



# A DIGEST OF INDIAN LAW CASES ;

CONTAINING

HIGH COURT REPORTS, 1862-1900,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,  
1836-1900,

WITH AN INDEX OF CASES.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

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IN SIX VOLUMES.

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## PREFACE TO THE FIRST EDITION.

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THE object of this work is to furnish a comprehensive Index to the case law of India as laid down in the reported decisions of the High Courts and Privy Council, analogous to that already compiled of the statute law. It would perhaps be too much to hope that this object has been fully attained, but I can at least claim for it that it goes further towards success in that attainment than any previous work of the kind in India. I shall be satisfied with this attempt towards such an end if it be found in some degree useful to the Government in its legislation, to the judicial officers of Government, and last, but by no means least, to the members of all the branches of the profession to which I have the honour to belong.

The work contains the gist of the cases reported in 166 volumes of Reports extending over a period of fifty years,—*viz.*, from 1836 to 1886. Besides the reports published in India, it contains the cases in Moore's Indian Appeals, without which, of course, no digest of Indian cases would be complete; and also such cases from the Law Reports, Indian Appeals, as are not reported in the Indian reports. The names of the reports are set out in the annexed list showing the periods over which they extend, the decisions of what Court they contain, and the abbreviations used for them in the references throughout the Digest.

With respect to a few of those volumes which have been reprinted, and in the later editions of which the paging is different from that in the original edition, I have given, wherever I could do so, both pagings. I think this difference of paging will be found with respect only to the first and second volumes of the Bombay Reports, the first volume of the N.-W. Provinces Reports, and the Agra Full Bench volume.

In some of the volumes—instances chiefly, however, confined to the Agra Reports—the paging is in some places manifestly incorrect, some pages having the same numbers. In these cases I have generally given the page which would have been correct had the paging been correctly continued.

In cases where it is not otherwise apparent that the case is a Privy Council or Full Bench decision, I have added in the reference the letters P. C. or F. B., as the case may be, to indicate this. It should be noticed that *all* the cases in the Supplemental Volume of the Bengal Law Reports are Full Bench cases. This is not the case, however, with the Full Bench volume of the Weekly Reporter, containing cases

decided in 1862-63; the letters W. R., F. B., therefore merely represent the abbreviation of the name of that volume, and do not necessarily imply that the case to which they are appended is a Full Bench case. In fact, as all the Full Bench cases in that volume are reported elsewhere, cases to which the letters W. R., F. B., alone are appended are probably not Full Bench cases, though some of them may be decided by more than two Judges.

With the names of the cases I have had great difficulty,—a difficulty which, from the character of Indian names, is, it seems to me, almost impossible to overcome. The general rule I have followed has been to cut out from the commencement of the names all prefixes and titles. The principal of these are Shahzada, Shah, Maharajah, Maharani, Rajah, Rani, Nawab, Sahib, Sri, Sreemutty, Mussamat, Bibi, Thakoor, Syed, Moulvie, Moonshee, Mir, Mirza, Hadji, Sheikh, Baboo, Coomar, Cowar or Kooer, and perhaps a few others. I have omitted these as far as possible with the object in view not only of greater brevity in the names, but also in order that, in the Index of Cases, names that are similar may come together, and not as they sometimes do in an index of names, some *with* the prefix or title and under one letter, and the same name *without* it under another letter. I have made exceptions to this rule only in cases where the name is given in the following form:—“Maharajah of Vizianagram,” “Rajah of Shivagunga,” “Nawab Nazim of Bengal,” etc.

As to the spelling of the names, I found it hopeless to attempt any consistency, for the various volumes of reports go through all the possible variations in the manner of spelling any particular Indian name, and I came to the conclusion that it was best to spell the cases as they appear in the reports. Had I adhered in all cases to any one mode of spelling, the result would have been that any cases spelt in the report in a different way would probably never be found by looking in the Index of Cases, or, if discovered at all, only after much more expenditure of time and trouble than would be desirable; and such a method would, it seemed to me, lead in other ways to difficulty and confusion.

I at first intended to issue the work in not more than two volumes, but owing to the material having taken up more space in print than I imagined it would do, and it being desirable not to have the volumes of a bulk inconvenient for ready use and reference, it has been decided to issue it in five volumes to be published successively, and, if possible, within the present year. To each volume will be appended a table of the headings contained in it, and the last volume will contain a list of all the cases contained in the five volumes. The paging will be continuous throughout the work.

J. V. WOODMAN.

CALCUTTA;  
15th September 1887.

## PREFACE TO THE PRESENT EDITION.

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SINCE the issue of the first Digest, which included the decisions of the High Courts and Privy Council down to 1886, the Author brought out three separate volumes containing the cases from 1887—1889, 1890—1893, and 1894—1897, respectively. The present edition is a consolidation of the previous Digests, with the addition of the rulings from 1898—1900 inclusive. Its bulk has consequently increased to a very considerable extent. A reference to the Table of Reports will show that the number of volumes of Reports digested is 241, as compared with 166 volumes digested in the first edition. The first four numbers of the Calcutta Weekly Notes have also been incorporated, as frequent reference is made to them in the Calcutta High Court. An idea of the increase of the size of this edition may be gained from a comparison of the number of volumes and columns of the two editions. Whereas the first Digest comprised five volumes including the Table of Cases, the present one is made up of five volumes of the Digest alone, and has a separate volume for the Table of Cases. In the former publication, Volume I contained the letters A—D and consisted of 1,562 columns; the present Volume I contains A—C only, and runs into 2,054 columns. In order to keep down the size of the volumes, the Author has been obliged in several places to omit lists of cases from cross references, thereby avoiding repetition, without, however, impairing the value of the work. The scheme and arrangement of the Digest remains the same, but Act XXVI of 1867, which was put under the Stamp Acts, has been transposed to Court Fees, and Bombay Act I of 1865 now appears under the heading “Bombay Survey and Settlement Act I of 1865.” Many separate minor headings have been brought under more general headings, and several sub-headings have been somewhat verbally altered. The vernacular terms and expressions which are scattered throughout the Reports are now printed in roman letters instead of italics, and some uniformity in their spelling has been observed.

CALCUTTA ;  
*15th July 1901.*



# TABLE OF REPORTS DIGESTED.

	Period.	Number of volumes.	In what Court.	Abbreviation.
Indian Jurist, Old Series	1862	2	High Court, Calcutta, and Privy Council.	Ind. Jur., O. S.
Sutherland's Weekly Reporter, Full Bench Volume.	1862-63	1	High Court, Calcutta, Appellate Side.	W. R., F. B.
Hay's Reports	1862-63	2	High Court, Calcutta, Appellate Side.	Hay.
Marshall's Reports	1862-63	1	High Court, Calcutta, Appellate Side.	Marshall.
Coryton's Reports	1862-63	1	High Court, Calcutta, Appellate Side.	Coryton.
Hyde's Reports	1863-64	2	High Court, Calcutta, Original Side.	Hyde.
Sutherland's Weekly Reporter, Gap Number.	1864	1	High Court, Calcutta, Appellate Side.	W. R., 1864.
Sutherland's Weekly Reporter	1864-76	26	High Court, Calcutta, Appellate Side, and Privy Council	W. R.
Bourke's Reports	1865	1	High Court, Calcutta, Original Side.	Bourke.
Indian Jurist, New Series	1866-67	2	High Court, Calcutta	Ind. Jur., N. S.
Bengal Law Reports, Supplemental Volume of Full Bench Rulings.	1862-68	1	High Court, Calcutta, Full Bench Cases.	B. L. R., Sup Vol
Bengal Law Reports	1868-75	15	High Court, Calcutta, and Privy Council.	B. L. R.
Madras High Court Reports	1862-75	8	Madras High Court	Mad.
Bombay High Court Reports	1862-75	12	Bombay High Court	Bom.
Agra High Court Reports	1866-68	3	North-Western Provinces High Court, Agra.	Agra.
Agra High Court Reports, Full Bench Volume.	1866-68	1	North-Western Provinces High Court, Agra	Agra, F. B.
North-Western Provinces High Court Reports.	1869-75	7	North-Western Provinces High Court, Agra	North-Western Provinces High Court Reports.
Indian Law Reports, Calcutta Series.	1876-1900	27	High Court, Calcutta, and Privy Council.	I. L. R., Calcutta.
Indian Law Reports, Madras Series.	1876-1900	23	High Court, Madras, and Privy Council.	I. L. R., Mad.
Indian Law Reports, Bombay Series.	1876-1900	24	High Court, Bombay, and Privy Council.	I. L. R., Bom.
Indian Law Reports, Allahabad Series.	1876-1900	22	High Court, North-Western Provinces, Allahabad, and Privy Council.	I. L. R., All.
Calcutta Law Reports	1877-84	13	High Court, Calcutta, and Privy Council.	C. L. R.
Moore's Indian Appeal Cases	1826-72	14	Privy Council	Moore's I. A.
Law Reports, Indian Appeals	1868-1900	27	Privy Council	I. R., I. A.
Law Reports, Indian Appeals, Supplemental Volume.	1872-73	1	Privy Council	I. R., I. A., Sup. Vol.
Calcutta Weekly Notes	1896-1900	4	High Court, Calcutta, and Privy Council.	C. W. N.
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- \_\_\_\_\_ s. 249.
- \_\_\_\_\_ s. 257.
- \_\_\_\_\_ s. 257A.
- \_\_\_\_\_ s. 258.
- \_\_\_\_\_ ss. 259, 260.
- \_\_\_\_\_ s. 268.
- \_\_\_\_\_ s. 272.
- \_\_\_\_\_ s. 275.
- \_\_\_\_\_ ss. 286, 290.
- \_\_\_\_\_ ss. 287, 289, 290.
- \_\_\_\_\_ s. 307.
- \_\_\_\_\_ ss. 311, 312.
- \_\_\_\_\_ s. 312.
- \_\_\_\_\_ s. 316.
- \_\_\_\_\_ ss. 325A, 326.
- \_\_\_\_\_ s. 326.
- \_\_\_\_\_ s. 341.
- \_\_\_\_\_ s. 357.
- \_\_\_\_\_ s. 367.
- \_\_\_\_\_ s. 372.
- \_\_\_\_\_ ss. 387, 391.
- \_\_\_\_\_ s. 424.
- \_\_\_\_\_ s. 432.
- \_\_\_\_\_ s. 443.
- \_\_\_\_\_ s. 493.
- \_\_\_\_\_ s. 543.
- \_\_\_\_\_ s. 544.
- \_\_\_\_\_ s. 548.
- \_\_\_\_\_ s. 549.
- \_\_\_\_\_ s. 551.
- \_\_\_\_\_ s. 553.
- \_\_\_\_\_ s. 556.
- \_\_\_\_\_ s. 558.
- \_\_\_\_\_ s. 560.

**CIVIL PROCEDURE CODE, 1882***—concluded.*

- \_\_\_\_\_ s. 575.
- \_\_\_\_\_ s. 583.
- \_\_\_\_\_ s. 584.
- \_\_\_\_\_ s. 587.
- \_\_\_\_\_ s. 643.
- Civil Procedure Code, 1859, Amendment Act.
- Civil Procedure Code, 1882, Amendment Acts.
- Claim.
- CLAIM TO ATTACHED PROPERTY.**
- CLERK OF THE COURT.**
- Clerk of Small Cause Court.
- CLUB.**
- Co-defendant.
- Codicil.
- Codifying the law, Object of.
- Coercion.
- Cohabitation.
- Coin.
- COLLECTOR.**
- Collision.
- Collusion.
- COMMISSION.**
  - 1. CIVIL CASES.
  - 2. CRIMINAL CASES.
- Commission Agent.
- Commission Sale.
- COMMISSIONER.**
- COMMISSIONER FOR TAKING ACCOUNTS.**
- COMMISSIONERS OF REVENUE CIRCUIT.**
- COMMITMENT.**
- Common, Rights of.
- Common Assembly.
- Common Object.
- COMPANIES ACTS.**
- COMPANY.**
  - 1. FORMATION AND REGISTRATION.
  - 2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.
  - 3. RIGHTS OF SHAREHOLDERS.
  - 4. TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.
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  - 6. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS.
  - 7. WINDING UP.
    - (a) GENERAL CASES.
    - (b) DUTIES AND POWERS OF LIQUIDATORS.
    - (c) COSTS AND CLAIMS ON ASSETS.
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**'COMPASS MAP,' MEANING OF.  
COMPENSATION.**

1. CIVIL CASES.
2. CRIMINAL CASES.
  - (a) FOR LOSS OR INJURY CAUSED BY OFFENCE.
  - (b) TO ACCUSED ON DISMISSAL OF COMPLAINT.

Competent Court.

**COMPLAINANT.****COMPLAINT.**

1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.
2. POWER TO REFER TO SUBORDINATE OFFICERS.
3. WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT.
4. DISMISSAL OF COMPLAINT.
  - (a) GROUND FOR DISMISSAL.
  - (b) POWER OF, AND PRELIMINARIES TO, DISMISSAL.
  - (c) EFFECT OF DISMISSAL.
5. REVIVAL OF COMPLAINT.

Composition Deed.

**COMPOUNDING OFFENCE.****COMPROMISE.**

1. CONSTRUCTION, ENFORCING, EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE.
2. REMEDY ON NON-PERFORMANCE OF COMPROMISE.
3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

Compulsory Labour (Madras).

**CONCEALMENT OF BIRTH.**

Conciliator.

Concubine.

Concurrent Judgments on fact.

Condition.

Condition precedent

Conditional Sale.

**CONFESSION.**

1. GENERAL CASES.
2. CONFESSIONS UNDER THREAT OR PRESSURE.
3. CONFESSIONS SUBSEQUENTLY RETRACTED.
4. CONFESSIONS TO MAGISTRATE.
5. CONFESSIONS TO POLICE OFFICERS.
6. CONFESSIONS OF PRISONERS TRIED JOINTLY.

**CONFESSION OF JUDGMENT.**

Confiscation.

**CONFISCATION OF PROPERTY IN  
ODDH.**

Confiscation of Salt.

Connivance.

Consent.

Consent Decree.

Consequential Relief.

**CONSIDERATION.**

Consignee of West Indian Estate.

**CONSIGNOR AND CONSIGNEE.**

Consolidation of Claims.

**CONSOLIDATION OF SUITS.****CONSPIRACY.****CONSULAR COURT.****CONTEMPT OF AUTHORITY OF  
PUBLIC SERVANT.****CONTEMPT OF COURT.**

1. CONTEMPTS GENERALLY.
2. PENAL CODE, s. 174.
3. PENAL CODE, s. 228
4. PROCEDURE
5. EFFECT ON CONTEMPT.

Continuing Offence

Continuing Right

**CONTRACT.**

1. CONSTRUCTION OF CONTRACTS.
2. CONDITIONS PRECEDENT.
3. PRIVACY OF CONTRACT.
4. REFUDIATION OF CONTRACT.
5. BOUGHT AND SOLD NOTES
6. CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES
7. WAGERING CONTRACTS
8. ALTERATION OF CONTRACTS.
  - (a) ALTERATION BY PARTY.
  - (b) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)

9. BREACH OF CONTRACT

10 LAW GOVERNING CONTRACTS

**CONTRACT ACT.**

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- ss. 2, 25.
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- s. 4.
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- ss. 15, 16.
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- ss. 20, 21.
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- s. 23.

**ILLEGAL CONTRACTS**

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- s. 25.
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- s. 27.
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- s. 28.
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- s. 29.
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- s. 39.
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- s. 43.
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- s. 44.
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- s. 51.
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- s. 53.
- 
- s. 55.

**CIVIL PROCEDURE CODE, 1882***—continued.*

- \_\_\_\_\_ s. 232.
- \_\_\_\_\_ s. 234.
- \_\_\_\_\_ s. 235.
- \_\_\_\_\_ s. 236.
- \_\_\_\_\_ s. 244.
- 1. QUESTIONS IN EXECUTION OF DECREE.
- 2. PARTIES TO SUIT.
- \_\_\_\_\_ s. 245.
- \_\_\_\_\_ s. 249.
- \_\_\_\_\_ s. 257.
- \_\_\_\_\_ s. 257A.
- \_\_\_\_\_ s. 258.
- \_\_\_\_\_ ss. 259, 260.
- \_\_\_\_\_ s. 268.
- \_\_\_\_\_ s. 272.
- \_\_\_\_\_ s. 275.
- \_\_\_\_\_ ss. 286, 296.
- \_\_\_\_\_ ss. 287, 289, 290.
- \_\_\_\_\_ s. 307.
- \_\_\_\_\_ ss. 311, 312.
- \_\_\_\_\_ s. 312.
- \_\_\_\_\_ s. 316.
- \_\_\_\_\_ ss. 325A, 326.
- \_\_\_\_\_ s. 326.
- \_\_\_\_\_ s. 341.
- \_\_\_\_\_ s. 357.
- \_\_\_\_\_ s. 367.
- \_\_\_\_\_ s. 372.
- \_\_\_\_\_ ss. 387, 391.
- \_\_\_\_\_ s. 424.
- \_\_\_\_\_ s. 432.
- \_\_\_\_\_ s. 443.
- \_\_\_\_\_ s. 493.
- \_\_\_\_\_ s. 543.
- \_\_\_\_\_ s. 544.
- \_\_\_\_\_ s. 548.
- \_\_\_\_\_ s. 549.
- \_\_\_\_\_ s. 551.
- \_\_\_\_\_ s. 553.
- \_\_\_\_\_ s. 556.
- \_\_\_\_\_ s. 558.
- \_\_\_\_\_ s. 560.

**CIVIL PROCEDURE CODE, 1882***—concluded.*

- \_\_\_\_\_ s. 575.
- \_\_\_\_\_ s. 583.
- \_\_\_\_\_ s. 584.
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5. REVIVAL OF COMPLAINT.

Composition Deed.

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Conciliator.

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Concurrent Judgments on fact.

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Conditional Sale.

**CONFESSION.**

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10. LAW GOVERNING CONTRACTS.

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- \_\_\_\_\_ s. 4.
- \_\_\_\_\_ ss. 15, 16.
- \_\_\_\_\_ ss. 20, 21.
- \_\_\_\_\_ s. 23.

**ILLEGAL CONTRACTS**

- \_\_\_\_\_ s. 25.
- \_\_\_\_\_ s. 27.
- \_\_\_\_\_ s. 28.
- \_\_\_\_\_ s. 29.
- \_\_\_\_\_ s. 39.
- \_\_\_\_\_ s. 43.
- \_\_\_\_\_ s. 44.
- \_\_\_\_\_ s. 51.
- \_\_\_\_\_ s. 53.
- \_\_\_\_\_ s. 55.

**CONTRACT ACT—concluded.**

- \_\_\_\_\_ s. 53.
- \_\_\_\_\_ s. 62.
- \_\_\_\_\_ s. 63.
- \_\_\_\_\_ s. 64.
- \_\_\_\_\_ s. 65.
- \_\_\_\_\_ s. 69.
- \_\_\_\_\_ ss. 69 and 70.
- \_\_\_\_\_ s. 70.
- \_\_\_\_\_ s. 72.
- \_\_\_\_\_ s. 73.
- \_\_\_\_\_ s. 74.
- \_\_\_\_\_ s. 76.
- \_\_\_\_\_ s. 78.
- \_\_\_\_\_ s. 93.
- \_\_\_\_\_ s. 108.
- \_\_\_\_\_ s. 178.
- \_\_\_\_\_ s. 205.

Contractors.

Contradictory Statements.

**CONTRIBUTION, SUIT FOR.**

1. CO-SHARERS, LIABILITY OF.
2. VOLUNTARY PAYMENTS.
3. PAYMENT OF JOINT DEBT BY ONE DEBTOR.
4. JOINT WRONG-DOERS.
5. INTEREST.

Contributory.

**CONVERSION.****CONVERTS.**

Conveyance.

Conveyance, Return of, by purchaser.

**CONVICTION.**

Cooch Behar.

Co-parceners.

Co-parceners, Consent of.

Co-prisoner, Evidence of.

Copies of Documents.

Copy of copy of Document.

Copy of Decree or Judgment.

**COPYRIGHT.**

Copyright Acts.

**CORONER.**

Coroner's Act.

Coroner's Inquest.

Corporation.

Corpus Delicti.

**CO-SHARERS.**

1. GENERAL RIGHTS IN JOINT PROPERTY.
2. ENJOYMENT OF JOINT PROPERTY.
  - (a) CULTIVATION.

**CO-SHARERS—concluded.**

- (b) ERECTION OF BUILDINGS.
  - (c) EXCLUSIVE POSSESSION OF PORTION OF JOINT PROPERTY.
  - (d) LEASES BY ONE CO-SHARER.
3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY.
- (a) POSSESSION.
  - (b) MISCELLANEOUS SUITS.
  - (c) EJECTMENT.
  - (d) KABULIATS.
  - (e) RENT.
  - (f) ENHANCEMENT OF RENT.

**COSTS.****1. SPECIAL CASES.**

ABATED SUIT OR APPEAL.  
 ACCOUNT, SUIT FOR.  
 ADMIRALTY OR VICE-ADMIRALTY.  
 APPEAL.  
 ATTORNEY AND CLIENT.  
 AWARD.  
 BOMBAY MINORS ACT, XX OF 1861.  
 CERTIFICATE UNDER ACT XL OF 1858.  
 COLLECTOR.  
 COMPANIES ACT (VI OF 1882).  
 CO-SHARERS.  
 DEFENDANTS.  
 DELAY.  
 ERROR OR MISTAKE.  
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 FRESH SUIT WRONGLY BROUGHT.  
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 GROUNDS OF APPEAL.  
 GUARDIAN.  
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 JURISDICTION.  
 LANDLORD AND TENANT.  
 LETTERS OF ADMINISTRATION.  
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 MISJOINDER.  
 MORTGAGE.  
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 PAYMENT INTO, AND PAYMENT OUT OF, COURT.  
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 PLEAS TAKEN OUT OF TIME.  
 PRELIMINARY ISSUE.  
 PRINTING AND TRANSLATIONS.  
 PROBATE.  
 REFERENCE TO HIGH COURT.  
 REMAND.  
 RESPONDENT.  
 SERVICE OF SUMMONS BY MISTAKE.  
 SMALL CAUSE COURT SUITS.  
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 THIRD PERSONS, PAYMENT BY.  
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**COSTS—concluded.**

TRUSTEES.  
VALUATION OF SUTT.  
VENDOR AND PURCHASER.  
VEXATIOUS LITIGATION.  
WILL.  
WITHDRAWAL OF SUTT.

2. COSTS OUT OF ESTATE.

3. INTEREST ON COSTS.

4. SCALE OF COSTS.

5. TAXATION OF COSTS.

**COTTON FRAUDS ACT.****COTTON FRAUDS REGULATION.****COUNSEL.****COUNTERFEITING COIN.****COUNTERFEITING GOVERNMENT  
STAMP.****COURT, MEANING OF.****COURT OF WARDS.****COURT OF WARDS ACT.****COURT FEES.****COURT FEES ACT, 1870.**

s. 5.

ss. 5, 7, and 12.

s. 6.

s. 7.

s. 10.

s. 11.

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s. 16.

s. 17.

s. 19.

s. 19D.

s. 20.

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s. 28.

s. 31.

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sch. I, arts. 4 and 5.

sch. I, art. 6.

sch. I, art. 7.

sch. I, art. 8.

sch. I, art. 11.

sch. I, art. 12.

sch. II, art. 1.

sch. II, art. 6.

sch. II, art. 10.

sch. II, art. 11.

sch. II, art. 17.

Court Fees Act Amendment Act.

Courts (Colonial) Jurisdiction Act, 1874.

Cousins.

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**COVENANT RUNNING WITH LAND.****COVENANT TO RENEW.**

Coverture, Plea of.

Cow, Definition of.

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Crabs.

Creditor.

Cremation.

**CRIMINAL BREACH OF CONTRACT.****CRIMINAL BREACH OF TRUST.**

Criminal Case.

Criminal Court.

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**CRIMINAL INTIMIDATION.****CRIMINAL MISAPPROPRIATION.**

Criminal Procedure Code, 1882.

Criminal Procedure Code, 1882, Amendment Acts.

**CRIMINAL PROCEDURE CODES.**

s. 45.

s. 103.

s. 164.

s. 176.

s. 182.

s. 197.

s. 236.

s. 238.

s. 258.

s. 263.

s. 264.

s. 273.

s. 288.

s. 289.

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s. 310.

ss. 340, 341.

s. 342.

s. 347.

s. 350.

s. 351.

s. 360.

ss. 367, 369.

s. 374.

s. 376.

s. 380.

s. 403.

s. 423.

**CRIMINAL PROCEDURE CODES**  
*—concluded.*

_____	s. 428.
_____	s. 435.
_____	ss. 436, 438.
_____	s. 437.
_____	s. 451.
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_____	s. 476.
_____	s. 477.
_____	s. 478.
_____	ss. 480, 481, 482.
_____	s. 487.
_____	s. 488.
_____	s. 517.
_____	s. 520.
_____	s. 523.
_____	s. 526A.
_____	s. 537.
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_____	s. 548.
_____	s. 551.

**CRIMINAL PROCEEDINGS.**
**CRIMINAL TRESPASS.**

Crops.
Cross-appeal.
Cross-appeals.
Cross-cases tried together.
Cross-claim.
Cross-decree.
Cross-examination.
Crown.

**CROWN DEBTS.**

Cruelty.
Cruelty to Animals.

**CULPABLE HOMICIDE.**

Cultivator.
Cumulative Sentence.
Curator.

**CUSTODY OF CHILDRE .**

Custody of Wife.
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**CUSTOM.**

Cutchi Memons.
Cypres Performance.

A DIGEST  
OF  
THE HIGH COURT REPORTS,  
1862—1900,  
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THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA.  
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A

**ABANDONMENT, NOTICE OF—**

See INSURANCE—MARINE INSURANCE.  
[6 B. L. R., 318; on appeal  
7 B. L. R., 347  
Bourke, O. C., 391  
1 Ind. Jur., N. S., 406]

**ABANDONMENT OF CHILDREN.**

1. ——— *Penal Code, s. 317.*—S 317 of the Penal Code was intended to prevent the abandonment or desertion by a parent of his or her children of

2. ——— *Penal Code (Act XLV of 1860), s. 317—Exposure of child—Facts constituting the offence defined—Child left in charge of a blind woman and deserted.*—A woman who was the mother of an illegitimate child, aged at the time about six months, left the child in charge of a blind woman in whose company she was, saying that she was going to get food and would return shortly. She went away to another village, and did not return. Apparently she never intended to return. Upon these facts it was held by the Court that the child was

**ABANDONMENT OF PART OF CLAIM.**

See CASES UNDER RELINQUISHMENT OF, OR  
OMISSION TO SUE FOR, PORTION OF CLAIM.

**ABANDONMENT OF TENURE.**

See CASES UNDER LANDLORD AND TENANT  
—ABANDONMENT, RELINQUISHMENT, AND  
SURRENDER OF TENURE.

See CASES UNDER RIGHT OF OCCUPANCY—  
TRANSFER OF RIGHT.

**ABATEMENT OF APPEAL.**

See CASES UNDER ABATEMENT OF SUIT—  
APPEALS

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R., 2 Bom., 564  
I. L. R., 19 Bom., 714]

See COSTS—ABATED SUIT OR APPEAL  
[I. L. R., 8 Calc., 440]

**ABATEMENT OF PROSECUTION.**

Adultery—*Death of Husband*—The death of the husband does not necessarily put an end to a prosecution for adultery under s 497 of the Penal Code. ANONYMOUS. 4 Mad. Ap., 55

**ABATEMENT OF RENT.**

1. ——— Ground of Abatement—Causes beyond control—*Act X of 1859, s. 18*—The real meaning of s 18, Act X of 1859, is that the grounds for which an abatement of rent may be claimed by a raiyat must have resulted from causes beyond his control. MURSOOR ALI v HARVEY [11 W. R., 291]

2. ——— Diluvion—*Act X of 1859, s. 18 (Bengal Act VIII of 1869, s. 19)*—Deduction in suit for arrears of rent—Rent of a talukh may be abated if a portion of the

3. ——— *Onus probandi*—The onus lies on the defendant in a suit

14 W. R., 1002 A., 21

**ABATEMENT OF RENT—continued.**

4. ————— *Diluvion—Right of occupancy.*—A tenant, whether with or without a right of occupancy, is entitled to abatement of rent for land washed away unless precluded by the term of his *kabuliat* from claiming any abatement. *ENAYUTTOOLAH v. ELAHEBUKSH*

[W. R., 1864, Act X, 42]

5. ————— *Cause of action.*—When a diluvion takes place, a right of suit to obtain an abatement of *jumma* accrues from the time when the plaintiff is compelled to pay the rent named in his *pottah* without the allowance of the abatement claimed by him. *BARRY v. ABDOL ALI* . . . . . W. R., 1864, Act X, 64

6. ————— *Talukh created before 1790.*—*Quere.*—Whether the proprietor of a *talukh* created before the Permanent Settlement can claim abatement of rent on the ground of diluvion. *RAM CHURN BISACK v. LUCAS* [16 W. R., 279]

7. ————— *Waiver of right to deduction.*—In a suit for arrears of rent of land adjacent to a river where defendant claims deduction on account of diluvion, and it is found that the agreement under which he holds requires measurement to be made once in three years, no account being taken of accretion or decretion occurring within that period: if the tenant has waived his right of measurement and has held over, it must be presumed that he elects to continue to hold at the same *jumma* as before, and his claim to deduction cannot be allowed. *KRISTO KINKUR PURAMANICK v. RAMDHUN CHETTANGIA*

[24 W. R., 326]

8. ————— *Kabuliat—Sale by tenant of his tenure—Suit against purchaser.*—In a suit against the purchaser at an auction sale of a tenure under a *kabuliat*, by which it was agreed that the former tenant should not be entitled to abatement of rent on any ground and should be liable for interest at a particular rate for all arrears of rent, the defendant pleaded that as auction purchaser he was not bound by the terms of the *kabuliat*; that he was entitled to abatement on the ground of diluvion of portion of the demised lands, and only bound to pay interest at a reasonable rate upon arrears of rent. *Held*, that defendant was bound by the terms of the *kabuliat* entered into by his predecessor. *ISHAN CHUNDER CHOWDHRY v. CHUNDER KANT ROY* . . . . . 13 C. L. R., 55

9. ————— *Transferee of tenant, Right of, to abatement.*—A tenant has a right to, and can claim an abatement of rent where the area of the land, the subject of his tenure, has been diminished by diluvion, and such right passes to a purchaser on a sale of the tenure. *Prosunno Moyee Dossee v. Doya Moyee Dossee*, 22 W. R., 275, distinguished. *KALI PRASANNA RAI v. DHANANJAI GHOSE* . . . . . I. L. R., 11 Calc., 625

10. ————— *Bengal Act VIII of 1869, s. 18.*—A raiyat cannot sue for

**ABATEMENT OF RENT—continued.**

abatement of rent simply because the lands which he holds are rated higher than those of the same description and with similar advantages held by raiyats of the same class in the vicinity. Bengal Act VIII of 1869, s. 18, refers to an alteration of area owing to a portion of the land having gone away by diluvion or otherwise—not to some difference in the length of the measuring pole in use at different periods. *BADUN MUNDLE v. SHIM KOOMAREE BURMONEE* . . . . . 21 W. R., 404  
*PERTAB CHUNDER BANERJEE v. OMUR SIRDAR* [25 W. R., 89]

*Affirmed in OMUR SIRDAR v. PERTAB CHUNDER BANERJEE* . . . . . 25 W. R., 212

11. ————— *Damage to land by Cyclone—Right of under-tenant to get remission of rent.*—A landlord receiving remission from Government on account of damage done to his estate by a cyclone is not on that account bound to allow a remission to his under-tenants, unless he received the former on the understanding or agreement that he would allow it in turn. *GOLUCK CHUNDER MYTEE v. PARBUTTY CHURN DASS* 15 W. R., 167

12. ————— *Land less than stated in lease—Decree apportioning rent, reserved in a mokurari lease, to the land transferred—Lessee getting possession of less land than stated in lease—Act XI of 1859, s. 54—Right of lessee to abatement of rent.*—A decree had determined that lands leased in *mokurari* to a lessee, with a fixed rent thereon, were less in extent than they were specified to be in the *pottahs* that comprised them, the lessors not having title to the whole; and the lessee had obtained possession of the less estate:—*Held*, that the lessee was entitled to abatement of the rent reserved. . . . . *mehal*, within which were the lands subject to the *mokurari*, such lands being shares of *mouzas* therein, was afterwards sold for arrears, under Act XI of 1859. The purchaser at that sale was sued by the *mokuraridar* to make good her incumbrance under s. 54 of the Act. The lease was maintained by the decree that followed, but only as to part of the shares specified in the *pottahs*, and the lessee obtained possession of that part only. In this suit for mesne profits brought by the lessee against the purchaser's heir, who filed a cross suit against her for rent, it was *held* that, as the lessee had not proved that she, having had possession under the leases, had been dispossessed by the purchaser, there had not been an eviction in the proper sense of the word. But when, in her suit for possession, part only was decreed to her, and she was precluded by the result from getting a substantial part, her position was the same as if she had been evicted. She, therefore, had the same equity for an apportionment, as if she had been evicted. On the facts it was rightly found by the first Court that the leases were not taken with knowledge on the part of the lessee that the title was a doubtful one. *IMAMBANDI BEGUM v. KAMLESWARI PERSHAD*

[I. L. R., 21 Calc., 1005  
L. R., 21 I. A., 118]

**ABATEMENT OF RENT—continued.**

13. ————— **Error in measurement of land—Land found to be less than stated.**—A lease providing for enhancement if the lands are found on measurement to exceed the quantity stated in the lease, does not necessarily give the right to abate if the lands are found to be less than that stated in the lease. **RAM KANT CHOWDHRY v. BINDABUN CHUNDER GOPE**

[2 W. R., Act X, 71

14. ————— **Construction of pottah—Default of tenant.**—Though a pottah provided for an abatement of defendant's rent if on measurement the land was found to be less than 145 bighas, yet it was held that if defendant came to be in possession of that less quantity by his own default, and not that of the lessor, the

15. ————— **Raiyat having paid no rent—Bengal Act VIII of 1869,**

pottah. **BRONATH KONDHO CHOWDHRY v. UNANT RAM DUTT** . . . . . 17 W. R., 449

16. ————— **Misrepresentation as to quantity of land.**—In a suit by a patnidar to recover rent in accordance with the

show that he had been damaged by the plaintiff's misrepresentation as to the extent of his share, he could not be relieved from his contract, in this form of suit at least. **GOVE MOHUN BOY v. RADHA ROMUN SINGH** . . . . . 21 W. R., 372

17. ————— **Delay**

18. ————— **Act X of 1859, ss 18 and 23, cl. 3.**—S. 18, Act X of 1859, is not applicable to a case in which a

**ABATEMENT OF RENT—continued.**

plaintiff patnidar sues for an abatement of rent, on the ground of fraud caused by the concealment from him of the existence of an intermediate tenure created by the zemindar. Cl 3, s. 23 of that Act, is wide enough to admit of such a suit being tried by the Revenue Courts. **SHOKOOR ALI v. UMOLA AHALYA** [8 W. R., 504

19. ————— **Denial of right to assess lands in tenure.**—A suit in which the plaintiff alleges that rent was wrongly assessed on him for lands not covered by his pottah, and contends that in assessing his rent these lands should be included, is not in the nature of a suit for abatement of rent. **OBHOY GOBIND CHOWDHRY v. KENNY** . . . . . 8 W. R., 518

20. ————— **Breach of Contract—Jurisdiction of Civil Court.**—In a suit for damages by a lessee, where the plaint shows a distinct prayer for abatement of rent, and also sets forth as the main ground of the suit a fraudulent breach of contract by misrepresentation and refusal of deduction and refund stipulated for, so much of the claim as refers to abatement is, by cl. 3, s. 23, Act X of 1859, beyond the jurisdiction of the Civil Court, but the rest of the suit is properly cognizable by such Court. **NILMOY SINGH v. ISHUR CHUNDER GHOSAL** . . . . . 9 W. R., 92

21. ————— **Reduction of rent payable by landlord to Government—Act X of 1859, ss. 17 and 18—Ss 17 and 18**

liability to make abatement in any other case. In a suit for abatement of rent on the ground that the jumma payable to Government had been reduced upon condition that the rents of the

rents fixed by pottahs or kabuliats entered into subsequently. **SUKHAWATOOLLAH v. PUTHOO GOL-DAR** . . . . . 1 Ind. Jur., O. S., 7

22. ————— **Loss of portion of land—Suit for declaration of liability to pay less rent—Equitable relief.**—A suit by a tenant against his original lessors for a declaration that he is not liable to pay them the whole rent payable under his pottah in consequence of a third person having, subsequently to the grant of such pottah,

# ABATEMENT OF RENT—continued.

entitled to obtain.  
NATH CHATTERJEE

CHANDMONI DAS v. LOKE  
6 C. L. R., 494

23. Land taken for public purposes.—*Suit to recover share of money taken as compensation for land.*—In a suit to recover the proportion of money paid into Court as compensation for land taken for a railway, to which the plaintiff, a dar-patnidar, may be entitled, and in which suit the zemindar and patnidar are defendants, the plaintiff cannot claim abatement of rent under Act X of 1859, s. 18, since such a claim is cognizable only in a suit instituted under that Act. GORDON STUART & Co. v. MOHATAB CHAND [Marsh., 490

24. Claim to deduction from rent.—A claim for rent being a recurring cause of action, a tenant is entitled to set up against it for any particular year any right which he had to a deduction or abatement, notwithstanding that he has paid full rent for several previous years. When land is taken away for railway purposes, and compensation made, which is divided between the zemindar and those holding under him, any deduction of rent claimed from the zemindar must be reckoned with reference, not to the gross amount of compensation, but to the proportion which passed into his hands. MOHATAB CHAND v. CHITTUO COOMAREE BIERE 16 W. R., 201

25. In a suit for rent by a zemindar against a patnidar, the latter claimed abatement of the rent on the ground that part of the land included in the patni tenure had been acquired by the Government for public purposes. The kabuliati executed by the patnidar contained a provision to the effect that, if any of the land settled should be taken up by Government for public purposes, the zemindar and the patnidar should divide and take in equal shares the compensation money, and a further provision to the effect that the patnidar should "make no objection on the score of diluvion or any other cause to pay the rent fixed or reserved by this kabuliati." Held that the patnidar was entitled to abatement of the rent. USTA SUNKUR SIBKAN v. TARINI CHUNDER [I. L. R., 9 Cal., 571; 11 C. L. R., 366

26. *Ijara Settlement*—An ijaradar took on lease certain lands, giving a kabuliati which contained the following clause:—"In regard to the aforesaid rent we take upon ourselves the risk of flood and drought, of death and flight, of alluvion and diluvion, of profit and loss. In no case shall we be able to claim a reduction in the rent, nor will it be open to you to demand more on account of alluvion, etc." During the lease part of these lands were taken up by Government for the purpose of a railway, and compensation was paid to the lessor therefor. The ijaradar claimed to make a deduction from his rent for the land taken away from him. Held that such a claim did not come under the meaning of the word "abatement" as used in the rent law, nor was it intended by the parties to be within the clause of the lease, but the land having been taken from

# ABATEMENT OF RENT—continued.

the whole area demised, not by natural causes, but by *vis major*, the ijaradar was entitled to a deduction from the rent, on his showing that there were tenants of his on the land who, before the land was taken by Government, paid rent to him which they had now ceased to pay. WATSON & Co. v. NISTANJANI I. L. R., 10 Cal., 544

27. In a suit for arrears of rent, a claim for abatement may be made by way of set-off in respect of land taken up by Government for the purposes of a road. DEEN DIAL LALL v. THUKHOO KOONWAR 6 W. R., Act X, 24

28. Proceedings under Land Acquisition Act, 1870.—Purchase at sale for arrears of rent.—Reg. Reg. VIII of 1819.—Portion of certain land held under a patni having been taken up by the Government for public purposes under the Land Acquisition Act, the zemindar declared his intention of granting no abatement of rent, and acting upon this declaration the patnidar was allowed to appropriate the whole of the compensation. The patni was subsequently sold under Regulation VIII of 1819, with notice of the amount of the original rent, and the purchaser now sued for abatement of that rent. He did not allege that he had no notice of the proceedings under the Land Acquisition Act. Held that the plaintiff must be presumed to have had notice of these proceedings, and that it was therefore incumbent upon him to have made inquiry regarding the position of the patni, and that under the circumstances he was not entitled to the abatement sought for. PEARI MOUN MUKERJEE v. AUDHIRAJ AFTAB CHAND [10 C. L. R., 526

29. Previous suit for abatement, effect of.—*Onus probandi.*—There is no provision in the Rent Law prescribing that suits for enhancement or abatement shall not be brought within a certain period after the determination of a similar suit on the same grounds. And there is no provision throwing upon a plaintiff in a suit for abatement of rent the burden of proof that there has been some change in circumstances since a decision in a previous similar suit was passed. CHEDA v. NUNHOO BEG 2 N. W., 348

30. Claim to abatement.—"Otherwise vary" the rent.—The words "otherwise vary" in s. 153, Act X of 1859, are meant to include abatement claimable by the ryot; and this reservation is made in respect of questions of right to vary the rent, whether raised by the landlord or by the tenant. ANUND CHUNDER DEGREE v. NUBOCOOMAR CHATTERJEE [8 W. R., 192

31. Right to sue.—Patnidar.—A patnidar can sue for abatement of rent under the Rent Act, 1859. PROSUNOMOYEE DOSSEE v. SOONDER COOMAREE DEBIA 2 W. R., Act X, 30  
MAN GUROMINEE DASSEA v. KHETPUR CHUNDER GHOSE 2 W. R., Act X, 47

## ABATEMENT OF RENT—continued.

32. ———— *Lessee*—*Act X of 1859, s. 23*—A patnidar, or any other lease-holder, may bring a suit against the zemindar for abatement of rent, under s. 23, Act X of 1859. *RAMNARAYAN BANERJEE v. JAYAKRISHNA MOOKERJEE* . . . B. L. R., Sup. Vol. 70  
*HOBOKISHEN BANERJEE v. JOYKISHEN MOOKERJEE* [1 W. R., 299]

33. ———— *Howladar*.—A howladar has a right to sue for abatement of rent *KOMLAKANT DOSS v. POGOSE* 2 W. R., Act X, 65

34. ———— *Tenant without right of occupancy*—*Act X of 1859, s. 18*.—A tenant not having a right of occupancy is not entitled to an abatement of rent under Act X of 1859, s. 18. *NOBODDEP CHUNDER SIRCAR v. LALLA SKEB LOOL* . . . Marsh, 325

35. ———— *Under-tenants*—*Act X of 1859, s. 23, cl. 2*—*Illegal exaction of rent*.—Cl. 2, s. 23, Act X of 1859,

*CHUNDER FANDRY* . . . 14 W. R., 269

36. ———— *Form of Suit*—*Act X of 1859, s. 23*—*Jurisdiction of Civil Court*.—A obtained from B a patni lease, whereby it was agreed that A should prepare a hustabad (rent roll), that if it should appear that there was any deficiency in the jumma stated in the pottah, the correct jumma should be ascertained as therein provided, and that the rent should be made up to A by B, and B should return a proportionate amount of the consideration-money. A sued B for an abatement of rent, for a refund of rent paid in excess, and for a proportionate refund of the consideration-money

37. ———— *Suit for apportionment of rent*—*Bengal Act VIII of 1869, s. 19*.—In 1877 certain batwara proceedings were ter-

In 1881 the defendants sued the plaintiff for rent

## ABATEMENT OF RENT—concluded.

stated by him in his plaint, and not that alleged by the defendants. *Held* that the suit was rather one for the apportionment of rent after the batwara proceedings, and not one for abatement of rent. *DUROA PERSHAD v. GHOSITA GORJA*

[J. L. R., 11 Calc., 284]

38. ———— *Rate of deduction*—*Jurisdiction of Revenue Court*.—A granted a patni to B, to which a certain mehal appertained. The Government, to which the mehal belonged, in reversion upon an ijara held by A, sold it to C. *Held* that B was entitled to abatement of rent from A, and that a suit for abatement, under the circumstances, was cognizable by the Revenue Court. *Semble*.—Where there is no specification in the original contract of the amount of rent payable for the portion of land for which abatement is claimed, such a sum ought to be deducted from the whole rent as would bear to

39. ———— *Procedure—Suit for arrears of rent*.—A claim by defendant for abatement of rent under remission granted to plaintiff by Government may be tried in a suit for arrears. *BOIKUSTO PARAKI v. SURENDRONATH ROY* . . . 1 W. R., 84

40. ———— *Plea of abatement in suit for arrears of rent*.—In a suit to recover arrears of rent it is competent to a Court to adjudicate upon a plea of abatement. *GOUR KISHORE CHUNDER v. BONOMALEE CROWDERY*

[32 W. R., 117]

41. ———— *Effect of decision of Civil Court on decree of Revenue Court*—*Suit for*

pending, the Collector decreed the rent suit in full. In execution, the zemindar recovered the full rent, and the patnidar then sued for a refund of excess payments and of the interest realized by the zemindar thereon. *Held* that the decree of the Revenue Court was superseded and modified by the decree

liable for and also interest on such excess. *Held* (on reference to the decree) that the abatement was to take effect from the commencement of the patni lease. *NILMONY SINGH DEO v. SHARODA PERSHAD MOOKERJEE* . . . 18 W. R., 434

## ABATEMENT OF SUIT.

Col.

- 1.—SUITS . . . 11  
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See APPEAL—ORDERS.

[I. L. R., 18 Mad., 496

I. L. R., 17 All., 172, 286

See INSOLVENT ACT, s. 36.

[8 B. L. R., 119

10 Bom., 58

See CASES UNDER RIGHT OF SUIT—  
SURVIVAL OF RIGHT.

## (1) SUITS.

1. ——— Lands washed away—*Suit for possession and mesne profits.*—A suit for possession with mesne profits does not abate by reason of the lands having since been washed away. *UNNA POORNA DEBIA v. RAM LOCHAN GHOSE*

[5 W. R., 227

2. ——— Death of sole plaintiff—*Revivor—Civil Procedure Code (Act X of 1877), ss. 363, 365, 366, 371—Limitation Act (XV of 1877), sch. ii, arts. 171, 178.*—Upon the death of a sole plaintiff, if no application to revive is made within sixty days from the date of the plaintiff's death, the suit abates. But the Court may, under s. 371 of the Code of Civil Procedure, revive the suit, on the application of the legal representative of the plaintiff, within three years from the time when the right to apply accrues, if he can show that he was prevented by sufficient cause from continuing the suit. *BHOYRUB DASS JOHURRY v. DOMAN THAKOOR*

[I. L. R., 5 Cal., 139

4 C. L. R., 374

3. ——— *Civil Procedure Code (1859), s. 102, (1877) s. 371—Institution of fresh suit.*—Where a suit was declared abated in 1868 under s. 102 of Act VIII of 1859 for non-prosecution by the representative of deceased plaintiff,—*Held* that the Civil Procedure Code, s. 371, was no bar to a fresh suit instituted in 1880 on the same cause of action. *PALLIKUNATH RAMEN MENON v. MULLANKAJI SRI KUMARAN NAMBUURI*

[I. L. R., 3 Mad., 31

4. ——— *Civil Procedure Code (1882), ss. 365, 366, 371—Revival of suit.*—The plaintiff died on the 28th August 1883, and in December 1884, letters of administration to his estate were granted to the Administrator General. The defendant died in June 1884, leaving a widow and one son him surviving. By his will he appointed two executors. On the 3rd February 1885, the Administrator General took out a summons to revive the suit. *Held* that, notwithstanding the provisions of s. 365 of the Civil Procedure Code (XIV of 1882) and of the Limitation Act (XV of 1877), it was competent for a Judge in chambers to revive the suit by making an order for abatement under s. 366 of the Code, coupled with an order under s. 371 setting aside the order for abatement. *FULYAHU v. GOCULDAS VALLABHDAS* . I. L. R., 9 Bom., 275

5. ——— Insolvency of plaintiff—*Civil Procedure Code (1859), s. 106, (1882) s. 370—*

## ABATEMENT OF SUIT—continued.

## (1) SUITS—continued.

*Order for security for costs by Official Assignee when made a party.*—S. 106 of the Civil Procedure Code means that a suit abates by the insolvency of the plaintiff, but that the defendant shall not plead the abatement without giving the Official Assignee an opportunity of prosecuting the suit. Where, therefore, the plaintiff, after the institution of a suit, became insolvent, and the defendant thereupon obtained an order that the Official Assignee should give security for the costs of the defendant within fourteen days, and should be made a party to the suit within one month, and that, in default of such security, the suit should be set down for dismissal within eight days after the expiration of the time so limited. *Held* that such order was irregular. *Held*, also, that the Official Assignee, having notice of the order, was not entitled to further notice of the setting down of the suit for dismissal, he not having given the security required, and that the giving of such security was a condition precedent to his being made a party to the suit. *IBRAHIM BIN MAHASIN v. ABDUR RAHMAN BIN ALI* . GAMBLE v. ABDUR RAHMAN BIN ALI . 12 Bom., 257

6. ——— *Civil Procedure Code (1859), s. 106, (1882) s. 370.*—If an assignee, who has been substituted for the plaintiff under s. 106, Act VIII of 1859, declines to furnish security for costs within such reasonable time as the Court may order, the defendant may, within eight days after such neglect and refusal, plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit. *HEERA LALL SEAL v. CARAPIET* [3 W. R., 431

7. ——— Survival of cause of action. —During the pendency of a suit by a Hindu widow to recover possession of her husband's estate, the widow died. *Held*, the cause of action was one which, from its very nature, survived on the death of the plaintiff, and therefore the suit did not abate. *PARBUTTY v. HIGGIN* . 17 W. R., 475

*PARBUTTY v. BHIKUN* . 8 B. L. R., Ap., 98

8. ——— *Suit by son to set aside father's alienation of ancestral property—Death of son—Hindu mother.*—Where a Hindu minor, governed by the law of the Mitakshara, on whose behalf a suit to set aside his father's alienation of ancestral property had been instituted, died,—*Held* that no right to sue survived in favour of his mother, but the suit abated. *PADARATH SINGH v. RAJA RAM* . I. L. R., 4 All., 235

9. ——— *Personal cause of action.*—*Held*, that under the circumstances the suit which had arisen on account of some illegal act of the widow, had abated on her death pending the suit, and that the question as to the plaintiff's reversionary right, which was raised by an intervenor, must be decided in a separate suit. *RANJUN v. LACHEE*

[1 Agra, 49

10. ——— *Act VIII of 1859, s. 100, (1882) s. 362.*—A and B, as joint owners of

## ABATEMENT OF SUIT—continued.

## (1) SUITS—continued.

certain land, brought an action for damages on account of trespass. *B* died after action was brought. *Held*, that the cause of action survived to *A*. *Semle*.—The words "cause of action" in s. 100 of Act VIII of 1859 mean right to bring an action. *CHUNDERMOHUN DUTT v. BISWAMBHUR LAHA* [1 B. L. R., O. C., 42]

11. — In a suit to recover possession of timber, the first defendant had ceased to have any interest, and after the settlement of issues he died. *Held* that the cause of action against the other defendants survived, and that, the first de-

12. — *Act X of 1859, s. 20 (Beng. Act VIII of 1859, s. 21)*.—A cause of action accruing against an agent for money received and accounts kept, falling within the class mentioned in s. 20, Act X of 1859, survives the death of the agent. *HILLS v. SHOKHEE MONEE DOSSEE*

[10 W. R., 59]

13. — *Suit by original mortgagor against mortgagee and sub-mortgagee—Death of mortgagee pending suit—Civil Procedure Code (1882), s. 368*.—Plaintiff sued to redeem a mortgage passed by his deceased father to defendant No. 1, and joined defendant No. 2 as being the sub-mortgagee of defendant No. 1 and in possession of the property. After suit, defendant No. 1 died, and no steps were taken by the plaintiff within time to make his legal representatives parties. The suit was, however, allowed to be continued against defendant No. 2, and a redemption decree was passed in plaintiff's favour.—*Held*, on second

PADGAYA v. BAJI BABAJI MOHOLKAR

[1. L. R., 20 Bom., 549]

14. — *Interest of mother on partition—Civil Procedure Code (Act XIV of 1882), s. 361, ill. (c)*.—Upon a partition *D* was allotted a one-third share of certain premises as

arbitrators, but before decree thereon, *D* died,

by the death of *D*, and the right of action on the award survived to the sons. *DENOMOVEE DASSEE v. CHOONEE MONEE DASSEE* . 4 C. W. N., 280

Affirmed on appeal in *CHOONEE MONEE DASSEE v. RAM KINKER DUTT* . 1. L. R., 28 Calc., 155

[5 C. W. N., 242]

## ABATEMENT OF SUIT—continued.

## (1) SUITS—concluded.

15. — *As against heir of a deceased wrong-doer—Civil Procedure Code, s. 361—Tort—Malicious prosecution, Suit for—Act XII of 1855—"Actio personalis moritur cum persona," Application of.*—The plaintiff sued to recover damages from the defendant's father, *R*, for wrongful arrest and malicious

damages to the plaintiff, to be recovered from the estate of the deceased. On appeal, the defendant

## (2) APPEALS.

16. — *Death of appellant.—The*

SINGH v. DABEE PERSHAD

[W. R., 1864, Act X, 47]

DEY . . . . . 11 W. R., 543  
BHAGIAN v. PALMER . . . . . 20 W. R., 287

18. — *Civil Procedure*

*Held*, that the appeal must abate in accordance with s. 102 of Act VIII of 1859 and s. 37 of Act XXIII of 1861; and that the respondent could not require that it should proceed, in order

[10 BULL., 2. C. 6. 6.]

## ABATEMENT OF SUIT—continued.

## (2) APPEALS—continued.

19. ———— Death of appellant during pendency of appeal—Only one of three legal representatives brought upon the record.—*Civil Procedure Code (1882), s. 365*—Representative of deceased person.—The words “the legal representative” in s. 365 of the Code of Civil Procedure must, where there are more than one legal representative, be read in the plural. Hence where a sole appellant died during the pendency of his appeal, leaving three legal representatives, and only one of such legal representatives was brought upon the record in the place of the deceased appellant within the prescribed period of limitation:—*Held*, that the appeal must abate. Either all the legal representatives of the deceased appellant should have been brought upon the record as appellants, or, if any had refused to be joined as appellants, they should have been brought on as respondents. *GHAMANDI LAL v. AMIR BEGAM*

[I. L. R., 16 All., 211

20. ———— Appeal—*Civil Procedure Code, 1882, s. 366*—Application by legal representative to carry on appeal.—The appellant's father having died during the pendency of an appeal lodged by him, a notice was served upon the appellant's two adult brothers; but they having failed to apply within sixty days, the appellant, who was a minor, applied several months afterwards to be put on the record in his deceased father's place as his legal representative, which was done. The Assistant Judge who heard the appeal was of opinion that, in consequence of the omission on the part of the brothers of the appellant to apply, the appeal abated, and he passed an order accordingly. *Held*, that the application having been made by the minor son within the time limited by law, the order of abatement made by the Judge was wrong. Although the complete legal representation vested in the minor son and his two brothers, s. 366 of the Civil Procedure Code only required an application to be made by a person claiming to be the legal representative, in order to prevent an order of abatement being made. If neither of the brothers was willing to have his name placed on the record, the respondent was entitled to have them made defendants, so that they might be bound by the decree. The minor son could then proceed alone with the appeal. *BHIKAJI RAMCHANDRA v. PURSHOTAM*. I. L. R., 10 Bom., 220

21. ———— *Civil Procedure Code (1882), ss. 365, 366*—Application by representatives to be brought on record—“Legal representative”—Effect of application being made by some only of several legal representatives.—During the pendency of an appeal two persons applied under s. 368 of the Code of Civil Procedure to be brought on the record as legal representatives of the appellant, who had died. In their petition they stated that there were two other persons having interests equal to their own in the representation, who did not join in the application and

## ABATEMENT OF SUIT—continued.

## (2) APPEALS—continued.

were not made parties by the applicants for reasons that were given. The applicants were duly placed on the record as representatives of the deceased appellant within the time limited by art. 175A of sch. II of the Limitation Act. After the period of limitation had elapsed, the respondents applied under ss. 366 and 582 of the Code of Civil Procedure for an order that the appeal had abated on the ground that the former petitioners had not added all the persons who had interests equal to their own in the representation. The Subordinate Judge held that the representation of the two applicants was sufficient to prevent the abatement of the appeal, but he made the other two representatives respondents on the record. He subsequently heard and allowed the appeal. On its being contended, on second appeal, that the appeal to the Subordinate Court had abated and should have been dismissed by reason of the non-joinder of the other two representatives:—*Held*, that though, in art. 175A of sch. II of the Limitation Act, the application is expressed to be an application under s. 365 of the Code of Civil Procedure and s. 366 is not mentioned, yet for the purpose of considering the question of abatement, the two sections must be read together. When there are more than one legal representative of a deceased appellant, all these representatives must, so far as it is possible for this to be done, join in an application under s. 365 and the words “legal representative” in s. 365 of the Code of Civil Procedure (and similarly the words “any person” and “the legal representative” in s. 366), strictly construed, must, in such a case, be read in the plural and as including all the legal representatives. But where all the representatives cannot be joined as applicants, ss. 365 and 366 should not be construed so as to have the effect of rendering the application no application by “the legal representative” within the meaning of the sections, so that the appeal must be held to have abated. *Bhikaji Ramchandra v. Purshotam*, I. L. R., 10 Bom., 220, and *Ghamandi Lal v. Amir Begam*, I. L. R., 16 All., 211, considered. *MUSALA REDDI v. RAMAYYA*. . . . I. L. R., 23 Mad., 125

22. ———— Claim to guardianship based on a will.—One K applied to be the guardian of the person and property of her minor son. Her application was opposed by G, the grandmother of the minor, who alleged that she had been appointed guardian by the will of the minor's father. The Judge found the will not proved, and he appointed K to be guardian. G appealed; and pending the appeal she died. G's brother, one M, thereupon applied for leave to prosecute the appeal as G's representative. *Held*, refusing the application, that the appeal must abate by reason of G's death. Her appointment, alleged to have been made under the will, was a matter of personal preference and trust. A claim based on personal trust could not survive to her representative. *GANGABAI v. KHASHABAI*

[I. L. R., 23 Bom., 719

## ABATEMENT OF SUIT—continued.

## (3) APPEALS—continued.

23. — Death of one of two joint decree-holders—*Appeal by decree-holders—Civil Procedure Code, 1882, s. 231.*—A suit was instituted against two joint decree-holders under s. 283 of the Code of Civil Procedure for a declaration that certain property which had been attached by them belonged to the plaintiffs, and was not liable to be taken in execution of the decree. The suit was dismissed by the Court of first instance, but decreed by the Lower Appellate Court. The decree-holders appealed, but during the pendency of the appeal one of them died and no steps were taken to bring his representatives on the record within the prescribed period. *Held*, that the appeal abated. *Ghamandi Lal v. Amir Begam, I. L. R., 16 All., 211, referred to. KAMLAPAT v. BALDEO [I. L. R., 23 All., 222]*

the circumstances of the case that appellant, though an agent, intended himself to be the plaintiff. Had the appellant intended to be the plaintiff, he would have put the legal representative on the record, and in the application that eventually was made, the

THORNSHILL v. TAYLOR 1 Agra, 215

25. — Death of respondent—*Civil Procedure Code, 1882, ss. 368, 582, 591—Order or decree—Order as to abatement of appeal embodied in the judgment and decree—Rules of the Court, rule 9.*—Where one of four respondents (plaintiffs) in the Lower Appellate Court died, and no application was made within six months to put the legal representative on the record, and in the application that eventually was made, the

368 read with s. 582 of the Code applied, and the proper order was to have directed the suit to abate. *Held*, further, that where the order of the lower Court as to abatement was embodied in the judgment and decree, objection was properly taken thereto by way of second appeal against the

*Chandarsang v. Khimabhai, I. L. R., 22 Bom., 718, referred to. HEM KUNWAR v. AMBA PRASAD [I. L. R., 22 All., 430]*

26. — *Civil Procedure Code, 1882, ss. 368, 371—Change of procedure pending suit.*—An appeal having been declared to have abated on the 12th December 1881 under s. 368 of the Code of Civil Procedure, 1877, because the appel-

## ABATEMENT OF SUIT—continued.

## (2) APPEALS—continued.

lant had not applied within sixty days of the date of the death of the respondent to bring in his representative, an application was made in January 1882 to set aside the order and was heard after the Code of Civil Procedure, 1882, came into force. *Held*, that the application was open to the

BAMA BHATTA . . . I. L. R., 7 Mad., 195

27. — *Civil Procedure Code, 1882, ss. 368, 582, 591.*

the application of another person, who satisfied the Court that he, and not the person whose name had been conditionally substituted, was the real party. The application was put over upon being the subject of the appeal was ordered to abate. *SADHU SAEUN SINGH v. DWARKA SINGH . . . 12 C. L. R., 45*

28. — *No application for substitution of deceased's representative—Civil Procedure Code, ss. 368, 582—Act XI of 1877 (Limitation Act), sch. II, art. 171B—Held by the Full Bench (MAHMOOD, J., dissenting) that s. 582 of the Civil Procedure Code does not make the provisions of chapter XXI, relating to the death of a defendant in a suit, applicable to the death of a plaintiff-respondent in an appeal, so as to render the appeal abated.*

application, the appeal does not abate. *Per PETERHAM, C.J.*—The words "so far as may be," in the second clause of the first paragraph of s. 582, must be construed as referring to the provisions of chapter XXI of the Code of Civil Procedure, 1877, relating to the death of a defendant in a suit.

## ABATEMENT OF SUIT—continued.

## (2) APPEALS—continued.

praying that the legal representatives of the deceased be made parties in his place, the appeal abates. Also *per* MAHMOOD, J.—The word “defendant,” as used in art. 171B of the Limitation Act (XV of 1877), must be taken to include a respondent, whether plaintiff or defendant in the suit. *Lakshmbai v. Balkrishna*, I. L. R., 4 Bom., 654, *Rajmonee Dabee v. Chunder Kant Sandel*, I. L. R., 8 Calc., 440, and *Bai Javer v. Hathising Kerising*, I. L. R., 9 Bom., 56, referred to. *NARAIN DAS v. LAJJA RAM* . . . I. L. R., 7 All., 693

29. ———— *Application for declaration of insolvency—Appeal from order rejecting application—Death of decree-holder-respondent—No application by appellant for substitution of deceased's representative—Act XV of 1877 (Limitation Act), sch. II, art. 171B—Civil Procedure Code, ss. 344—348, 350, 351, 368, 553, 582, 590.*—The decree-holder-respondent, in an appeal from an order refusing an application by the judgment-debtor for declaration of insolvency under s. 344 of the Civil Procedure Code, died, and the judgment-debtor, appellant, took no steps to have the legal representative of the deceased substituted as respondent in his place.—*Held* that art. 171B, sch. II of the Limitation Act, applied to the case, and that, as no one had been brought on the record to represent the deceased respondent within the period prescribed, the appeal must abate.—*Per* MAHMOOD, J., that whatever the position of the parties might have been in the regular suit, in the insolvency proceedings the judgment-debtor occupied a position analogous to that of a plaintiff, and the decree-holder occupied the position of a defendant. *Narain Das v. Lajja Ram*, I. L. R., 7 All., 693, distinguished. *RAMSHAR SINGH v. BISHESHAR SINGH* . . . I. L. R., 7 All., 734

30. ———— *Suit to recover share of joint family property sold in execution of decree—Death of plaintiff-respondent—Survival of right to sue.*—In a suit for the recovery of a share of ancestral family property which had been sold in execution of a money decree for a debt contracted by the plaintiff's grandfather, the plaintiff obtained a decree in the Lower Appellate Court, from which the defendant appealed to the High Court. While the appeal was pending, the plaintiff died, and, on her application, his widow was made respondent in his place. At the hearing of the appeal, the appellant contended that, upon the plaintiff's death, the right to sue did not survive, and the appeal should therefore be decreed by the suit being dismissed.—*Held* by the Full Bench that, judgment having been obtained before the plaintiff's death, the benefit of the judgment, or the right to sue, would survive to his legal representative, though whether the deceased plaintiff's representative could enforce the whole of the judgment in this case was a different matter. *Phillips v. Humphrey*, L. R., 24 Ch. D., 439, and *Padaoath Singh v. Raja Ram*, I. L. R., 4 All., 235, referred to. When a person desires to be added as such representative upon the death of a plaintiff

## ABATEMENT OF SUIT—concluded.

## (2) APPEALS—concluded.

after judgment, he must satisfy the Court that he is the proper person to be so added. *MUHAMMAD HUSAIN v. KHUSHALO* . . . I. L. R., 9 All., 131

31. ———— *Civil Procedure Code, ss. 368, 582—Death of plaintiff-respondent—Application by defendants-appellants for substitution—Application presented after the 1st July 1888—Civil Procedure Code Amendment Act (VII of 1888), ss. 53, 66—Limitation Act (XV of 1877), sch. II, art. 175C.*—The plaintiff-respondent in an appeal pending before the High Court died on the 17th September 1885. Subsequently D applied to the High Court to be brought on the record as legal representative of the deceased. On the 15th April 1886 he was referred to a regular suit to establish his title as such representative, and on the 25th February 1887 such suit was dismissed. On the 8th February 1886 the defendants-appellants applied to the High Court for judgment, but the application was dismissed under the decision of the Full Bench in *Chajmal Das v. Jagdamba Prasad*, I. L. R., 10 All., 260. On 24th July 1888 they applied to the High Court to bring certain persons upon the record as the legal representatives of the deceased plaintiff-respondent. *Held*, that the application, having been made subsequent to the 1st July 1888, when the Civil Procedure Code Amendment Act (VII of 1888) came into force, and being an entirely fresh application not in continuation of any former proceedings between the same parties, must be dealt with under that Act, and not under the Civil Procedure Code as it stood before the amendment; and that as it was made more than six months after the death of the deceased plaintiff-respondent, the appeal abated, with reference to s. 368 of the Code and art. 175C of the Limitation Act. *Held* also, that the petitioners had not shown “sufficient cause” within the meaning of s. 368 of the Code for not making the application within the prescribed period. *Ram Jivan Mal v. Chand Mal*, I. L. R., 10 All., 587, referred to. *CHAJMAL DAS v. JAGDAMBA PRASAD* . . . I. L. R., 11 All., 408

32. ———— *Defendant.*—The word “defendant” in art. 171B of the Limitation Act, 1877, does not include a respondent. *UDIT NARAIN SINGH v. HAROGOURI PRASAD* [I. L. R., 12 Calc., 590]

## ABETMENT.

*See JURISDICTION OF CRIMINAL COURTS—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.*

1. ———— *Omission to give information of offence—Penal Code, s. 107.*—An omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed. *QUEEN v. KHADIM SHEIK*, 4 B. L. R., A. Cr., 7

## ABETMENT—continued.

2. ————— *Penal Code, s. 107*  
 —“Illegal omission.”—To prove abetment under s. 107, Penal Code, by “illegal omission” it would be necessary to show that the accused intentionally aided the commission of the offence by his non-interference. *NOORUL HOSSAIN alias WAHEED JAN v. FABRE TONNERRE* . . . 24 W. R., Cr., 28

3. ————— *Penal Code (Act*  
*XXIV of 1860), s. 107* . . .

assembly was formed shewed such sympathy as amounted to instigation. *Held*, that such conduct did not amount to “instigation” within the meaning of s. 107, Penal Code, or abetment of an offence under s. 143. *ETIM ALI MAJUMDAR v. EMPRESS* [4 C. W. N., 500

4. ————— *Penal Code (Act*  
*XLV of 1860), s. 107*—Instigation by means of letter—Place where offence may be tried—Jurisdiction of Criminal Court.—Where one person instigates another to the commission of an offence by means of a letter sent through the post, the offence of abetment by instigation is completed so soon as the contents of such letter become known to the addressee, and such offence is triable at the place where such letter is received. *QUEEN-EMPRESS v. SHEO DIAL MAL* [1 L. R., 18 All., 380

5. ————— *Bombay Police Act*  
*(Bombay Act IV of 1890), ss. 51 and 52*—Duty of a Police-officer to shelter a person in custody—*Penal Code (Act XLV of 1860), s. 330*—Using violence for the purpose of extorting a confession—Abetment of causing hurt—Illegal omission to act—*Maxim “Respondent superior”*—A policeman

who tortures any one by order of a superior. The *maxim respondent superior* has no application in such a case. Under the *Bombay Police Act (Bombay Act IV of 1890)*, every Police-officer is bound to persons bodily in

*LATIF KHAN* . . . 1 L. R., 20 Bom., 304

6. ————— Non-commission of offence abetted.—It is not necessary to constitute the offence of abetment that the act abetted should be committed. *IN THE MATTER OF DINO NATH BURQA* [18 W. R., Cr., 32

7. ————— Abetment of abetment of offence—*Penal Code, s. 108, Exp. 2 and 4*

## ABETMENT—continued.

—It is not necessary to an indictment for the abetment of an abetment of an offence to show that such offence was actually committed. *EMPRESS v. TROY-LUCKHO NATH CHOWDERY* 1 L. R., 4 Cal., 368 [3 C. L. R., 525

8. ————— *Acquittal of principal—Conviction of abettor*—The offence of abet-

9. ————— *Penal Code, s. 109*  
 —S. 109 of the Penal Code contemplates that the act abetted should be committed in consequence of the abetment. *QUEEN v. RAJCOOMAR BANERJEE* [1 Ind. Jur., O. S., 105

10. ————— Supplying food to person about to commit a crime—*Facilitating com-*

then to show that he was also present when the offence was committed. *QUEEN v. NIDUNI* [7 W. R., Cr., 49

13. ————— When a person abets the commission of an offence and is present at the time when it is committed, he should be tried under s. 114 of the Penal Code, for the same offence as the principal. *REG. v. CHIMA* [8 Bom., Cr., 164

14. ————— *Presence of person at commission of offence—Proof necessary to abetment*—The mere presence as an abettor of any person would not, under the terms of s. 114 of the Penal Code, render him liable for the offence committed. *Empress v. Chatradhari Guala*, 2 Cal. W. N., 49, explained. In order to bring a person within s. 114 of the Penal Code, it

**ABETMENT—continued.**

offence was committed. *Queen v. Niruni*, 7 W. R., Cr., 49, relied on. *ABHI MISSEER v. LACHMI NARAIN* [I. L. R., 27 Calc., 566 4 C. W. N., 546]

15. ——— *Continuing abetment—Withdrawal before offence is committed.*—If an abettor of a crime is, on account of his offence at its commission, to be charged under s. 114 of the Penal Code as principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence is not committed with his continuing abetment. *REG. v. AMRITA GOVINDA* . . . 10 Bom., 497

16. ——— *Abetment by Instigation—Intention of abettor.*—The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets. *QUEEN v. IMAMDI BHOOLAH* . . . 21 W. R., Cr., 8

17. ——— *Assault.*—Where, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick and uses it, B (the master of A), who gives a general order to beat, is guilty of abetting the assault made by A. *QUEEN v. RASOO KOOLLAH* . . . 12 W. R., Cr., 51

18. ——— *Bigamy—Illegal Marriage.*—Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage. *EMPRESS v. UMI* [I. L. R., 6 Bom., 126]

*QUEEN v. KUDUM* . . . W. R., 1864, Cr., 13

19. ——— *Penal Code, ss. 109, 494.*—A Mahomedan guardian of a married female infant, who, while her husband is living, causes a marriage ceremony to be gone through in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment under ss. 109 and 494 of the Penal Code. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned. *IN THE MATTER OF THE EMPRESS v. ABDOL KURREEM*

[I. L. R., 4 Calc., 10: 3 C. L. R., 81]

20. ——— *Conspiracy—Penal Code, s. 108, expl. 5.*—Under expl. 5, s. 108, Penal Code, it is not necessary to the commission of the offence of abetment by conspiracy that the abettor shall concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed. *QUEEN v. GOBIND DOBEY* . . . 21 W. R., Cr., 35

21. ——— *Conspiracy what must be proved to establish—Evidence Act (I of 1872), s. 10—Hearsay evidence—Penal Code (Act XLV of 1860), ss. 363, 109.*—A little child was kidnapped by persons some of whom were servants of T. N was for many years T's mistress. N

**ABETMENT—continued.**

was fond of the child, and she used to send for her. The child was missed after a visit to her. The child was found with the assistance of T. N was thereupon charged with abetment of kidnapping, but no charge was brought against T. There was no evidence to shew that the persons who kidnapped the child acted under the orders of N or carried out any wish expressed by her. *Held* that the evidence was insufficient to establish the charge of abetment, or that, if there was any conspiracy, the accused was a party to it; that s. 10 of the Evidence Act could not be properly applied so as to convict N by the admission of evidence of what had been "said, done or written by others;" and that a conspiracy within the terms of s. 10 of the Evidence Act contemplates more than the joint action of two or more persons to commit an offence. *NOGENDRABALA DEBEE v. EMPRESS*

[4 C. W. N., 528]

22. ——— *Criminal breach of trust—Penal Code (Act XLV of 1860), ss. 408, 114—Abetment of criminal breach of trust by servant—Want of knowledge of the commission of the breach of trust—Evidence of an accomplice.*—To support a conviction for abetment of criminal breach of trust by a servant, it must be proved that the transaction was a dishonest transaction; that the accused knew that, in respect of such transaction, the servant was acting dishonestly, and was committing a breach of trust; and that the accused abetted the servant in effecting it. *BALGOBIND SHAHA v. EMPRESS* . . . 4 C. W. N., 309

23. ——— *Execution of unstamped Document—Receipt of unstamped Document.*—The mere receipt of an unstamped instrument does not constitute the offence of abetment of the execution of such an instrument. *EMPRESS v. JANKI*

[I. L. R., 7 Bom., 82]

24. ——— *Penal Code, s. 107—Act I of 1879 (Stamp Act), s. 61—Abetment of making an unstamped receipt.*—A debtor, having paid a sum of money to his creditor, accepted from the latter an unstamped receipt promising to affix a stamp thereto. *Held* that this did not constitute abetment, within the meaning of s. 107 of the Penal Code, of the offence of making an unstamped receipt. *EMPRESS v. Bahadur Singh, Weekly Notes, All., 1885, p. 30*, distinguished. *EMPRESS v. JANKI, I. L. R., 7 Bom., 82*, and *EMPRESS v. Bhairon, Weekly Notes, All., 1884, p. 37*, referred to. *QUEEN-EMPRESS v. MITTHU LAL* . . . I. L. R., 8 All., 18

25. ——— *Extortion—Village Chowkidar—Penal Code (Act XLV of 1860), s. 384.*—The mere fact that the offence of extortion under s. 384 of the Penal Code is committed in the presence of the village chowkidar, without eliciting any disapproval on his part, will not render him liable as an abettor of the offence. *IN THE MATTER OF THE PETITION OF GOPAL CHUNDER SIRDAR. GOPAL CHUNDER SIRDAR v. FOOLMONI BEWA*

[I. L. R., 8 Calc., 728]

11 C. L. R., 223

**ABETMENT—continued.**

26. ————— **False Charge—Giving false evidence.**—There being no abetment of an offence

27. ————— **Giving evidence in support of false charge—Penal Code, ss. 109 and 211.**—A person cannot be convicted of abetment

28. ————— **False Evidence—Intention.**—In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those

intended that the statement should be made falsely  
**QUEEN v. NIM CHAND MOOKERJEE**

[20 W. R., Cr., 41]

29. ————— **Asking witness to suppress evidence.**—The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate

30. ————— **Grievous Hurt.**—Where *A* ordered *B* and *C* to seize and forcibly take *D* in the contemplation of an assault upon *D*, and *D* was

31. ————— **Where *A* gave a dao to *B*, who had given out his intention to coerce who who dao, of cl**  
**MEAL**

32. ————— **Murder—Proof of offence.**—There can be no conviction for abetment of murder without proof of murder. **QUEEN v. ASKUR**

[W. R., 1864, Cr., 12]

33. ————— **Murder by impossible means. — Quare.**—Whether abetment to murder by sorcery or other impossible means is an offence under the Penal Code. **RGO. v. PESTANJI DINSRA**

34. ————— **Penal Code, s. 111—Knowledge of abettor—Probable consequences of abetment.**—*M* and *C* were proved to have

**ABETMENT—continued.**

connived at a robbery in which excessive violence was used, resulting in the death of the persons robbed. The Sessions Judge convicted *M* and *C* of abetment of murder, on the ground that the death was "a probable consequence of the inten-

ABETMENT AND COMMON SENSE, THE ABETTOR MUST HAVE

35. ————— **Penal Code, ss. 114 and 302—Constructive murder—Standing**

36. ————— **Suicide—Assisting Leper in**

**SINGH** . . . . . 1 **Agra, Cr., 21**

37. ————— **Assisting in Suicide**—Evidence that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre and stood by her,

38. ————— **Theft—Penal Code, s. 107, expl. 1.**—A person can be convicted of abetment of theft, under the first explanation of s. 107 of the

**ABETMENT—concluded.**

Penal Code, only if he either procure or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient. *QUEEN v. SHUMERUDDEEN*

[2 W. R., Cr., 40

39. ————— *Penal Code, ss. 107, cls. 2 and 3, and 109.*—A prisoner who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of the theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof, under cl. 3, s. 107, and s. 109, Penal Code, read together. *QUEEN v. BODHUN MOOSHUR*

[8 W. R., Cr., 78

40. ————— The carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to be an abetment of theft as defined in the Penal Code. *IN THE MATTER OF THE PETITION OF TARINEE PERSAD BANERJEE*

18 W. R., Cr., 8

41. ————— *Torture—Common object.*—Where several prisoners were all concerned in a case of torture, and were prosecuting a common object, each was held guilty as a principal, and not as an abettor of others. *QUEEN v. TARINEE CHURN CHUTTAPADHYA*

7 W. R., Cr., 3

42. ————— *Penal Code, s. 107, expl. 2—Keeping out of the way with knowledge that offence is to be committed.*—Where a head constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, it was held that he was guilty of abetment under the words of s. 107 of the Penal Code, expl. 2. *QUEEN v. KALI CHURN GANGOOLY*

21 W. R., Cr., 11

43. ————— *Act XIV of 1866 (Post Office Act)—Penal Code, s. 109.*—Act XIV of 1866 does not provide for the punishment of abetting an offence under that Act. Under s. 109 of the Penal Code, the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law. *QUEEN v. RAMLUGEN LALL*

7 W. R., Cr., 54

44. ————— *Excise Act XXI of 1856.*—The Excise Act of 1856 contained no provision for the punishment of abetment. *QUEEN v. KULLMOODEEN*

[7 W. R., Cr., 53

**ABKARI LAWS.**

*See BENGOAL EXCISE ACTS.*

*See LORD'S DAY ACT.*

[1 B. L. R., A. Cr., 17

*See CASES UNDER BOMBAY ABKARI ACT.*

*See CASES UNDER MADRAS ABKARI ACT.*

**ABSCONDING OFFENDER.**

*See PENAL CODE, s. 172.*

[5 W. R., Cr., 71

7 N. W., 302

1 L. R., 4 Mad., 393

9 W. R., Cr., 70

**ABSCONDING OFFENDER—continued.**

1. ————— *Evidence of Guilt.*—A prisoner's absconding is but a small item in evidence of his guilt. *QUEEN v. SAROB ROY*

5 W. R., Cr., 28

2. ————— *Evidence of absconding is some evidence of guilt, but where it is shewn that the accused may have run away to avoid the consequence of being charged with an offence different from that for which he was being tried, no effect should be given to his running away.* *RAKHAI NIKARI v. QUEEN-EMPRESS*

2 C. W. N., 81

3. ————— *Proclamation—Forfeiture of property—Criminal Procedure Code (1861), s. 183, (1872) s. 171.*—Before the passing of an order declaring the property of an accused person, who cannot be found, to be at the disposal of the Government, there must be a proclamation, under s. 183, Code of Criminal Procedure, specifying a time within which such person is required to appear. But before a Magistrate can issue such a proclamation, he must be satisfied that such person has absconded or is concealing himself for the purpose of avoiding the service of the warrant. *SHEODYAL SINGH v. GIRBAN SINGH*

6 W. R., Cr., 73, 79

4. ————— *Criminal Procedure Code (1861), ss. 183, 184, (1872) ss. 171, 172—Issue of proclamation for appearance—Forfeiture of property.*—In order to lay a sufficient foundation for the issue of a proclamation under s. 183, Act XXV of 1861, and the accompanying order of attachment under s. 184, the Magistrate must, on some sufficient materials, find judicially that the person against whom the proclamation is to be issued has absconded or concealed himself for the purpose of avoiding the service of the warrant of arrest previously issued against him. *Semble.*—*Per PHILLIPS, J.*—The period of thirty days, which is prescribed in s. 183 as the minimum period within which the person is to be required by the proclamation to appear, runs from the date on which the publication in the mode prescribed by the same section should be effected, not from the date of the issue of the proclamation. The declaration of forfeiture directed to be made in s. 184 was intended to be in furtherance of a matter of procedure, and not simply as a mode of punishment for contempt of process; therefore, where it is not made before the person affected by the proclamation has come in, or has been brought in, it ought not to be made at all. *IN THE MATTER OF THE PETITION OF RAMKISHAN SEEN*

10 B. L. R., Ap., 14

[10 W. R., Cr., 12

5. ————— *Procedure—Forfeiture of property.*—Ss. 183 and 184 of the Code of Criminal Procedure, 1861 (proclamation and attachment of property of absconding parties), do not apply to offences punishable with imprisonment extending to six months only. There is no rule which requires a Magistrate to satisfy himself that a party has absconded before issuing a proclamation, but the party, on going to recover his property, may prove by evidence that he had not absconded. Before a Magistrate proceeds to declare attached property forfeited, he should take evidence to prove compliance with

**ABSCONDING OFFENDER—continued.**

the formalities laid down by law with regard to proclamation **QUEEN v. MUDDUN MOHUN PODAR** [3 W. R., Cr., 34]

6. ——— *Criminal Procedure Code (1882), ss 87, 88, 89, and 537—Proclamation for person absconding—Attachment of his property—Irregularity in publication of proclamation—An accused person for whose arrest a*

attached. The proclamation was not published at the village where the accused resided until the 15th of November. The accused surrendered on the 25th of June, 1894, and applied for restoration of the property under the Criminal Procedure Code, s 89, and an order was made by which the restoration

7. ——— *Proclamation, effect of—Contempt—Application on behalf of accused person absconding—An accused person, against whom a proclamation has been issued, must, until he has surrendered, be regarded as in contempt, and the Court will not entertain any application on his behalf.* **QUEEN v. BISSESSUR PERSHAD** . 2 N. W., 441 [Agra, F. B., Ed. 1874, 236]

8. ——— *Striking off of case, effect of, on Contempt order for absconding—An order striking off a case on account of the little prospect of bringing the guilty parties to trial, cannot, dispose of the question of contempt of Court arising out of the fact of the accused having absconded to evade justice.* **QUEEN v. MADHOOSUDUN** . 7 W. R., Cr., 40

9. ——— *Proclamation, proof of—Criminal Procedure Code, ss. 87, 88—Penal Code, s. 176—Presumption—Omnia praesuntur rite esse acta—Where K was convicted under s 176, Penal Code, of having intentionally omitted to be offender, because it was proved that his property had been attached under the provisions of s. 88 of the Criminal Procedure Code, 1882. Held, the prosecutor was bound to prove the fact of proclamation.* **IN THE MATTER OF THE PETITION OF PANDYA NAYAK** [I. L. R., 7 Mad., 436]

**ABSCONDING OFFENDER—continued.**

warrant of attachment simultaneously with the proclamation, if he resorts to attachment at all. **ANONYMOUS CASE** . 4 Mad., Ap., 48

11. ——— *Reason for absconding—Forfeiture of property—The forfeiture of the property of an absconding offender, who appears within two years from the attachment of his property, should not be carried into effect until after a regular inquiry into the causes of the offender's absence.* **IN THE MATTER OF BISHONATH SINGAR** . 3 W. R., Cr., 63

12. ——— *Power to make order as to property—Penal Code, s 174—Where property of an absconding offender had been attached and declared to be at the disposal of*

*property.* **IN THE MATTER OF THE PETITION OF THE GOVERNMENT OF BENGAL** . 9 B. L. R., 342

**GOVERNMENT OF BENGAL v. SURWAR JAN** [18 W. R., Cr., 33]

13. ——— *Power to try claim of third parties—Criminal Procedure Code, 1861, ss 184, 185—A Magistrate has no power under ss 184, 185 of the Criminal Procedure Code, 1861, to investigate the claims of third persons to property which has been attached, as that of absconding offenders.* **QUEEN v. CHUMROO ROY** [7 W. R., Cr., 35]

**IN RE CHUNDER BHON SINGH** 17 W. R., Cr., 10

14. ——— *Power to try claims of third parties—Criminal Procedure Code, 1882, ss 88, 89—Proceedings of Magistrate—"Judicial proceedings"—There is no provision of law requiring a Magistrate, who has attached property under s. 88 of the Criminal Procedure Code, to inves-*

fore not "judicial proceedings" in the sense of s. 4 (d) of that Code. **QUEEN-EMPERESS v. SREODIPAL RAI** . I. L. R., 6 All., 487

15. ——— *Criminal Procedure Code (1882), s 88—Attachment of property as of an absconding person—Claim to property attached—Procedure—Right of suit—Revision—When a claim is made to property attached under*

**v. KANDAPPA GOUNDAN** . I. L. R., 20 Mad., 88

16. ——— *Title given by Magistrate's sale—Sale in execution of decree—Sale by Magistrate—Code of Criminal Procedure*

**ABSCONDING OFFENDER—concluded.**

(Act X of 1872), s. 172.—*A*, having been accused of an offence under the Penal Code, absconded, and his property was, on the 7th of August 1878, attached by the Magistrate under s. 172 of the Code of Criminal Procedure, Act X of 1872. While the property was so under attachment, it was attached by *B* in execution of a money-decree against *A* and sold on the 15th of January 1879, *B* being the purchaser. On the 21st of April 1880, the Magistrate sold the property to *C*. It did not appear whether the time fixed by the Magistrate's proclamation for *A*'s appearance had expired at the date of the sale to *B*. *Held*, in a suit for possession by *B* against *C*, that the title obtained by *C* under the Magistrate's sale was superior to the title (if any) obtained by *B* at the sale in execution of the money-decree.—*Semble*, that after the date of the attachment by the Magistrate under s. 172 of the Code of Criminal Procedure and during its continuance, no title could be conferred by an attachment and sale subsequently made in execution of a money-decree. *GOLAM ABED v. TOOLSEERAM BERA* . . . . . I. L. R., 9 Cal., 861  
[12 C. L. R., 411]

17. ————— *Criminal Procedure Code, 1882, ss. 87, 88, 89—Proclamation and attachment—Sale of attached property—Title of purchaser.*—Where property was attached and sold as property of a proclaimed offender under ss. 87 and 88 of the Code of Criminal Procedure, it was *held* that, although the proclamation was irregular, yet the property having vested in third parties, strangers to the proceedings in which the proclamation was made, the sale could not be set aside. *ABDULLAH v. JITU* . . . . . I. L. R., 22 All., 216

**ABSENCE FROM BRITISH INDIA.**

See LIMITATION ACT, 1877, s. 7.

[1 B. L. R., S. N., 25]

See CASES UNDER LIMITATION ACT, 1877, s. 13.

**ABUSE, SUIT FOR DAMAGES FOR—**

See CASES UNDER JURISDICTION OF CIVIL COURT—ABUSE, DEPAMATION, AND SLANDER, SUITS FOR.

See CASES UNDER SLANDER.

**ABWABS.**

See CASES UNDER CESS.

**ACCESSORY.**

————— *Accessory after the fact.*—Under the Indian Law, no one is liable for being an accessory after the fact. *RAKHAI NIKASI v. QUEEN-EMPRESS* . . . . . 2 C. W. N., 81

**ACCIDENT, LOSS BY—**

See CASES UNDER CARRIERS.

See CASES UNDER RAILWAY COMPANY.

**ACCOMMODATION ACCEPTOR.**

See BILL OF EXCHANGE.

[I. L. R., 3 Cal., 174]

**ACCOMMODATION DRAWER.**

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

[7 B. L. R., 535]

I. L. R., 4 Cal., 132

I. L. R., 6 Cal., 241

I. L. R., 13 Mad., 172

**ACCOMPLICE.**

See CASES UNDER APPROVER.

See CHARGE TO JURY—MISDIRECTION.

[6 W. R., Cr., 17, 44]

6 Bom., Cr., 57

8 W. R., 19

I. L. R., 12 Mad., 196

I. L. R., 17 Cal., 642

1. ————— *Corroboration, necessity for.*—*Setting aside conviction for error in law.*—The uncorroborated testimony of one or more accomplice or accomplices is sufficient in law to support a conviction. The evidence of accomplices should not be left to the jury without such directions and observations from the Judge as the circumstances of the case may require, pointing out to them the danger of trusting to such evidence when it is not corroborated by other evidence. The omission to do so is an error in law in the summing up by the Judge, and is, on appeal, a ground for setting aside the conviction, when the Appellate Court thinks that the prisoner has been prejudiced by such omission, and that there has been a failure of justice. The nature and extent of the corroboration requisite, explained and illustrated. *QUEEN v. ELAHI BAX*

[B. L. R., Sup. Vol., 459]

5 W. R., Cr., 80

*QUEEN v. BAKANTHANATH BANERJEE*

[3 B. L. R., F. B., 2 note]

*QUEEN v. CHUTTERDHAREE SING*

[5 W. R., Cr., 59]

2. ————— *Evidence of accomplices.*—Observations on the necessity of requiring corroboration, in material particulars, of the evidence of an accomplice. *Queen-Empress v. Ram Saran*, I. L. R., 8 All., 306, referred to. *QUEEN-EMPRESS v. IMDAD KHAN* . I. L. R., 8 All., 120

3. ————— A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice who was made a witness after a pardon was granted to him. *QUEEN v. NUNHOO* . . . . . 9 W. R., Cr., 28

4. ————— The testimony of an accomplice is not alone sufficient for a conviction. The corroboration must be on matters directly connecting the prisoner with the offence of which he is accused; and the evidence of two or more accomplices requires confirmation equally with the testimony of one. *QUEEN v. DWARKA* . . . . . 5 W. R., Cr., 13

[1 Ind. Jur., N. S., 100]

**ACCOMPLICE—continued.**

5. ————— *Charge to assessors.*—There is no rule of law that the uncorroborated evidence of an accomplice is sufficient for a conviction. The proper form of the charge to the assessors in such cases stated. ANONYMOUS

[4 Mad., Ap. 7]

6. ————— *Evidence Act (II of 1855), s. 28.*—A jury may convict upon the evidence of an accomplice, though not corroborated so as to show the prisoner's actual participation in the offence. S. 23, Act II of 1855, applied only to the old Supreme Courts, and the rules and practice prevailing in them, and does not show

[10 W. R., Cr. 11]

7. ————— *English practice.*—The English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice, which is, that when he speaks to two or more persons as having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoners; and that any prisoner as to whom his testimony is not supported should be acquitted. REG. v. IMAM TALAB BABAU

[3 Bom., Cr. 57]

See REG. v. GANTU BIN DHARJOI

[6 Bom., Cr. 57]

8. ————— *Witness erroneously treated as accomplice.*—Where the Magistrate erroneously treated a witness as an accomplice, and granted him a conditional pardon,—*Held* that the evidence did not require corroboration. REG. v. FATECHAND VASTACHAND

[5 Bom., Cr. 85]

9. ————— *Evidence of accomplice.*—The evidence requisite for the corrobora-

confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others; tainted evidence not being made better by being corroborated by other tainted evidence. REG. v. MALAPA BIN KAPANA

[11 Bom., 193]

QUEEN v. BALJOO CHOWDREY

[25 W. R., Cr. 43]

10. ————— *Evidence of accomplices.*—It is an established rule of practice

QUEEN-EMPRESS v. KRISHNABHAT

[I. L. R., 10 Bom., 319]

11. ————— *Evidence Act, 1872, s. 114.*—*Held* on a consideration of the Evidence Act, 1872, s. 114, that the Legislature

**ACCOMPLICE—continued.**

intended to lay down as a maxim or rule of evidence that the testimony of an accomplice is unworthy of credit so far as it implicates an accused person, unless it is corroborated in material particulars in respect to that person; and it is the duty of a Court which has to deal with an accomplice's testimony, to consider whether this maxim applies to exclude that testimony or not, and in a case tried by jury to draw the attention of the jury to the principles relative to the reception of an accomplice's testimony. QUEEN v. SADHU MUNDAL

[21 W. R., Cr. 69]

12. ————— *Evidence Act, 1872, ss. 114 and 133.*—S. 133 of the Evidence Act (I of 1872) in unmistakable terms lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision. The rule in s. 114 of the Evidence Act coincides with the rule observed in England, that though the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the jury or the Court credits the evidence, a conviction proceeding upon it is not illegal. REG. v. RAMASAMI PADAYACHI

[I. L. R., 1 Mad., 394]

QUEEN v. KOA

[19 W. R., Cr. 48]

13. ————— *Evidence Act, 1872, ss. 114 and 133.*—*Evidence unworthy of credit.*—Although under s. 133 of the Indian Evidence Act the conviction of a prisoner on the uncorroborated testimony of an accomplice is not illegal, the Court, having reference to illustration (b), s. 114 of that Act, considered in this case that the accomplice was unworthy of credit. QUEEN v. LUCHNEE PERSHAD

[19 W. R., Cr. 43]

14. ————— Although by s. 133, Act I of 1872, an accomplice is a competent witness against an accused person, and a conviction would not be illegal merely because it proceeded upon the uncorroborated testimony of an accomplice, yet it would be unsafe, where the testimony of the accomplice is not corroborated in any material point

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to convict

[10 W. R., Cr. 68]

15. ————— *Evidence Act, 1872, s. 133.*—*Per FRYER, C.J.*—Although as a general rule the testimony of an accomplice is not to be received, yet if the testimony of an accomplice is corroborated by other witness, be considered and weighed by the Judge, who, in doing so, should not overlook the

QUEEN-EMPRESS v. KRISHNABHAT

[I. L. R., 10 Bom., 319]

11. ————— *Evidence Act, 1872, s. 114.*—*Held* on a consideration of the Evidence Act, 1872, s. 114, that the Legislature

**ACCOMPLICE—continued.**

believed, establishes the guilt of the prisoner, it is his duty to convict. *Reg. v. Ramasami Padayachi, I. L. R., 1 Mad., 394, Empress v. Hardeo Dass, Weekly Notes, All., 1884, p. 286, and Queen-Empress v. Ram Saran, I. L. R., 8 All., 306*, referred to. *Queen-Empress v. Ram Saran, I. L. R., 8 All., 306*, explained and distinguished by STRAIGHT, J. *Per BRODHURST, J., contra.*—Observations as to the necessity of corroboration in material particulars of the evidence of accomplice witnesses. *Queen-Empress v. Ram Saran, I. L. R., 8 All., 306, Queen v. Ramsaday Chuckerbutty, 20 W. R., Cr., 19, and Reg. v. Budhu Nanku, I. L. R., 1 Bom., 475*, referred to. *Per EDGE, C.J., and STRAIGHT, J.*—Every case as it arises must be decided on its own facts, and not on supposed analogies to other cases. *QUEEN-EMPRESS v. GOBARDHAN . . . I. L. R., 9 All., 528*

16. ————— *Evidence of accomplices—Act I of 1872, ss. 114 (b), 133.*—The law in India, as expressed in s. 133 and s. 114 of the Evidence Act, and which is in no respect different from the law of England on the subject, is that a conviction based on the uncorroborated testimony of an accomplice is not illegal, that is, it is not unlawful; but experience shows that it is unsafe, and hence it is the practice of the Judges, both in England and in India, when sitting alone, to guard their minds carefully against acting upon such evidence when uncorroborated, and, when trying a case with a jury, to warn the jury that such a course is unsafe. There must be some corroboration independent of the accomplice, or of a co-confessing prisoner, to show that the party accused was actually engaged directly in the commission of the crime charged against him. A second accomplice does not improve the position of the first, and, if there are two, it is necessary that both should be corroborated. The accomplice must be corroborated not only as to one but as to all of the persons affected by the evidence, and corroboration of his evidence as to one prisoner does not entitle his evidence against another to be accepted without corroboration. *R. v. Webb, 6 C. & P., 595, R. v. Dyke, 8 C. & P., 261, R. v. Addis, 6 C. & P., 383, and R. v. Wilkes, 7 C. & P., 272*, referred to. The possession of property taken from a murdered person is not adequate corroboration of the evidence of an accomplice charging such person in possession with participation in the murder, though it would, no doubt, be corroboration of evidence that the prisoner participated in a robbery, or that he had dishonestly received stolen property. In the trial of *R, S, and M* upon a charge of murder, the evidence for the prosecution consisted of (i) the confession of *P*, who was jointly tried with them for the same offence; (ii) the evidence of an accomplice; (iii) the evidence of witnesses who deposed to the discovery in *R*'s house of property belonging to the deceased; and (iv) the evidence of witnesses who deposed that, on the day when the deceased was last seen alive, all the prisoners were seen together near the place where the body was afterwards found. *Held* that there was no sufficient corroboration of the

**ACCOMPLICE—continued.**

statements of the accomplice or of the co-confessing prisoner *P*. *QUEEN-EMPRESS v. RAM SARAN [I. L. R., 8 All., 306]*

17. ————— *Evidence Act (I of 1872), s. 133.*—A Magistrate should not convict a person upon the evidence of witnesses who are no better than accomplices and whose evidence is not corroborated in material respects by other independent evidence in the case. *JOGENDRA NATH BHAWMIK v. SANGAR GARO . . . 2 C. W. N., 55*

18. ————— *Compulsion as an excuse for crime—Pretence as evidence of common intention—Fear of instant death—Penal Code (Act XLV of 1860), ss. 34 and 94—Evidence Act (I of 1872), s. 133—Power of High Court in Revision.*—The accused, who were classers employed in the Revenue Survey Department, were charged, under s. 161 of the Penal Code, with taking bribes from the raiyats of certain villages. The only evidence against the accused was that of persons who had either subscribed to the bribes or collected subscriptions or paid the money to the accused. They stated that they had offered the bribes, because the classers had threatened to raise the assessment, cut down the hedges, and erect new boundary-marks. As regards this evidence, the trying Magistrate remarked that, even if all the witnesses for the prosecution were treated as accomplices, it was open to him to convict on their uncorroborated testimony, as "there was inherent truth in their statements, and circumstances existed which negated the presumption of a conspiracy, and evidenced signs of truthfulness." The Magistrate was also of opinion that there was a distinction between accomplices who volunteered to assist in the receipt of illegal gratifications and those who assisted under compulsion. In the opinion of the Magistrate, the witnesses in the present case belonged to the latter class, and there was no reason to disbelieve their evidence. He, therefore, convicted the accused under s. 161 of the Penal Code, and sentenced them to rigorous imprisonment and fine:—*Held* (SCOTT, J., dissenting) that the convictions were illegal, there being no evidence to corroborate the witnesses for the prosecution, all of whom were accomplices. *Held*, also (SCOTT, J., dissenting), that there was such error in the consideration by the Magistrate of the evidence as to prejudice the accused, and such a failure of justice as to justify the Court in revision in setting aside the convictions. *Per CURIAM*:—The limits of the application of the doctrine of necessity as an excuse for an act otherwise criminal are those prescribed in s. 94 of the Penal C.de. Therefore witnesses who, in order to avoid pecuniary injury or personal molestation, had offered or given bribes to a public servant were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. By the law both of India and England the evidence of an accomplice is admissible, and a conviction is not illegal because it proceeds upon the uncorroborated testimony of an accomplice (s. 133 of the Evidence Act, I of 1872). But the presumption that an accomplice is unworthy of credit, unless corroborated

**ACCOMPLICE—continued.**

in material particulars, has become a rule of practice of almost universal application. *Per* SCOTT, J.—There may be, however, cases of an exceptional character in which the accomplice evidence alone convinces a Judge, and if he acts on that conviction, with the sanction of the High Court, it is not an error.

circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed so as to make s. 34 of the Penal Code applicable. *Reg. v. Farler, 8 C. & P., 106.* Where the Magistrate on that ground did make that presumption against an accused person, and applied the provisions of s.

19. ————— The Court (MITTER and PONTIFEX, JJ., GLOVER, J., dissenting) refused to convict in this case on the uncorroborated evidence of an accomplice who had previously been convicted of the same offence on her own confession. *QUEEN v. RAMSODOY CHUCKENBUTTY*  
[20 W. R., Cr., 19]

20. ————— *Accused acquitted, but under arrest, pending appeal under s. 272, Criminal Procedure Code.*—K and B were accused of being concerned in the same offence. K was first apprehended, and the Magistrate inquired into the charge against him and committed him for trial, but the Court of Session acquitted K. The Local Government preferred an appeal against his acquittal, and the Magistrate arrested him with a view to his detention in custody until such appeal was determined. While K was so detained, the Magistrate inquired into the charge against B, who had meanwhile been arrested, and made K a witness for the prosecution and committed B for trial. K's evidence was taken on B's trial. *Held, per* STUART, C.J. (SPANKIE, J., doubting), that K's

OF INDIA v. KAHIM BAKHSH I. L. R., 2 All., 386

21. ————— *Person charged*

22. ————— *Person cognizant of crime taking no means to prevent it.*—An accused

**ACCOMPLICE—continued.**

person cannot be convicted solely upon the evidence of persons who are more or less participators in the crime of which he is accused. Where a witness admits that he was cognizant of the crime as to which he testifies, and took no means to prevent or disclose it, his evidence must be considered as no better than that of an accomplice. *QUEEN v. CHANDU CHANDALINEE* . . . . . 24 W. R., Cr., 55

23. ————— *Informer cognizant of offence—Omission to disclose commission of offence.*—Where an informer was, upon his own statement, cognizant of the commission of an offence, and omitted to disclose it for six days, the Court was not prepared to say that he was an accomplice, but held that his testimony was not such as to justify a conviction except where it was corroborated. *ISHAN CHANDRA CHANDRA v. QUEEN-EMPRESS* . . . I. L. R., 21 Calc., 328

24. ————— *Witnesses who have acted as accomplices.*—Where witnesses ap-

rated in material respects, in convicting the accused *ALIMUDDIN v. QUEEN-EMPRESS*  
[I. L. R., 23 Calc., 361]

25. ————— *Spy—Distinction between a spy and an accomplice Detective officer.*—The action of a spy and informer in suggesting and instigating a criminal offence is itself an offence, the act not being excused or justified by any exception in the Penal Code or by the doctrine which distinguishes the spy from the accomplice. But the act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice. Distinction between a spy and an accomplice pointed out. *Reg. v. Despard, 28 State Trials, 489, Reg. v. Mullins, 3 Cox. C. C., 526, Queen-Emress v. Moni Puna, I. L. R., 16 Bom., 661, referred to and followed.* *QUEEN-EMPRESS v. JAVECHARAM* . . . I. L. R., 19 Bom., 363

26. ————— *Evidence Act (I of 1872), ss. 114 and 133—Public Officer, offer of bribe to—Corroboration.*—A person who offers a bribe to a public officer is an accomplice. *Per* BIRDWOOD, J.—A conviction is not

**ACCOUNT, ADJUSTMENT OF—**

See CASES UNDER LIMITATION ACT, 1877,  
ART. 64 (1859, s. 1, CL. 9).

See CASES UNDER PARTNERSHIP—SUITS  
RESPECTING PARTNERSHIP.

1. ———— **Contract to purchase land—**  
**Necessity to sell land for arrears**—Where an estate was sold under a contract at 10½ years' purchase of the net annual rent collections, and various sums of money were met various and the amount the vendor's ex,

**ACCOUNT STATED—concluded.**

*Kuar v. Chandrawati, I. L. R., 4 All., 30, distinguished. KIAM-UD-DIN v. RAJIO*  
[I. L. R., 11 All., 13]

2. ———— **Cause of action**  
**—Evidence of the existing debt—Fresh contract**  
**—Interest—Damdupat.**—In June 1833, the plaintiff's father advanced a loan to the defendant at compound interest. The account of this debt with interest was adjusted and signed from time to time. In June 1833, it was adjusted and signed, the amount found due being Rs28-8-0. In February 1896, the plaintiff sued to recover this amount. *Held* that the account (ruzukhata) was the claim interest upon it. The debt to be sued on was

Formerly this was the rule also in Bombay (as shown by the earlier cases), where the account was signed. If, however, it was not signed, it could not be sued on as a new contract. The Indian Limitation Act required an acknowledgment or admission of a debt

sued on as a fresh contract. The suit must be brought in respect of the original transaction, and the subsequent stated or adjusted accounts are only evidence of the debt arising from them, and serve to prevent the operation of the Act of Limitation. *SHANKAR v. MUKTA*  
[I. L. R., 22 Bom., 513]

**ACCOUNT, SUIT FOR—**

See BENGAL RENT ACT (VIII OF 1869), s.  
30 . . . I. L. R., 5 Calc., 303, 314  
[I. L. R., 7 Calc., 89  
8 C. L. R., 285  
16 W. R., 149  
3 C. L. R., 444  
I. L. R., 20 Calc., 425]

See DEKHAH AGRICULTURISTS RELIEF  
ACT, s. 15D . . . I. L. R., 16 Bom., 351  
[I. L. R., 20 Bom., 469]

See GUARDIANS AND WARDEN ACT, s. 41.  
[I. L. R., 22 All., 332]

See CASES UNDER MORTGAGE—ACCOUNTS.

See CASES UNDER PARTNERSHIP—SUITS  
RESPECTING PARTNERSHIP.

See CASES UNDER PLAINT—FORM AND  
CONTENTS OF PLAINT—FRAME OF SUITS  
GENERALLY.

that even a decree, taken out by the zemindars against defendant for the rents of the land in suit, did not affect plaintiff's claim to the money owing under the contract. *OFENDER NARAIN MOOKERJEE v. GUDADHAR DEY.* 25 W. R., 472, 476

2. ———— **Proof of adjustment—Parol evidence.**—The adjustment of an account may be proved by verbal evidence, and need not necessarily be in writing signed by the party to be bound. *PURNIMA CHOWDHURI v. NITTANAND SHAH*  
[B. L. R., Sup. Vol. 3  
W. R., F. B., 82]

**ACCOUNT STATED.**

See CASES UNDER LIMITATION ACT, 1877,  
s. 19—ACKNOWLEDGMENT OF DEBTS.

See CASES UNDER LIMITATION ACT, 1877,  
ART. 64

of the bond, and that she had had any dealings or stated any account with the plaintiff. The Courts

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implied by the statement of accounts.—*Held* that this decision was wrong, and that the plaintiff was entitled to sue upon the account stated. *Sardar*

ACCOUNT, SUIT FOR—*continued.*

See CASES UNDER SMALL CAUSE COURT,  
MOFUSSIL—JURISDICTION—ACCOUNT,  
SUIT FOR.

See VALUATION OF SUIT—SUITS.

[I. L. R., 9 Bom., 22

I. L. R., 12 Bom., 675

I. L. R., 13 Bom., 517

1. ——— Liability to account—*Administrator General as Executor of the surviving trustee of religious endowment.*—An account was decreed against the Administrator General, who had been appointed the executor of the last surviving trustee under the will of the founder of a religious institution. *THACOR DASS SETT v. HOGG*

[Cor., 68

2. ——— Lumberdar—*Account of rents uncollected.*—Held that a lumberdar is ordinarily bound to account for rents not collected if he does not exercise his power of distraint with due diligence. *SEES RAM v. CHAIT RAM*

2 Agra, 266

3. ——— *Account of rents uncollected.*—Held that a lumberdar is not liable for the rent which he, without any wilful default on his part, has never received, if he shows that he has done his duty in endeavouring to collect the same. *ENAYET HOSSEIN v. GHOLAM ALLY*

2 Agra, 276

4. ——— Mahomedan widow in possession for dower—*Suit not framed for an account.*—In a suit by the only brother and heir-at-law of a Mahomedan of the Shiah sect, claiming the whole of the deceased's estate, and for mesne profits, the issues raised by the pleadings were, first, whether a marriage had taken place between the deceased and the party in possession, who claimed to be his widow, and secondly, the validity of a deed of dower executed by the deceased in her favour. The Courts in India found these issues in favour of the widow, and dismissed the suit. The Judicial Committee, in affirming the Court's decrees upon these points, held further that although the estate of the husband was hypothecated for the dower, yet as the heir-at-law would be entitled to the residue after satisfying the widow's claim, he was by right entitled to an account, but as the plaint was so framed as not to admit of an account being taken, the appeal was affirmed, without prejudice to a suit being brought for administration of the deceased's estate upon the footing of the marriage and deed of dower being admitted in the suit. *AMEEROONNISSA v. MORADONNISSA*

6 Moore's I. A., 211

5. ——— Mother appointed administratrix of minor son—*Bombay Minors Act (XX of 1864), ss. 6, 9, and 19—Account of minor's estate after his death—District Court.*—Where a mother is appointed administratrix to the estate of her minor son, under Act XX of 1864, s. 6,—Held that, unlike a curator or other person appointed administrator under s. 9, she is not bound to render an account, unless a suit should be instituted for the purpose, under s.

ACCOUNT, SUIT FOR—*continued.*

19, by a relative, during the minority. No application for an account can be made after the death of the minor, though his representatives are entitled to an account. When the minor is dead, the District Court is no longer capable of representing him under the Act. The only way of calling the administrator to account is a suit instituted by a person interested. *IN THE MATTER OF THE PETITION OF NABMADABAI*

I. L. R., 8 Bom., 14

6. ——— Right to an account—Person with title barred by lapse of time—*Hereditary Office, administration of trusts of.*—The plaintiff brought a suit to establish his right to and for possession of the hereditary office of dharmakarta of a pagoda and to remove the defendant, but it was held that his title was extinguished by lapse of time. Held that plaintiff, having no longer any title to the property, was not in a position to treat defendant as a trespasser and to call upon him for an account of the past administration of the trust upon that footing; and further, that the suit being substantially one to remove the defendant from the trust and establish plaintiff's title to the hereditary office or, on failure of this, to secure the appointment of a fit and proper person to fill defendant's office, the account was only prayed for on that understanding, and, therefore, the plaintiff was not entitled to call for an account of the past administration of the trust, as a person interested in the religious trust. *MANALLY CHENNA KESAVARAYA v. VAIDELINGA*

[I. L. R., 1 Mad., 343

7. ——— Landlord and tenant—*Rent set off against advances—Suit for rent—Limitation Act (XV of 1877), arts. 85, 89, sch. II—Form of decree.*—The plaintiffs executed a lease for nine years in favor of the defendant No. 1 at a fixed annual rent payable by instalments. The defendant, under instructions from the plaintiffs, paid from time to time Government revenue, cesses, expenses of litigation, etc., on their behalf, and used to set off those sums against the rent due to them under the lease; no sum of money by way of advance or otherwise from the plaintiffs ever came into the hands of the defendant. After the expiry of the lease, the plaintiffs instituted this suit against the defendant for an account:—Held that the suit for an account was not maintainable; the relationship between the parties as created by the lease was simply that of landlord and tenant, and the only relief which the plaintiffs could have properly asked for was a decree for rent, if any was still due. *BHEKDHARI LAL v. BADHSINGH DUDHARIA*

I. L. R., 27 Calc., 663

8. ——— Principal and Agent—*Method of taking accounts—Civil Procedure Code, 1877, ss. 394, 395.*—In a suit for an account against an agent, the plaintiff stated that the defendant had not submitted proper accounts of his agency, and prayed that the defendant might be ordered to produce certain papers, and that, on failure to submit the accounts, he might be decreed to pay the plaintiff Rs. 1,200 by way of damages. The plaintiff also alleged that, in consequence of the defendant's negligence and mismanagement, the plaintiff believed that

**ACCOUNT, SUIT FOR—continued.**

he had sustained a loss of Rs.5,000, and prayed for a decree for this sum. *Held* that no decree could be made for the sums mentioned, or any other sum, until an account had been taken and the amount due from the defendant ascertained. *Method to be followed on taking accounts in the mofussil stated.* If the taking of accounts by the Judge would occasion a waste of public time, he should resort to the provisions of ss. 394 and 395 of the Civil Procedure Code, and furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary. *ANNODA PERSAD ROY v. DWARAKA NATH GANGOPADHYA*

[I. L. R., 6 Calc., 754  
8 C. L. R., 321]

9. *Suit by principal for an account—Object of a decree for an account as distinguished from a decree made upon the hearing—Costs—A continued agency, or employment as dewan, for the purpose of drawing and expending the money of a principal, resulted in a suit by the latter, who alleged that more had been drawn than expended for him, and that a specific*

adduced at the hearing, how much of the principal's money was unaccounted for, though the attempt had been made to prove a balance due, the Appellate Court dismissed the suit:—*Held* that such a suit was essentially one for an account, and that the Courts below should have followed the regular course, i.e., to order an account to be taken of the defendant's dealings with plaintiff's money. This was without any expression of opinion that, in a suit for an account, an issue may not be raised, at the outset, so clearly as to be ready for decision. But the general rule being the other way, this suit was an example of it. *MURBINATH RAI v. KRISHNA KUMAR BAKSHI*

[I. L. R., 14 Calc., 147; L. R., 13 I. A., 123]

for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and form

**ACCOUNT, SUIT FOR—continued.**

187 of sch. IV to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree

v. KALLYNATH ROY

I. L. R., 7 Calc., 654  
[9 C. L. R., 265]

11. *Fraud or specific error in account, Allegation of—M sued for an account of all moneys received and paid on his behalf by T, deceased (represented by his widow), and F as his agents from 1st August 1859 to 30th April 1865. It was alleged in the plaint that M "left India in 1858, and has since resided in Scotland; that at the time he left he was, and still is, possessed of extensive property in the Province of Bengal, chiefly landed property," that T and afterwards T and F were his agents and managers. In his written statement, M stated that "in the month of June 1861, the deceased rendered an account to the plaintiff showing that all moneys due to him by the plaintiff in respect of his salary and commissions up to the 31st January 1861, being the whole of deceased's claim against him up to that date under their above-mentioned arrangements, had been duly paid by the plaintiff. In the month of April 1865, deceased transmitted to the plaintiff the agency accounts of himself and his firm with the plaintiff in continuation of the accounts rendered by him as mentioned in the preceding paragraph, brought down to the end of February 1865, and again in May 1865, the deceased transmitted the continuation of the said account brought down to the 30th April preceding, being the date of the termination of the agency. The said accounts rendered have been examined by the plaintiff, who verily believes that the true balance now due to him thereon exceeds Rs.1,00,000, without including interest." There was no allegation in the plaint, written statement, or opening of counsel, of fraud or specific error. *Held* that M, in his plaint and written statement, had not disclosed any cause of action. *MACINTOSH v. TEMPLE**

2 Ind. Jur., N. S., 333

12. *Suit against go-*

to have these papers brought before it and examined, and to determine whether they were correct and fair accounts between the parties. *SHRUBH SHREKHIA AUDHIKAR v. SULEEM BISWAS*

22 W. R., 191

13. *Decree for account against agent.—Where a decree requires an agent to render accounts, he can only discharge himself by accounting for all the moneys that have come into his hands, and it is always open to the decree-holder*

**ACCOUNT, SUIT FOR—continued.**

to show that this has not been done. *WOOMANATH ROY CHOWDERY v. SREENATH SINGH*  
[15 W. R., 260]

14. ——— Refusal to account—*Destruction of account books.*—Where a defendant refused to render accounts, and there was evidence of spoliation of the banking books, the Court charged him with the principal sum for which he was accountable, with interest at 12 per cent. per mensem in lieu of the profits he failed to account for. *RAMPERSHAD TEWARRY v. SHEO CHURN DOSS; THOOKRA v. RAMPERSHAD TEWARRY*

[10 Moore's I. A., 490]

15. ——— Right to re-open settled account—*Principles of Court of Equity in re-opening accounts—Principles which regulate a Court of Equity in opening stated and settled accounts.*—Accounts of long standing and great complication of a mercantile firm at Calcutta, one of the partners of which afterwards acted as agent in England, involving charges for agency and partnership transactions, were mutually agreed to be investigated and closed. After long negotiations and discussion respecting some of the charges, an agreement was come to, the parties agreeing to strike the general balance at a given sum, reserving one item of the account, amounting to a considerable sum, for future investigation. This reserved item was subsequently settled by the acceptance of a bill of exchange for a lesser amount, as such reserved item, if re-opened, would have disarranged the settled general account. The bill of exchange was dishonoured and an action brought to recover the amount. A bill was then filed for an injunction for the cancelment of the bill of exchange, and praying that the accounts so settled might be opened. The Supreme Court at Calcutta held that the reserved item being left open was evidence that the account was not finally closed, and decreed the accounts to be opened, referring the cause to the Master. On appeal, held by the Judicial Committee (reversing such decree, and dismissing the bill with costs) that the transaction amounted to an adjustment of the general account between the parties, subject to the reserved item which was subsequently settled, and that the accounts so settled and closed could not, in the absence of fraud, be re-opened. *McKELLER v. WALLACE* . . . 5 Moore's I. A., 372

16. ——— Impeachment of accounts on ground of fraud—*Mode of proof—Re-opening of accounts.*—Where accounts are impeached on the ground of fraud, two or three instances of particular items, which can be taken as false and fraudulent, must be brought to the notice of the Court before it can be called upon to order the accounts to be re-opened from the first. *Williamson v. Barbour, L. R., 9 Ch. D., 529*, followed. *BOO JINATBOO v. SHA NAGAR VALAB KANJI*

[I. L. R., 11 Bom., 78]

17. ——— Running account for portion of which hundis are given—*Obligation to sue on hundis.*—Where there is a running account

**ACCOUNT, SUIT FOR—concluded.**

between the parties, a portion of which relates to an amount due upon dishonoured hundis, plaintiff is not bound to sue upon the hundis, but may base his claim upon the running account. *RAM CHAND v. PUNNA LAL* . . . 3 N. W., 323

18. ——— Necessity to go into accounts in suit for profits.—The mere fact that in a suit for profits by a co-sharer it is necessary to go into the accounts will not alter the character of the suit and make it one for settlement of accounts. *DABEE DEEN v. DOORGA PERSHAD*

[3 N. W., 49]

**ACCOUNT BOOKS, ENTRIES IN—**

*See BANKERS' BOOKS EVIDENCE ACT.*

[4 C. W. N., 433]

*See CASES UNDER EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.*

**ACCOUNT SALES.**

*See EVIDENCE—CIVIL CASES—ACCOUNT SALES* . . . 5 B. L. R., 619

[2 Ind. Jur., N. S., 5  
6 Bom., O. C., 39]

*See PRINCIPAL AND AGENT—COMMISSION AGENTS* I. L. R., 16 Mad., 238

**ACCOUNTANT.**

*See BANKERS* . I. L. R., 16 All., 88

**ACCOUNTS.**

*See DECREE—CONSTRUCTION OF DECREE—ACCOUNT.*

*See DECREE—FORM OF DECREE—ACCOUNT.*

*See CASES UNDER MORTGAGE—ACCOUNTS.*

——— Keeping two sets of—

*See BOMBAY TOLLS ACT, s. 7.*

[I. L. R., 20 Bom., 668]

——— Mutual Accounts—

*See CASES UNDER LIMITATION ACT, 1877, ART. 85.*

——— Procedure.—Procedure to be observed in a judicial enquiry into accounts laid down. *ALAI AHMAD alias BOOLAKI v. NUSIBUN*

[24 W. R., 70]

**ACCRETION.**

Cpl.

**1. NEW FORMATION OF ALLUVIAL**

LAND . . . . . 49

a. GENERALLY . . . . . 49

b. RIVERS OR CHANGE IN COURSE OF RIVERS . . . . . 51

c. CURS OR ISLANDS IN NAVIGABLE RIVERS . . . . . 55

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**1. NEW FORMATION OF ALLUVIAL  
LAND.**

(a) GENERALLY.

[W. R., 1864, 149]

BISSESSUREE DOSSEE v. KALEE KOOMAR ROY  
[18 W. R., 198]

2. ——— Beng. Reg. XI of 1825, s. 4, application of.—Cl. 1, s. 4, Regulation XI of 1825, applies only to lands gained by alluvion either gradually or suddenly, and not to lands existing as waste land subject to inundation and in one year rendered cultivable by a deposit of earth by the action of the river. RAMJEEAWAN RAI v. DEEP NARAIN RAI . Agra, F. B., 78, Ed. 1874, 60

[4 C. W. N., 508]

4. ——— s. 4, cl. 1—*Alluvion*—Title to land acquired by gradual accretion—Limitation.—Cl. 1 of s. 4 of Regulation XI of 1825 does not depend for its operation on the capability of identification of the accreted lands. Whether the accreted lands are capable of identification or not, the clause applies where the lands have been gained by gradual accretion by the recession of a river. In the case of gradual accretions, the ordinary rule of acquisition by prescription does not apply, but each accretion as it occurs comes under the same title as that

**ACCRETION—continued.****1. NEW FORMATION OF ALLUVIAL  
LAND—continued.**upon which the land to which it is made is held.  
DEBI BAKSH SINGH v. TIBBRAWAN SINGH

[I. L. R., 19 All., 238]

5. ——— Suit for accreted land.—In a suit for possession of alluvial land, which plaintiffs claimed by right of accretion under the provisions of Regulation XI of 1825 and in which the question of accretion was put in

or whether they were accretions to that estate by recession of the river. WISE v. JUGGOBUNDU BOSE

[12 W. R., 229]

Affirmed on review, JUGGOBUNDU BOSE v. WISE  
[12 W. R., 409]

6. ——— cls. 1 and 3.—  
In a suit for possession where certain lands were

DASSEY 14 W. R., 254

7. ——— Proprietor of resumed mehal.—The Government, when it holds a resumed mehal on its rept roll as its khas property, holds it as, and with all the rights and liabilities of, a private zamundar, and is therefore entitled, under Regulation XI of 1825, to claim accretions to the khas estate. COLLECTOR OF PUNNA v. SUREN MOYEE . . . . . 17 W. R., 183

8. ——— Suit for possession of chur

accretion to that remnant. RASHMONEE DOSSEE v. BHUBONATH BHUTTACHARJEE . 12 W. R., 252

9. ——— Land forming bed of canal—Beng. Reg. XI of 1825, s. 4, cl. 4.—Land forming the dry bed of a canal belongs to the estate in which the canal itself was included. In cl. 4, s. 4, Regulation XI of 1825, the words "subject to the provisions stated in the first clause of the present section" do not apply to the formation and position of the newly-accreted land, but to the owner's rights in them in relation to the Government. SYOOLLAM v. BRUTON alias BUTTASSUR  
[10 W. R., 68]

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to show that this has not been done. *WOOMANATH ROX CHOWDHRY v. SREENATH SINGH*

[15 W. R., 260

14. ——— Refusal to account—*Destruction of account books.*—Where a defendant refused to render accounts, and there was evidence of spoliation of the banking books, the Court charged him with the principal sum for which he was accountable, with interest at 12 per cent. per mensem in lieu of the profits he failed to account for. *RAMPERSHAD TEWARRY v. SHEO CHURN DOSS; THOOKRA v. RAMPERSHAD TEWARRY*

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15. ——— Right to re-open settled account—*Principles of Court of Equity in re-opening accounts—Principles which regulate a Court of Equity in opening stated and settled accounts.*—Accounts of long standing and great complication of a mercantile firm at Calcutta, one of the partners of which afterwards acted as agent in England, involving charges for agency and partnership transactions, were mutually agreed to be investigated and closed. After long negotiations and discussion respecting some of the charges, an agreement was come to, the parties agreeing to strike the general balance at a given sum, reserving one item of the account, amounting to a considerable sum, for future investigation. This reserved item was subsequently settled by the acceptance of a bill of exchange for a lesser amount, as such reserved item, if re-opened, would have disarranged the settled general account. The bill of exchange was dishonoured and an action brought to recover the amount. A bill was then filed for an injunction for the cancelment of the bill of exchange, and praying that the accounts so settled might be opened. The Supreme Court at Calcutta held that the reserved item being left open was evidence that the account was not finally closed, and decreed the accounts to be opened, referring the cause to the Master. On appeal, held by the Judicial Committee (reversing such decree, and dismissing the bill with costs) that the transaction amounted to an adjustment of the general account between the parties, subject to the reserved item which was subsequently settled, and that the accounts so settled and closed could not, in the absence of fraud, be re-opened. *McKELLER v. WALLACE* . . . 5 Moore's I. A., 372

16. ——— Impeachment of accounts on ground of fraud—*Mode of proof—Re-opening of accounts.*—Where accounts are impeached on the ground of fraud, two or three instances of particular items, which can be taken as false and fraudulent, must be brought to the notice of the Court before it can be called upon to order the accounts to be re-opened from the first. *Williamson v. Barbour, L. R., 9 Ch. D., 529*, followed. *BOO JINATBOO v. SHA NAGAR VALAB KANJI*

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See BANKERS' BOOKS EVIDENCE ACT.

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[2 Ind. Jur., N. S., 5  
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[I. L. R., 20 Bom., 668

———— Mutual Accounts—

See CASES UNDER LIMITATION ACT, 1877, ART. 85.

———— Procedure.—Procedure to be observed in a judicial enquiry into accounts laid down. *ALAIYANAD alias BOOLAKI v. NUSIBUN*

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**ACCRETION.**

Cpl.

**1. NEW FORMATION OF ALLUVIAL LAND**

. . . . . 49

a. GENERALLY . . . . . 49

b. RIVERS OR CHANGE IN COURSE OF RIVERS . . . . . 51

c. CHURRS OR ISLANDS IN NAVIGABLE RIVERS . . . . . 55

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[I. L. R., 27 Cal., 338  
4 C. W. N., 113]See CASES UNDER LANDLORD AND TENANT—  
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Assessment of, to Revenue—

See CASES UNDER ACT IX OF 1847.

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(a) GENERALLY.

[W. R., 1864, 149]

BISSESSUREE DOSSEE v. KALEH KOOMAR ROY  
[18 W. R., 193]year rendered culturable by a deposit of earth by the  
action of the river. RAMJEEAWAN RAI v. DEEP  
NARAIN RAI . . . . . Agra, F. B., 78, Ed. 1874, 603. ——— Regulation XI of  
1825 applies only to land gained by gradual accretion  
from the recession of a river or sea, and has no appli-  
cation to land formed by the drying-up of a bhil or  
marsh. Suroop Chunder Mozoomdar v. Jardine,  
Skinner & Co., Marsh., 334, relied on. KHONDEKAR  
ABDUL HAMID v. MOHINI KANT SAHA

[4 C. W. N., 508]

4. ——— s. 4, cl. 1—*Ac-  
cretion—Title to land acquired by gradual  
accretion—Limitation.*—Cl. 1 of s. 4 of Regu-  
lation XI of 1825 does not depend for its operation  
on the capability of identification of the accreted  
lands. Whether the accreted lands are capable  
of identification or not, the clause applies where  
the lands have been gained by gradual accretion  
by the recession of a river. In the case of  
gradual accretions, the ordinary rule of acquisition  
by prescription does not apply, but each accretion  
as it occurs comes under the same title as that**ACCRETION—continued.****1. NEW FORMATION OF ALLUVIAL  
LAND—continued.**upon which the land to which it is made is held.  
DEBI BAKSH SINGH v. TIRSHAWAN SINGH

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5. ——— *Suit for accreted  
land.*—In a suit for possession of alluvial land,  
which plaintiffs claimed by right of accretion  
which plaintiffs claimed by right of accretionor whether they were accretions to that estate by re-  
cession of the river. WISE v. JUGGUBENDOO BOSE

[12 W. R., 229]

Affirmed on review, JUGGUBENDOO BOSE v. WISE  
[12 W. R., 409]6. ——— cls. 1 and 3.—  
In a suit for possession where certain lands weretween,—*Held* that the decision was not in conformity  
with cl. 1 or cl. 3, s. 4, Regulation XI of 1825, and that  
it was necessary to determine how the land formed,  
whether it was thrown up as an island in the bed of  
the river, or was formed by gradual accretion to  
an estate; and if by gradual accretion, to what lands  
it so accreted. UNNOPOORNA DEBIA v. SREEMUTTY  
DASSEE . . . . . 14 W. R., 2547. ——— *Proprietor of re-  
sumed mehal.*—The Government, when it holds  
a resumed mehal on its rent roll as its khas  
property, holds it as, and with all the rights and  
liabilities of, a private zamindar, and is therefore  
entitled, under Regulation XI of 1825, to claim  
accretions to the khas estate. COLLECTOR OF PUNNA  
v. SURNO MOTEE . . . . . 17 W. R., 163accretion to that remnant. RASHMONKEE DOSSEE v.  
BRUBONATH BRUTTACHARJEE . . . . . 12 W. R., 252

9. ——— Land forming bed of canal

rights in them in relation to the Government.  
STOOLAM v. BRUTTON alias BUTTASSUR

[10 W. R., 68]

**ACCRETION—continued.****1. NEW FORMATION OF ALLUVIAL LAND—continued.**

10. ——— Accretion to estate on opposite side of river.—Accretion on one side of a river is not claimable as belonging to an estate on the opposite bank. *PUNCHANUN MULLICK v. HEERA LALL SEAL* . . . . . 1 W. R., 173

11. ——— Gradual accretion.—*Lakhi-rajdhar*.—Gradual accretion may be claimed by a lakhirajdar as his property. *PUTHURAM CHOWDREY v. KUTHENABAIN CHOWDREY* . . . . . 1 W. R., 124

12. ——— Right of zamindar to accreted land.—As long as any portion of an estate is in existence, the zamindar is entitled to claim the land accreting to it as forming by law part of that estate. *BHOOBUNMOHUN SIRCAR v. WATSON & Co.*

[W. R., 1864, 64]

13. ——— Accretion to riparian village.—“Ancestral” property.—*Alluvial land*—“Ancestral” riparian property.—*Alluvial land held on same title as riparian land*.—Held that the ownership of alluvial land which had accreted to a riparian village must rest upon the same title as that upon which the original village was held, and that, as the riparian village was ancestral, the accreted property must be ancestral also. *RAM PRASAD RAI v. RADHA PRASAD SINGH* . . . . . I. L. R., 7 All., 402

14. ——— Evidence.—*Alteration of surface of land*—*Obiteration of landmarks*.—The question whether land is formed by gradual accretion depends on evidence; but it would be an error in law to consider it as conclusive of that fact that the surface of the land had all been changed, and the marks all obliterated, so that no old houses, or trees, or mounds, or vestiges of boundary could be found, and that all the surface of the land was fresh land which had been brought down by the river. *Lopez v. Maddan Mohan Thakur*, 6 B. L. R., 121, commented on. *PAHALWAN SINGH v. MAHESUR BUKSH SING. MAHESUR BUKSH SING v. MEGBURN SING* [9 B. L. R., 150  
16 W. R., P. C., 5]

15. ——— Accretion by washing away lands of another.—The party to whose lands new formations accrete is entitled to them, though the accretion may have been caused by the washing away of the lands of another person. *ADOO MEAN v. SHIBO SOONDOOREE* . . . . . 2 W. R., 295

**(b) RIVERS OR CHANGE IN COURSE OF RIVERS.**

16. ——— Gradual accretion from river receding.—*Riparian proprietors*—*Beng. Reg. XI of 1825, s. 4, cl. 5*.—In a suit for lands gradually gained by recession of a river the plaintiffs and defendants are equally bound to prove their titles, and where they fail to do so, the accretion under the 5th clause of s. 4 of Regulation XI of 1825 should be so divided that the owners of the land forming each bank of the original bed of the river must receive the land newly formed opposite their respective holdings. *BHAGEERUTTEE DABEA v. GREESH CHUNDER CHOWDREY* . . . . . 2 Hay, 541

**ACCRETION—continued.****1. NEW FORMATION OF ALLUVIAL LAND—continued.**

17. ——— Gradual accretion from river.—Land gained from a river by gradual accretion belongs to the owner of the adjacent soil by the title of occupancy. *NASAVANJI PESTANJI v. NASARVANJI DABASHA*

[2 Bom. 366, 2nd Ed., 345]

18. ——— *Nadi bharati*.—*Nadi bharati*, or land raised out of the river, is not an accretion, and belongs to the person to whom the river was re-leased by the Resumption Authorities. *HARI KISHORE DUTT v. COLLECTOR OF DACCA*

[3 B. L. R., Ap., 116]

19. ——— Bed of navigable rivers.—The East India Company as representing the Indian Government had a freehold in the bed of navigable rivers in India, and to the land between high and low-water mark. Land formed by gradual accretion belongs to the owner of the adjacent soil. *DOE d. SEEBKRISTO v. EAST INDIA COMPANY*.

[6 Moore's I. A., 267]

20. ——— Land dry only in dry season below high-water mark.—*Private property*.—A strip of land which, in the dry season only, is left dry between the permanent bank and the river cannot be private property until it rises beyond high-water mark, so as to become fit for cultivation; and when it does so rise, the public will be entitled to the same access to the river as before. *ODHIRANEE NARAIN KOOMAREE v. NAWAB NAZIM OF BENGAL*

[4 W. R., 41]

21. ——— *Beng. Reg. XI of 1825, s. 1, cl. 4*.—*Right of jalkar*.—Before cl. 4, s. 1, Regulation XI of 1825, can have the effect of depriving a party of the title given by cl. 1, the opposite party must prove that the land in question was the bed of a small and shallow river which, with the jalkar right of fishing over it, was recognized as the property of such opposite party. *RAM SHURN SHAHA v. BHOTE KINKUR* . . . . . 14 W. R., 268

22. ——— Land accreting from bed of khal.—Land which accretes to an estate from the bed of an adjoining khal, not being a canal, but a river, belongs by law to the owner of the estate. *DATARAM NATH v. ESHAN CHUNDER LAW* . . . . . 11 W. R., 116

23. ——— Change in course of river.—*Alluvion and diluvion*.—Land gained by the gradual accession of a river, and added by the operation of nature to A's tenure, must be held to be A's property, although it be also established by evidence that this land has re-formed on a site which was formerly part of B's property. If it should be proved that the river flowed over the original site, and, receding, left the new formation and a fordable channel between it and B's property, B would be entitled to retake possession of the newly-formed land on the old site, and he would not be deprived of it because the river was either fordable on A's side, or had wholly dried up. *MASEYK v. HEDGEE* . . . . . W. R., 1864, 306

24. ——— *Land capable of identification*.—*Semble*.—That the general law of al-

## ACCRETION—continued.

## 1. NEW FORMATION OF ALLUVIAL LAND—continued.

capable of being identified as part of the estate of another. *ISREZ SINGH v. SHUREFOODEN*

[1 N. W., 142, Ed. 1873, 224]

*PRAGDUTT RACOT v. LUCHMUN PERSHAD*

[3 N. W., 111]

25. ————— *Beng. Reg. XI of*

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recover such land under cl. 2, s. 4, Regulation XI of 1825 *RAI MANIK CHAND v. MADHURAM*

[3 B. L. R., P. C., 5; 11 W. R., P. C., 42  
13 Moore's I. A., 1]

riparian proprietors. *DROOLHIN HURPAUL KOON-  
WAREE v. USBUCK SINGH* . . . 3 Agra, 18

27. ————— *Boundary Suc-*

rivers, and from time to time the volume of water shifts, so that alternately one of these channels is deep, and the other is fordable, then the whole of such intermediate land belongs to the land-owner on the side of the channel which at any given time is fordable. *Held* (without deciding whether such a custom

## ACCRETION—continued.

## 1. NEW FORMATION OF ALLUVIAL LAND—continued.

to the renewal of that settlement in 1857, the river, which was to the south of the plaintiff's zamindari in Tirhoot, and to the north of the defendant's in

standing, summarily settled with the defendant, who

Tirhoot and Saran, but also the boundary between the two zamindaries, the plaintiffs were entitled to the lands. *RAGHOOBUR DYAL SAKOO v. KISHEN PERTAB SAHEB* . . . L. R., 6 I. A., 211

28. ————— *New formation of alluvial lands—Rivers or change in course of rivers—Tidal navigable river—Cause and nature of variation in high-water line—The rules of English law, according to which the rights of the Crown or of riparian owners to accretions caused by alluvion are determined with reference to the*

had been caused by acts unlawfully done by the tenants of the riparian owner.—*Held* that the Crown was entitled as against the riparian owner to the accretion caused by such variation. *SECRETARY OF STATE FOR INDIA v. KADMIKUTTI*

[I. L. R., 13 Mad., 369]

30. ————— *Changes in a*

adjoined. *Held* that the right of property remained in the original owner, the defendant. The owner of the adjoining village on the eastern side could not make out a title to it either under cl. 1, under cl. 6, of s. 4 of Regulation XI of 1825, or

*BISSESSURNATH v. MOHESUR BUKSH SING BAHADUR* . . . 11 B. L. R., 265; 18 W. R., 160

[L. R., I. A., Sup Vol., 34]

28. ————— *Accretion by gradual accession—Riparian proprietors—Effect of sudden change in course of boundary river—Beng. Reg. XI of 1825, s. 2, and s. 4, cls. 1 and 2—The lands in suit in Tirhoot were settled under Regulation XI of 1825, s. 4, cl. 1, with the plaintiff's predecessor in 1837, as the proprietors of an estate to which the lands had become an accretion by gradual accession, and the plaintiffs continued in possession thereof till the expiration of the settlement in 1847, which was made on the same principle. Prior*

## ACCRETION—continued.

## 1. NEW FORMATION OF ALLUVIAL LAND—continued.

in virtue of any known principle. There was no proof of a custom giving this land to him on account of contiguity, and there had been no gain to him from the river by alluvion within the meaning of the Regulation. *JAGGOT SINGH v. BRIJ NATH KUNWAR* . . . I. L. R., 27 Calc., 768

[L. R., 27 I. A., 81  
4 C. W. N., 555]

## (c) CHURS OR ISLANDS IN NAVIGABLE RIVERS.

31. ———— *Accretion to chur—Fordable channel.*—An accretion to a chur belongs to the owner of the chur, whether the channel between the main land and the chur is fordable or not. *KALLY NATH ROY CHOWDHRY v. LAWRIE* 3 W. R., 122

32. ———— Under Reg. XI of 1825, chur land belongs to the proprietor of the estate to which it accretes, provided it is not separated from such estate by an unfordable stream. *SHIBCHUNDER GHUTTUCK v. COLLECTOR OF TIPPERAH*

[5 W. R., 139]

33. ———— *Formation of churs—Beng. Reg. XI of 1825, s. 5, cls. 1 and 4—Right of fishery.*—According to cl. 4, s. 4, Regulation XI of 1825, churs thrown up in small and shallow rivers, the beds of which are private property, belong to the proprietor of the bed of the river; but by cl. 1 of the same section, churs thrown up in rivers, not small and shallow, the ownership of the beds of which remains in the public, are an increment to the tenure of the riparian owner to whose land or estate they are annexed. The fact of the right of fishery being in another person, does not take the case out of the operation of the former clause. *CHUNDERMONEE CHOWDHRAIN v. CHOWDHRAIN* . . . 4 W. R., 54

34. ———— *Diluvion—Reformation—Title—Beng. Reg. XI of 1825, s. 4.*—Where a chur formed in the middle of a river, and was settled with A, and by the recession of the river new land appeared, which was really a deposit on the ancient site of B's lands, though adhering to the chur, it was held to be B's land. The first rule established by s. 4, Regulation XI of 1825, does not apparently contemplate land other than that commonly known as alluvion, *viz.*, land gained by gradual and imperceptible accretion, the *incrementum latens* of the civil law. There is no express provision in the Regulation for the case of land which has been lost to the original proprietor by the encroachment of the sea or a river, and which, after diluviation, re-appears on the recession of the sea or river, and there is nothing to take away or destroy the original proprietor's right; such a case is to be determined by the general principles of equity and justice under the 5th rule contained in s. 4. A title founded on the original ownership and identification of land re-appearing is to be confined *primâ facie* to the reformation on that site. The cases of *Imam Bandi v. Hurgobind Ghose*, 4 Moore's I. A., 403, *Lopez v. Maddan Mohan Thakur*, 6 B. L. R., 121, and *Eckowri Singh v. Heeralai Saei*, 2 B. L. R., P.

## ACCRETION—continued.

## 1. NEW FORMATION OF ALLUVIAL LAND—continued.

C., 5, commented on. *NOGENDER CHUNDER GHOSE v. MAHOMED ESOF*

[10 B. L. R., 406: 18 W. R., 113]

35. ———— *Beng. Reg. XI of 1825, s. 4, cl. 3.*—If alluvial land be surrounded by water fordable at any point, the owner of the land to which the chur adjoins has a *primâ facie* title to it under cl. 3, s. 4, Regulation XI of 1825. *WISE v. AMBERUNNISA KHATOON* . . . 2 W. R., 34

*WISE v. ABDOL ALI* . . . 2 W. R., 127

*PORESH NARAIN RAI v. WATSON* 5 W. R., 283

36. ———— *Formation of chur—Alluvion—Beng. Reg. XI of 1825, s. 4—Re-formation on old site.*—Under Regulation XI of 1825, a right of property in land gained by alluvion from a river (the bed of which is not the property of an individual) is acquired in two modes: first, where the land is gained by gradual accession by the recess of the river, in which case it becomes the property of the person in possession of the estate to which the land is an increment; and secondly, when a chur or island is thrown up in a large navigable river, and the channel between such chur or island is fordable at any season of the year, the accession is an accession to the land or tenure most contiguous. *MOHINI MOHUN DOSS v. JUGGOBUNDU BOSE* . . . 9 W. R., 312

37. ———— *Gradual accretion—Land "most contiguous."—Beng. Reg. XI of 1825, s. 4, cl. 3.*—The land "most contiguous" to a chur, as that phrase is used in Regulation XI of 1825, s. 4, cl. 3, is intended only to comprise the estate or estates with which the chur comes into contact along the length of the fordable part of a channel; and the whole chur becomes an accession to the land and part of the tenure of the party to whom such estate belongs, and no portion of it will cease to belong to him merely by reason of the deep water between it and the estate of another becoming shallow and fordable. *Held*, also, that after the chur had, by the first occurrence of the fordable channel, become part of A's property, all further accretions to it, if gained by "gradual accession," would also belong to A, even though the result would, in the aggregate, be a prolongation of the chur in front of estates on the river bank not belonging to him. *GOLAM ALI CHOWDHRY v. GOPAL LALL TAGORE*

[9 W. R., 401]

38. ———— *Navigable river—Rights of riparian proprietors.*—Where a chur or island is thrown up in a large navigable river, originally surrounded by deep, unfordable water, but between which and the estate of the zemindar a fordable channel has since been created, the criterion for deciding whether the Government has the right of disposing of that island, or whether the owner of the land to which it is most contiguous has that right, is to consider the state of circumstances at the time of the formation of the island,—that is, at the time when it was thrown up, and not the state of things at any subsequent or fluctuating period, such as the subsequent silting up of the bed of the river between

## ACCRETION—continued.

## 1. NEW FORMATION OF ALLUVIAL LAND—continued.

the island and the contiguous estate so as to form a fordable passage. *BUDRUMISSA CHOWDHRAIN v. PROSUNNO KUMAR BOSE*

[6 B. L. R., 255; 14 W. R., F. B., 25

*CANNON v. BISSONATH ADHICABEE*

[5 C. L. R., 154

39. ——— Fordable river—*Beng. Reg. XI, s. 4, cl. 3*—Island in navigable river—Right of riparian proprietor to—Under cl. 3, s. 4, Regulation XI of 1825, a riparian proprietor has no right

out of twenty-four hours. *NOBIN KISHOR ROY v. JAGES PRASAD GANGOPADYA*

[6 B. L. R., 343; 14 W. R., 352

40. ——— *Beng. Reg. XI of 1825, s. 4, cl. 3*.—A river that can be crossed from

XI of 1825 *ISSURCHUNDER SEIN v. KALEE DOSS HATRAH*

3 W. R., 95

41. ——— *Formation of*  
*char*—The fact that, under certain circumstances, a river is in some places, and at extreme time of low water, fordable, does not warrant the presumption that the river was a fordable stream at the time of the formation of the char. *WISE v. AMERONISSA KHATOON*

3 W. R., 219

42. ——— When the Government sues for alluvial land as an ordinary riparian zamindar, it is bound to prove, under the latter part of cl. 3, s. 3, Regulation XI of 1825, that the stream between the char and the main land is fordable at some time of the year, and that it was fordable when the alluvium formed. *TABIRA v. GOVERNMENT*

6 W. R., 123

Affirmed on review. *GOVERNMENT v. TABIRA*

[7 W. R., 513

43. ——— Re-formation on old site—

which had been washed away *MAINT LALL SART v. COLLECTOR OF SARUN*

[8 B. L. R., Ap, 93; 14 W. R., 424

44. ——— The Government is not entitled, under cl. 3, s. 4, Regulation XI of 1825, to take possession of land which has re-formed

[14 B. L. R., 219; 22 W. R., 324

## ACCRETION—continued.

## 1. NEW FORMATION OF ALLUVIAL LAND—continued.

can always be carried on *MOHINER MOHUN DOSS v. ASSANOOLLAH*

17 W. R., 73

46. ——— Unfordable stream—Land

unfordable stream, nor can possession under such circumstances give a plaintiff a right to a declaration of his title *NOBBEN KISHORE ROY v. JOGESH PROKASH GANGOOLY*

10 W. R., 272

47. ——— Formation of island in river adjacent to zamindari—*Zamindars, Right of*  
*Waste lands*—Where an island was formed in a river, the lands adjacent to the banks of which were part of zamindari,—*Held* that the island was not the

the hold-

that the

of owner

SUBBAYA

1 Mad., 255

*v. JUGGUBUNDU BOSE*

7 W. R., 103

49. ——— Formation of land in navigable river—*Proof of title*—The re-formation of land in the bed of a navigable river is not *prima facie* to be ascribed to a loss from any particular riparian estate, nor is the land which has been removed from an estate by sudden avulsion reclaim-

will follow the title of the particular land forming the nucleus. *EGOWRI SINGH v. HIRALALL SEAL*

[2 B. L. R., P. C., 5; 11 W. R., P. C., 2  
 12 Moore's L. A., 136

*SHAM CHAND BYRACK v. KISHEN PERSAUD SURMA*  
 [18 W. R., 4; 14 Moore's L. A., 595

50. ——— Island in large river—*Proprietorship of alluvial land*—*Beng. Reg. XI of 1825, s. 4*.—Though an island or land thrown up and

**ACCRETION—continued.****1. NEW FORMATION OF ALLUVIAL LAND—continued.**

surrounded by a river may become vested in Government under the provisions of Regulation XI of 1825, s. 4, cl. 4, it does not follow that, if the river which separates the island from the main land dries up after the island has been resumed by Government, the bed of the river becomes the property of Government in cases in which the bed of the river is not gained as an accretion to the island by gradual accession within the meaning of cl. 1. **SURNOMOYEE v. JARDINE, SKINNER & CO. SURNOMOYEE v. WATSON & Co. . . . . 20 W. R., 276**

**51. ————— Formation of lands**

—*Beng. Reg. XI of 1825.*—In a suit brought on the 11th March 1872 to recover certain plots of land (a) as re-formations after diluviation of lands which had belonged to the plaintiffs and as accretions thereto; (b) under a title by prescription; it appeared that the lands had formed in the bed of a river in 1859, and that the plaintiffs took possession thereof as of re-formed lands, and had been maintained in possession under awards under Act IV of 1840, but that in 1868 they were ousted by the Collector, who assessed the same under Regulation XI of 1825 and settled them with his co-defendants.—*Held* that, whether or not in consequence of Act IX of 1847 the Government were entitled to assess the lands, they were entitled to oust the plaintiffs and to take possession of the lands as lands which had originally formed as an island, and were at their first formation surrounded by water which was not fordable. **WISE v. AMEER-UNNISSA KHATOON. WISE v. COLLECTOR OF BACKER-GUNGE . . . . . L. R., 7 I. A., 73**

**52. ————— Formation and**

*attachment to estate of island chur formed in river.*—Defendants were owners, by purchase from Government, of a property called Oojan Chur, which in its origin was an island thrown up in the bed of the river. Plaintiff was owner of the original estate of K, of which a great part was cut off by a stream channel of the river; but afterwards re-appeared, and for some time lay in contiguity with defendant's chur, and separated from plaintiff's estate by the said channel. By the gradual filling up of the sota re-formation became more and more extensive until the land again lay in contact with the plaintiff's estate. As it had been clearly ascertained by boundary marks and measurements that the re-formation took place on the original site of the plaintiff's land, the right of the plaintiff as by re-formation was held to be preferable to that of the defendants, which rested upon accretion. **BUDDUN CHUNDER SHAHA v. BEPIN BEHAREE ROY . . . . . 23 W. R., 110**

**53. ————— Gradual accre-**

*tion to a formation of dry land already existing and appropriated to an owner of land, on a river's bank—Ownership of the bed of the river not the subject of contest below—Variation of claim disallowed.*—Although there is not in Madras, as there is in Bengal, an express law embodying the principle that gradual alluvion enures to the land to which the accretion is made, following the ownership of that land, the rule is equally well

**ACCRETION—continued.****1. NEW FORMATION OF ALLUVIAL LAND—concluded.**

established in both those provinces. Both parties were riparian proprietors of adjoining estates on both banks of the river Godavari. The plaintiff claimed the right to newly-formed land, in mid-stream, which she alleged to have been formed by accretion upon an already existing lanka or alluvial island which belonged to her. On that point there were concurrent findings against her. The accretion had taken place upon a lanka owned, not by her, but by the Government, and higher up stream than hers:—*Held* that the plaintiff must abide by the ground of claim which she had presented below, that being that the new land was formed by gradual accretions to definite and visible portions of a lanka previously belonging to her. This she could not now vary to a claim founded on an ownership of the river-bed on the strength of her being zamindar and owner of the land on both banks of the river, without either issue or evidence directed to such subaqueous ownership. **BALUSU RAMAKASHNAMMA v. COLLECTOR OF THE GODAVARI DISTRICT . . . . . I. L. R., 22 Mad., 464**  
**[L. R., 26 I. A., 107**  
**3 C. W. N., 777**

**2. RE-FORMATION AFTER DILUVIATION.****54. ————— Ownership in re-formed**

*land.*—Ownership in soil is not lost because the subject of it becomes submerged; the owner of the site or sub-soil remains owner of the surface, and on re-formation of the surface soil takes whatever falls within his known boundaries. Ordinarily there can be no right of accretion when the new formation is on the site of what was formerly held by an individual as his private property. **DWARKANATH ROY v. DINOBUNDHOO SINGH CHOWDHRY**

**[15 W. R., 461**

**55. ————— Beng. Reg. XI of**

*1825, s. 4, cl. 1.*—Where new land is formed, whether it be a re-formation on an old site or whether it is formed where no land ever previously existed, ownership is determined by the ownership of the adjacent land to which it has accreted. To defeat or prevent the right by accretion, the person who claims the land as a re-formation of his old land is required to prove some continuing right of property in himself; it is not enough for him to rely merely on identity of site. **KATEMONEE DOSSEE v. MONMOHINEE DABEE**

**[B. L. R., Sup. Vol., 353: 3 W. R., 51**

**LYON v. GRAY . . . . . 11 W. R., 189**

**56. ————— Land inundated**

*and re-formed.*—The owner of land before it is inundated remains the owner of it when it is covered with water and after it becomes dry. **IMAM BANDI v. HUR GOBIND GHOSE**

**[7 W. R., P. C., 67: 4 Moore's I. A., 403**

**57. ————— Beng. Reg. XI of**

*1825, s. 4, cls. 1, 2, 3.*—Claims to alluvial lands under cl. 2, s. 4, Regulation XI of 1825 (*i.e.*, to lands as re-formed lands), are not superior to claims under cls. 1 and 3 of s. 4, or under s. 5 of that Regulation, *i.e.*, to lands as newly alluviated. **WISE v. AMEER-UNNISSA KHATOON . . . . . 2 W. R., 132**

**ACCRETION—continued.****2. RE-FORMATION AFTER DILUVIATION—continued.**

58. ————— *Beng. Reg. XI of 1825, s. 4, cls. 1 and 3—Re-formation on old site.*—Proof of re-formation on an old site will not suffice to establish a claim under Regulation XI of 1825. Re-formations are governed by cls. 1 and 3, s. 4, Regulation XI of 1825. A claim to hold the land under cl. 2 can only be maintained by the old proprietor when the land has not been diluviated, but cut off by a change of the stream. *KENNY v SUMMERHOONISSA* . . . . . 3 W. R., 63  
*KALLE MONEE DEBIA v. COLLECTOR OF MYMENSINGH* . . . . . 5 W. R., 55

59. ————— *Land diluviated by river—Riparian proprietors.*—Where property is

[14 W. R., F. C., 11  
 13 Moore's I. A., 467

60. ————— *Quare.*—To whom lands diluviated and afterwards re-formed belong. *KIRTEE NARAIN CHOWDHRY v. PROTAB CHUNDER BEROOAH* . . . . . W. R., F. B., 129

lands "gained" within the meaning of s. 4, Regulation XI of 1825, they do not become the property of the adjoining owner, but remain the property of the original owner. *ROMANATH THAKOOR v. CHUNDERNARAIN CHOWDHRY* . . . . . Marsh, 138

[W. R., F. B., 45  
 1 Ind. Jur., O. S., 44

*COLLECTOR OF TIPPERAH v. DOORGA PERSAD PARAY* . . . . . W. R., 1864, 302

*COLLECTOR OF DACCA v. KISHEN KISHORE CHATTERJEE* . . . . . W. R., 1864, 273

estate entirely lost by diluvion. *KESHUBLALL CHOWDHRY v. WATSON & Co.* . W. R., 1864, 64

63. ————— *Diluviated lands, re-forming on old site—Title by long possession—Adverse possession.*—The doctrine in *Lopes v. Maddan Mohan Thakoor*, 5 B. L. R., 521, that diluviated lands, re-forming on their old site, remain the property of their original owner, does not

**ACCRETION—continued.****2. RE-FORMATION AFTER DILUVIATION—continued.**

twelve years. *RADHA PROSHAD SINGH v. RAM COOMAR SINGH*

[I L. R., 3 Calc, 798: 1 C. L. R., 250  
 varying on appeal *COURT OF WARDS v. RADHA PROSHAD SINGH* . . . . . 22 W. R., 238

64. ————— *Land re-formed on site that can be identified.*—Where land re-forms by alluvion on a site capable of identification, the right of the owner of the original site to the chur is indisputable. *SARAT SUNDARI DEBY v. SOORJYA KANT ACHARYA* . . . . . 25 W. R., 242

65. ————— *Lands temporarily or permanently settled.*—Where lands submerged by a river re-form, and can be identified as having formed a part of a particular estate, they belong to the owner of that estate, whether his estate consists wholly of permanently-settled lands or whether it has been partly acquired as an alluvial accretion under temporary settlements made by Government with him as owner of permanently-settled lands. *HURSAHAI SINGH v. LOOTF ALI KHAN* . . . . . 14 B. L. R., 268  
 [23 W. R., 8: L. R., 2 I. A., 28

66. ————— *Land re-formed*

*TARINEE CHURN SINGH* . . . . . 8 W. R., 164

67. ————— *Submersion of*  
*of*  
*nd*  
*s*  
 "The dispute between the disputed land and plaintiff's property, but that the rivulet was closed up and the river had returned to its proper channel, and on the surface of the disputed land there still remained marks of its having belonged to the plaintiff."—*Held* that the finding sufficiently identified the land in suit as the property of the plaintiff, within the meaning

confirmation of title. *INDURJEET KOOR v. JUMNA DOSS* . . . . . 14 W. R., 164

68. ————— *Condition of land when re-formed—Beng. Reg. XI of 1825, s. 4—Right to possession.*—The rule, where a question arises as to

be decided is whether he has had such possession for

**ACCRETION—continued.****2. RE-FORMATION AFTER DILUVIATION—concluded.**

of cultivation or occupation as such, must be looked to. If, after the land comes into existence and is capable of cultivation, it is taken into possession and occupied, the subsequent drying up of the channel between such land and the shore does not affect the occupier's right to possession as against every one except the Government or one who can show a better title. *S. 4, Regulation XI of 1825*, is not against this view. *KALIPRASAD MAZUMDAR v. COLLECTOR OF MYMENSINGH*

[6 B. L. R., 261 note: 13 W. R., 366

69. ——— *Beng. Reg. XI of 1825, s. 4, Construction of—"At the disposal of Government."*—The words "at the disposal of the Government" in cl. 3, s. 4, Regulation XI of 1825, mean that the property in, and absolute right of disposal of, the land is vested in the Government, and not that the Government has merely a right to the revenue. *KHELUT CHUNDER GHOSE v. COLLECTOR OF BHAGULPORE*. W. R., 1864, 73

**3. PROCEDURE.**

70. ——— *Procedure where rules under Beng. Reg. XI of 1825 are inapplicable.*—Where the special rules laid down in Regulation XI of 1825 for the adjudication of questions of title to alluvial land are inapplicable, and no special custom exists, the decision of the case ought to proceed on general principles of equity and justice. *SHEGOOLAH TEWARIE v. FAQUERA MISSE*. 3 Agra, 400

71. ——— *Chur lands, re-formation on old site—Beng. Reg. XI of 1825, s. 4, cl. 3 § 5.*—Held that cl. 3, s. 4, Regulation XI of 1825, is applicable when the chur land is thrown up for the first time, and is not capable of being identified; but where the land thrown up forms a portion of the old mouzah, and can be identified, cl. 5, s. 4 of the said enactment, would be applicable; and in the absence of any particular local custom the claim in respect of such land must be decided according to the principles of equity. *TODEE SINGH v. GARDNER*

[2 Agra, 342

72. ——— *Suit for alluvial lands—Beng. Reg. XI of 1825, s. 5, cl. 5.*—In a suit for alluvial lands, if the defendant pleads, and can establish his plea, that the lands in question were gradual accretions to his estate, neither the ground of re-formation on the old site, nor that of prior possession for a short period, can avail the plaintiff. If, however, the plea be found against the defendant, the matter must be disposed of according to cl. 5, s. 5, Regulation XI of 1825. *GOVIND NATH SANDAL v. NUBO-COMAR BANERJEE*. 8 W. R., 206

73. ——— *Beng. Reg. XI of 1825, s. 4, cl. 5.*—Where plaintiff alleges that his and the defendant's villages were washed away, and have re-formed on the same site, and no third party claims the new formation as an increment to his estate, the question of title will have to be determined by cl. 5, s. 4 of Regulation XI of 1825. *JANNONEE CHOWDHURAN v. COLLECTOR OF MYMENSINGH*

[8 W. R., 267

**ACCRETION—continued.****4. RIGHT OF PURCHASERS TO ACCRETIONS.**

74. ——— *Re-formation since purchase.*—The purchaser of an estate found by actual measurement the year before to consist of a certain number of bighas with a specified rental can have no claim to re-formations of land belonging to the mahal as it originally stood. *JUGBUNDHOO BOSE v. KOOMOODINEE KANT BANERJEE CHOWDHRY*

[19 W. R., 89

75. ——— *Increments not mentioned in certificate of sale.*—Where a mahal which has been diminished by diluvion is sold at auction by the Collector, who apprizes the public of the existing area, his specification of such area in no way limits the terms of the certificate of sale, or restricts the right of the purchaser to claim thereafter any accretion to the estate, the increment being always a contingent right which the zamindar has. *GUNGA NARAIN CHOWDHRY v. RADHIKA MOHUN ROY. RADHIKA MOHUN ROY v. GUNGA NARAIN CHOWDHRY*

. 21 W. R., 115

Affirmed on review *RADHIKA MOHUN ROY v. GUNGA NARAIN CHOWDHRY*

. 22 W. R., 23

See *IDAN v. NUND KISHORE*

. 25 W. R., 390

76. ——— *Lands taken on settlement from Government.*—Parties settling with Government are entitled to all the proprietary rights of the Government, including the re-formed lands, unless they take the estate at a reduced jumma from that fixed at the original settlement, in which case they are in the position of a proprietor who has accepted a remission of revenue in consideration of the loss of area of the land, a situation which disentitles them to the lands re-formed. *KRISHITO MOHUN BYSACK v. COLLECTOR OF Dacca*

. 24 W. R., 91

77. ——— *Purchase of land from Government—Right to increments.*—Plaintiff bought a certain chur, situated between two branches of a river, from the Government, the sale notification stating that the chur contained a certain area and was subject to a certain jumma. It appeared that at a former time the chur had been much larger and extended over a site afterwards covered with deep water, but on which, and before the plaintiff's purchase, new land had formed by accretion to the opposite side of the channel. In a suit for possession of the newly-formed land on the ground that it was re-formation on an old site,—Held that what the Government sold and what plaintiff bought was the chur as it existed at the date of the purchase. *Gunga Narain Chowdhry v. Radhika Mohun Roy*, 21 W. R., 115, cited and distinguished. *GHOLAM ALI CHOWDHRY v. COLLECTOR OF BACKERGONGE*

[2 C. L. R., 39

78. ——— *Property not attached because submerged—Submersion of contiguous estate—Sale in execution of decree—Right of purchaser.*—F owned a share in a village, M, which in 1875 was divided into two separate mahals, K and U, and Government revenue was separately assessed on each mahal. In 1876, K was entirely submerged by the Ganges. On the 20th September 1877, F's

**ACCRETION—concluded.****4. RIGHT OF PURCHASERS TO ACCRETIONS—concluded.**

share was sold in execution of a decree and the auction-purchaser was put in possession. In the sale certificate the village M was named, without specific mention of either of the two mehals, and the Govern-

an accretion to the other. *Held* also that, inasmuch as the mahal K, being at the time under water, was not attached in execution of the decree against F, and was not advertised for sale, and the revenue

*v. Bhola Nath Dicht, I. L. R., 5 All., 86, referred to.* FIDA HUSAIN *v.* KUTUB HUSAIN  
[I. L. R., 7 All., 38]

**ACCUMULATIONS.**

*See* HINDU LAW—ALIENATION—ALIENATION BY WIDOW—INCOME AND ACCUMULATIONS.

*See* HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, JOINT PROPERTY—ANCESTRAL PROPERTY.  
[I. L. R., 20 Bom., 316  
I. L. R., 21 Bom., 349]

*See* HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE.

[I. L. R., 10 Bom., 478  
I. L. R., 14 Calc., 881]

*See* HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.

[I. L. R., 14 Calc., 881  
I. L. R., 16 Calc., 574]

*See* HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[9 W. R., P. C., 1  
12 Moore's I. A., 41  
I. L. R., 7 Calc., 289  
I. L. R., 11 Calc., 884  
L. R., 12 I. A., 103  
I. L. R., 20 Bom., 571  
I. L. R., 24 Calc., 589  
I. L. R., 25 Calc., 662  
2 C. W. N., 389]

**ACCUMULATIONS—continued.**

*v.* AMRITAMAYI DASI

[4 B. L. R., O. C., 3:12 W. R., O. C., 13]

2. ————— But income and accumulations are not the same thing; therefore, *quære*, whether she can deal with accumulations as she can with income. IN THE GOODS OF HAREN-DRANATHAN. KALLASNATH GHOSH *v.* BISWANATH BISWAS . . . 4 B. L. R., O. C., 41

*v.* RAMASUNDARI DASI . . . 6 B. L. R., 732

4. ————— *Immovable property purchased with accumulations.*—Immovable property purchased by a Hindu widow with the profits of her husband's estate, there being no proof of any distinct intention on her part to sever such purchases from the estate and appropriate it to herself, held to form part of her husband's estate. GONDA KOOR *v.* KOOR OODEY SINGH 14 B. L. R., 159  
*See* CHOWDHRY BHOLANATH THAKOOR *v.* BHAGABATTI DEVI . . . 7 B. L. R., 93

In that case it was held that, though a Hindu widow cannot alienate property acquired by her out

their maintenance. But this decision was, on the construction of the deed, reversed by the Privy Council. BHAGABATTI DEVI *v.* BHOLANATH THAKOOR  
[I. L. R., 1 Calc., 104]

**ACCUSED PERSON.**

*See* BAIL . . . 1 B. L. R., A. Cr., 7  
[10 W. R., Cr., 18  
I. L. R., 1 All., 161]

1. ————— *Definition of "accused person."*—An accused person is a person over whom a Magistrate or other Court is exercising jurisdiction. QUEEN-EMPERESS *v.* MONA PUNA  
[I. L. R., 16 Bom., 661]

JHOJA SINGH *v.* QUEEN-EMPERESS  
[I. L. R., 23 Calc., 493]

2. ————— *"Accused person"*—*Criminal Procedure Code, 1882, s. 437.*—Held that a person against whom proceedings under Ch. VIII of the Code of Criminal Procedure are being taken is "an accused person" within the meaning of s. 437 of the Code. QUEEN-EMPERESS *v.* MONA PUNA, I. L. R., 16 Bom., 661, and JHOJA SINGH *v.* QUEEN-EMPERESS, I. L. R., 23 Calc., 493, followed. QUEEN-EMPERESS *v.* MUTASADDI LAL  
[I. L. R., 21 All., 107]

## ACCUSED PERSON, RIGHT OF—

See CASES UNDER PRISONER, PRIVILEGES OF.

See CASES UNDER WITNESS—CRIMINAL CASES.

1. ————— *Notice and specification of offence—Criminal Process.*—An accused person is entitled to have conveyed to him by the process, whether summons or warrant, the same amount of information relative to the accusation made against him which should specify not only the technical designation of the offence, but the acts for which the accused would have to answer. *RAMZAN ALI v. DURPO KOMILLA*. . . . 24 W. R., Cr., 58

2. ————— *Application by accused for copy of Police charge sheet—Police diaries—Criminal Procedure Code (1882), ss. 161 and 172 Revision.*—At the beginning of a trial in the Court of a Presidency Magistrate, an application was made, on behalf of the accused, for a copy of the Police charge sheet which contained the whole of the prosecution evidence as set forth by the Police, and extracts from, if not copies of, the Police diary. The application was rejected by the Magistrate:—*Held* that the High Court should not on revision interfere with the order of the Magistrate. *QUEEN-EMPRESS v. VENKATARATNAM PANTULU*

[I. L. R., 19 Mad., 14

3. ————— *Right of an accused to copies of Police reports before trial—Criminal Procedure Code (1882), ss. 157, 168, and 173—Public documents—Right of accused to inspect and have copies.*—*Held* by the Full Bench (*SUBRAMANIA AYYAR, J., dissentiente*).—Reports made by a Police-officer in compliance with ss. 157 and 168 of the Criminal Procedure Code are not public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person is not entitled, before trial, to have copies of such reports. *Held* by *COLLINS, C.J., and BENSON, J.*—The same rule applies to reports made by a Police-officer in compliance with s. 173 of the Criminal Procedure Code. *Held* by *SHEPARD and SUBRAMANIA AYYAR, JJ.*—Reports made by a Police-officer in compliance with s. 173 of the Criminal Procedure Code are public documents within the meaning of s. 74 of the Evidence Act, and consequently an accused person, being a person interested in such documents, is entitled, by virtue of s. 76 of the Evidence Act, to have copies of such reports before trial. *QUEEN-EMPRESS v. ARUMUGAM* [I. L. R., 20 Mad., 189

4. ————— *Criminal Procedure Code (1882), ss. 161 and 172—Police diaries—Right of accused or his agent to see the special diary or have copy of statement in it.*—In no case is an accused person entitled as of right to a copy of any statement recorded by a Police-officer in the special diary prepared under the authority of s. 172 of the Code of Criminal Procedure. If the special diary is used by the Court to contradict the Police-officer who made it, or by the Police-officer who made it to refresh his memory, the accused person or his agent has a right to see that portion of the diary

ACCUSED PERSON, RIGHT OF—*continued.*

which has been referred to for either of these purposes, that is to say, the accused person or his agent is entitled to see the particular entry which has been referred to, and so much of the diary as in the opinion of the Court is necessary in that particular matter to the full understanding of the particular entry so used, but no more. So *held* by the Full Bench, *per EDGE, C.J., KNOX, BLAIR, and BURKITT, JJ.*—A Police-officer investigating a case may lawfully reduce into writing in the special diary the full and unabridged statement made to him by a person whom he is examining or has examined under s. 161 of the Code of Criminal Procedure, and if he does so, his record of such statement is part of the special diary and is just as much privileged as any other entry in the diary. *Per BANERJI, J., and AIKMAN, J.*—Statements recorded under s. 161 of the Code of Criminal Procedure by a Police-officer making an investigation were not intended by the Legislature to be entered in the special diary, and, if they are so entered, do not form an integral part of the diary, and are not privileged, but the accused person or his agent is entitled to see them. *QUEEN-EMPRESS v. MANNU* . . . . I. L. R., 19 All., 390

5. ————— *Accused, right of retrial before jury where conviction set aside for misdirection.*—When a case has been tried before a jury and the conviction has been set aside on the ground of misdirection, the accused is entitled to have his case retried before a jury. *Makin v. Attorney-General for New South Wales, L. R., 1894, App. Cas., 57,* referred to. *SADHU SHEIKH v. EMPRESS* [4 C. W. N., 578

## ACKNOWLEDGMENT.

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT.

See STAMP ACT, 1879, s. 3, CL. 4.

[I. L. R., 14 Bom., 511

I. L. R., 22 Calc., 757

See CASES UNDER STAMP ACT, 1879, SON. I, ART. 1.

————— by letter.

See STAMP ACT, 1879, s. 61.

[I. L. R., 8 Mad., 11

I. L. R., 11 Mad., 329

I. L. R., 27 Calc., 324

I. L. R., 23 Bom., 54

————— of debt.

See CASES UNDER LIMITATION ACT, 1877, s. 19 (1859, s. 4, 1871, s. 20)—ACKNOWLEDGMENT OF DEBTS.

See CASES UNDER LIMITATION ACT, 1877, ART. 64.

————— of title.

See CASES UNDER LIMITATION ACT, s. 19—ACKNOWLEDGMENT OF OTHER RIGHTS,

## ACQUIESCENCE

See CASES UNDER ESTOPPEL—ESTOPPEL  
BY CONDUCT.

*See* CASES UNDER JURISDICTION—QUESTION OF JURISDICTION—CONSENT OF PARTIES AND WAIVER OF JURISDICTION.

*See* CASES UNDER LACHES.

*See* CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR, IMPROVEMENTS.

1. ——— **Laches**—*Doctrine of laches and applicability of—Limitation.*—The equitable doctrine of laches and acquiescence does not apply to suits for which a period is provided in the Limitation Acts. **RAM RAU v. RAJA RAU** . 2 Mad. 114

TARUCK CHUNDER BHATTACHARJEE v. HURO SUN-  
KUR SANDYAL . . . 22 W. R. 267

*Contg* UDA BEGAM v. IMAMUDIN

[I, L, R., 1 All., 82

2. *Limitation.*—Mere acquiescence or laches will apply only to cases, if

3. ——— Delay.—Circumstances constituting delay and acquiescence discussed. JAMNADAS SHANKARLAL & ATMARAM HARJIAN

[I. L. R., 2 Bom., 133]

4                      Delay in bringing suit.—Long acquiescence held on the facts to bar a suit for possession after assignment. *JAN KOONWAB v RAM RUTTEN NROGHY* . . . . . 18 W. R. 500

MUDALI . . . . . 1 Mad., 131

## ACQUIESCENCE—continued.

7. ————— *Contract—Undue influence—Acquiescence by conduct—Exchange of land.*—Where the owner of certain land exchanges it for certain other land, but takes a lease for one year of the former land and pays the rent thereof, and receives and retains the rents of the land he has acquired by the exchange, he shows a complete acquiescence in the transaction that he cannot afterwards have it set aside on the ground of undue influence. **SEETHARAMA RAJU v. BAYANNA PAKTULU** I. L. R., 17 Mad., 275

8. \_\_\_\_\_ Acquiescence in  
lease by Executors which they had no power to

that the lessees had been deceived by or had acted upon such representation, the devisee was not estopped from contesting the validity of the lease. A man cannot be precluded from asserting his own rights by acquiescence in acts of other parties inconsistent with them unless (1) he has actual knowledge as

v. Barber, L. R., 15 Ch. D., 96, followed JEGMO-  
 HUNDAS VUNDBRAWANDAS v PALLONJER EDULJER  
 MOBEDINA . . . I. L. R., 22 Bom., 1

rightly considered to have consented to the alienations. RAM KISHORE NARAIN SINGH v. AYUND  
MISSER . . . . . 21 W. R. 12

action was, and what effect it would have upon his interests at the time he so conducted himself as to indicate assent. JAGO BUNDHOO TEWARREE v. KURUM SINGH. 22 W. R. 341.

11. ————— Suit to close a road—Presumption of consent.—The plaintiff not having opposed the making of a road until its

**ACQUIESCENCE—continued.**

completion was held not entitled to sue to have it closed. **RADHA NATH BANERJEE v. JOY KISHEN MOOKERJEE** . . . . . 1 W. R., 288

12. ————— *Suit to close road—Presumption of consent.*—If *A* construct a road across *B*'s land, *B* can sue within the ordinary period of limitation, and no consent can be inferred from the fact that *B* did not sue immediately after the commencement or completion of the road. **HERO SOONDUREE DEBIA v. RAM DHUS BHUTTACHARJEE** [7 W. R., 278

13. ————— *Delay in opposing erection of building—Presumption of consent.*—In a suit for the demolition of a privy erected on plaintiff's land, it having appeared that plaintiff was aware of the erection of the privy and had allowed it to be completed and to remain standing for at least seven years, his application was refused. **BROMO MOYEE DEBIA CHOWDRAI v. KOOMODINEE KANT BANERJEE. BARODA KANT BANERJEE v. KOOMODINEE KANT BANERJEE** . . . . . 17 W. R., 487

14. ————— *Erection of building without objection.*—Acquiescence must be inferred when a person stands by and allows another to erect a pucca building on his land, and a suit would not lie for the demolition of the building, but only for damages or rent of land. **HERRO CHUNDER MOOKERJEE v. HELLODHUR MOOKERJEE** . . . . . W. R., 1864, 166  
**NIL KANT SAHOO v. JUGOO SAHOO**

[20 W. R., 328

15. ————— *Building by trespasser on land.*—When a trespasser tortiously enters upon the land of another and builds a house thereon, the party injured is entitled to recover possession of the land by destroying the house if there is no proof of acquiescence on his part in the act of injury done. **GOBEND PURAMANICK v. GOOROO CHURN DEIT**

[3 W. R., 71

**GUJADHUR SINGH v. NUND RAM** 1 Agra, 244

16. ————— *Suit for restoration of land to former condition.*—The rights of a co-sharer in a joint estate were sold by auction, but it did not appear that a site held by him in the village passed by the sale, and the site remained in the possession of his heirs, who sold it to the defendant, who erected a shop thereon. Twenty years after the auction sale, the plaintiffs, some of the co-sharers in the joint estate, sued for demolition of the house, and the restoration of the site to the village. —Held that, under the circumstances, the claim could not be maintained. **BAHADOUR v. SHADEE RAM**

[2 Agra, 3

17. ————— *Right to remove building.*—Where *H*, knowing that *B* claimed certain land as his own, nevertheless purchased the land from a third person and erected a bungalow upon it which *B* did not interfere to prevent.—It was held that the English rule of equity, which, under such circumstances, would allow *B* to recover the land with the bungalow upon it, ought not to be applied in India, but that *H* should be allowed to remove the bungalow he had erected. **NARAYAN BIN RAGHAJI v. BHOLAGIR GURU MANJIR. HORMASJI SORABJI v.**

**ACQUIESCENCE—continued.**

**BHOLAGIR GURU MANJIR. BHOLAGIR GURU MANJIR v. HORMASJI SORABJI** . 6 Bom., A. C., 80

18. ————— *Building erected on land by purchaser, owner standing by.*—Where a purchaser claims to hold land which he has purchased from a third person on the ground that the owner of such land has acquiesced in the sale, the purchaser must show clearly that the real owner was aware of the sale at the time it took place. Where the owner of land was not aware of its being sold by his father to a third person, but having heard of such sale, subsequently stood by and allowed the purchaser to build upon the land,—It was held that the owner could not recover the land without compensating the purchaser for the building erected by him upon the land, and three months were allowed to the owner within which to pay such compensation. **SAVALAL KARAN DAS v. ORA NIZMEDDIN**

[8 Bom., O. C., 77

19. ————— *Right of way, interruption of.*—*A* had a right of way over *B*'s land. He allowed *B* to erect a house on the path-way and enjoy it for seven years. He then brought a suit to have the pathway re-opened by pulling down *B*'s house. Held, *A* must be taken to have acquiesced in the interruption of his right of way, and his claim was one that a Court of equity and good conscience would not enforce. **BENI MADHAB DAS v. RAMRAY ROXU** . 1 B. L. R., A. C., 213: 10 W. R., 318

20. ————— *When a man builds a house on land supposing it to be his own, or believing that he has a good title, and the real owner, perceiving his mistake, refrains from setting him right, and leaves him to persevere in his error, a Court of Equity will not allow the owner to assert his legal right against the other without at least making him full compensation.* **RAMA v. JAN MAHOMED**  
[3 B. L. R., A. C., 18: 11 W. R., 574  
**ARUNA CHELLEM CHETTY v. OLAGAPPAN CHETTY**

[4 Mad., 312

21. ————— *Suit for ejectment—Transferable tenure—Landlord and tenant—Permissive occupation.*—*B* and *C* and their father held lands for upwards of thirty-five years, and built houses on the same. *B* and *C* sold their tenures to *D* and *E*. *A*, the zamindar, who had not objected to the building, now sued to eject *D* and *E* as trespassers. Evidence was given that the tenures were, by the custom of the country, transferable. Held, *A* could not eject *D* and *E*. **BENI MADHAB BANERJEE v. JAI KRISHNA MOOKERJEE**

[7 B. L. R., 152: 12 W. R., 495

Upholding on appeal, **KEMP, J.** in S. C.

[11 W. R., 354

See **ESHAN CHUNDER GHOSE v. HURRISH CHUNDER BANERJEE**

[10 B. L. R., Ap., 5: 18 W. R., 19

and **NABU MONDUL v. CHOLIM MULLIK**

[1. L. R., 25 Cal., 896 per **RAMPENT, J.**

22. ————— *Erection of pucca building more than 20 years ago—Presumption as to permanent character of tenancy—Second appeal;*

**ACQUIESCENCE—continued.**

power of Court to question inference from fact in—

right. *Zeshwada Bai v. Ram Chandra Takaram, I.*

manent building by a tenant during the continuance of an ijarah of the landlord's interest should not be construed as amounting to acquiescence such as might be inferred where the landlord is in direct receipt of rent from the tenant. *Bani Madhub Banerjee v. Joy Kissen Mookerjee, 12 W. R., 495*, distinguished. *KRISHNA KISHORE NEOGI v. MAHOMED ALI* 3 C. W. N., 256

iff, and B dwelt in it for more than forty years. Held that B had an assignable interest on the house and land, which could, therefore, be seized and sold in execution of a decree against B, and that the purchaser who had obtained possession could not be dispossessed at the suit of the plaintiff. *DURGAPRASAD MISSEER v. BRINDABAN SOORUL*

[7 B. L. R., 159 : 15 W. R., 274

24. — *Land let for building purposes.*—A landlord who allows his lessee to invest capital in erecting buildings on lands let for cultivation, and raises no objection for a considerable number of years, will not be allowed to disturb the holding. The fact of buildings having been permitted without objection to stand on lands for a considerable number of years is *prima facie* proof that the land had been originally leased for building purposes. *BRAJA NATH KUNDU CHOWDERY v. SREWART* 8 B. L. R., Ap., 51 : 16 W. R., 216

25. — *Permissive occupancy—Right of possession as against purchaser.*—Where the defendant had been in possession of land for more than thirty years, and had without objection built upon the land,—Held that he had not by such permissive occupancy acquired a right to retain possession when served with notice to quit by a purchaser of the land. *ADDAITA CHARAN DEY v. PETER DAS* 13 B. L. R., 417 note : 17 W. R., 383

26. — *Law of landlord and tenant as to building by the tenant on the land—Acquiescence of lessor—Equitable estoppel preventing ejectment—Onus of proof.*—A lessor is not restrained by any rule of equity from bringing a suit

**ACQUIESCENCE—continued.**

to evict a tenant, the term of whose lease has expired, merely by reason of that tenant's having erected permanent structures on the land leased, such building

to be drawn from such facts as were found. The onus of establishing sufficient cause for an equitable estoppel had not been discharged by the tenant in this instance. *Ramsden v. Dyson, L. R., 1 E. and I. Ap., 129*, and s. 108 of the Transfer of Property Act, 1882, referred to. *BENI RAM v. KUNDAN LAL*

[I. L. R., 21 All., 496 : L. R., 28 I. A., 58  
3 C. W. N., 502

27. — *Erection of building by tenant—Acquiescence of landlord.*—To resist ejectment by a tenant on the ground that the tenancy is a permanent one, and that the landlord stood by and permitted him (the tenant) to erect pucca buildings on the land in the belief that the said tenancy was a permanent one, it is incumbent on the tenant to show that in erecting the buildings he was acting under an honest belief that he had a per-

*L. R., 21 All., 496 : I. R., 26 I. A., 58, Ramsden v. Dyson, L. R., 1 E. and I. Ap., 129, Jug Mohan Das v. Pollonjee, I. L. R., 22 Bom., 1 ; De Buzche v. Alt, L. R., 8 Ch. Div., 286, Kunhamed v. Narayana Mussad, I. L. R., 12 Mad., 320, referred to. ISMAIL KHAN MAHOMED v. JAIGUN BEHI*

[I. L. R., 27 Calc., 570 : 4 C. W. N., 210

28. — *Delay—Erection of buildings—Laches—Limitation.*—The plea of acquiescence is applicable to suits for which a fixed term of limitation is prescribed by law, but mere delay in enforcing a right does not constitute ac-

to deprive the plaintiff of her right to relief. *UDA BEGUM v. IMAM-UD-DIN* I. L. R., 1 All, 62

29. — *Standing by and seeing building erected—Right to removal.*—In a case in which plaintiffs sought to recover possession of some land on which defendants had constructed a pucca house and in which defendants pleaded that they had purchased a building right from a third party with whom plaintiffs had settled the land, and that plaintiffs had seen them building the house in

**ACQUIESCENCE—continued.**

question without offering any objections.—*Held* that, having stood by and allowed defendants to build the house, plaintiffs could not sue to have the house removed. *LALA GOPPE CHAND v. LIAKUT HOSSEIN* [25 W. R., 211]

30. ————— *Absence of protest—Suit for removal of building—Obstruction to right-of-way.*—In a suit for the removal of a building which the defendants had erected, and which was an obstruction to the plaintiffs' right to use a courtyard adjoining their residences, it appeared that the land on which the building stood did not belong to either party, but that all the inhabitants of the mohulla had from time immemorial exercised a right-of-way over it to and from their houses:—*Held* that there was no principle of acquiescence involved in the case, inasmuch as there was no evidence that the plaintiffs had given their actual consent to the building, and the only evidence of their acquiescence could be that they did not immediately protest, and the defendants must have known that they were building upon a courtyard which their neighbours had a right to use. *Uda Begum v. Imam-ud-din, I. L. R., 1 All., 82, and Ramsden v. Dyson, L. R., 1 E. and I. Ap., 129, referred to. FATEHYAB KHAN v. MUHAMMED YUSUF. MUHAMMED YUSUF v. FATEHYAB KHAN*

[I. L. R., 9 All., 434]

31. ————— *Cultivating land without objection—Acquiescence—Owner standing by and seeing person without title cultivate land—Fraud and deceit.*—In order to prevent the owner of land who is charged with standing by and allowing another person, who believes he has a good title thereto, to enter on the land and spend money in improving it, from recovering possession thereof, fraud and deceit on the part of the owner must be clearly proved. *Dann v. Spurrier, 7 Vesey, 251, and Rama v. Jan Mahomed, 3 B. L. R., A. C., 18 : 11 W. R., 574, explained. LANGLOIS v. RATTRAY. 3 C. L. R., 1*

32. ————— *Cultivation and changing character of land—Landlord and tenant—Injunction—Delay.*—The tenant of an agricultural holding planted his jote with mango trees to the knowledge, but without the consent, of his landlord, thus changing the character of the land. More than three years afterwards the landlord sued for a mandatory injunction to have the mango trees removed. *Held* that, having stood by for more than three years and allowed the tenant to spend his labour and capital upon the land without taking any action in the matter, the landlord was not entitled to a mandatory injunction. *NOYNA MISSE v. RUPIKUN*

[I. L. R., 9 Cal., 609 : 12 C. L. R., 300]

33. ————— *Malabar kanam—Change in character of land—Passive acquiescence of landlord—Estoppel—Compensation for improvements by tenant.*—Land was demised on kanam wet for cultivation. The demisee changed the character of the holding by making various improvements which were held to be inconsistent with the purpose for which the land was demised. On a finding that the landlord had stood by while the character of the holding was being changed and had thereby caused a belief that

**ACQUIESCENCE—continued.**

the change had his approval: *Held*, on second appeal, that the demisee was entitled to compensation for his improvements on redemption of the kanam. *Ramsden v. Dyson, L. R., 1 E. and I. Ap., 129, followed. KUNHAMMED v. NARAYANAN MUSSAD*

[I. L. R., 12 Mad., 320]

See *RAVI VARMAH v. MATHISSEN*

[I. L. R., 12 Mad., 323 note]

where, however, it was held that the landlord had not acquiesced in some of the improvements, and compensation was therefore refused for them, though the tenant was permitted to remove those for which no compensation was allowed.

34. ————— *Acquiescence in title, by conduct.*—In a suit to recover possession of property it was held, on the evidence, that the plaintiffs had acquiesced in defendant's title by their conduct. *JEEBUN MUNDAL v. NADYAR CHAND ROY*

[25 W. R., 461]

35. ————— *Conduct defeating title—Evidence of ratification.*—The plaintiff, a member of an undivided Hindu family, sued to recover a parcel of land which he alleged his uncle, the first defendant, to have wrongly transferred to the second defendant. The second defendant alleged a sale to him by the first defendant, and a subsequent sale to the third defendant, and denied the plaintiff's title. The Munsif gave a decree for the plaintiff; on appeal, the Principal Sudder Amin, finding that the plaintiff knew of the sale and treating the knowledge as evidence of acquiescence in it, reversed the decision of the Munsif. *Held*, reversing the decision of the Principal Sudder Amin, that such knowledge would not make the plaintiff a party to the sale by the first defendant, so as to bar his right to recover the land for which he sued in ejectment. A person who seeks to bar one who is *primâ facie* the legal owner, by evidence of ratification, or of facts cogent enough to prove one not a formal to be a substantial party, must make and prove such a case, for he is one who seeks to displace a legal title. *RAJAN v. BASUVA CHETTI*

[2 Mad., 428]

36. ————— *Ratification of transfer of property.*—A solehnama in 1847, to which were parties the sons, daughters, and widow of a deceased Mahomedan proprietor, transferred the shares of two minor daughters in their father's estate, having been executed by their mother, the widow, on their behalf. On the question whether the solehnama should be set aside, at the instance of the two daughters, on the ground of its having been beyond their mother's power to bind them, and of the instruments having been prejudicial to their interests, the evidence showed that it had been acted on and followed by possession, and that the daughters had, after attaining full age, allowed a lengthened period of twenty years to elapse without taking proceedings to dispute it:—*Held* that, if the mother had exceeded her powers in executing the solehnama on their behalf, and if they might, at one time, have had it set aside, their long acquiescence was sufficient to show ratification of the transaction; and the solehnama was

**ACQUIESCENCE—continued.**

upheld. MAHOMED ABDUL KADIR v. AMTAL KABIM BANGU

[I. L. R., 16 Cal., 161; L. R., 15 I. A., 220

herit was sought to be proved by the plaintiff's virtual

Hindu female a presumption by acquiescence in a rival claim from the mere non-contestation for a limited time of an adverse title. RAMAMANI AMMAL v. KULANTHI NAUCHERAN

[17 W. R., 1:14 Moore's I. A., 346

the plaintiff was a minor, and that it was sold by him without authority, the first Court gave him a decree for a one-fourth share of the property. R. K. appealed, but the other defendants did not appeal. The Judge, assuming the lower Court's finding to be correct, held that, as the plaintiff, who was of age at

who had not appealed. GOPAL CHUNDER LAHOORY v. ROY KISHORE LAHOORY

15 W. R., 467

39. ———— **Pre-emption—Mortgage by conditional sale.**—Acquiescence in a mortgage by conditional sale does not involve relinquishment of the right of pre-emption upon the conditional sale eventually becoming absolute. ASHWIN NATH v. MATHURA PRASAD

I. L. R., 11 All., 164

made up in accordance with the course of dealing which had practically been assented to by him and had been followed between the parties for many years. THAKOOR PERSHAD SINGH v. MOHESH LALL

[24 W. R., 390

**ACQUIESCENCE—continued.**

city as manager. The mortgagee brought a suit upon the mortgage joining as defendants the three re sued by A decree lands were others now et aside as regards them, on the ground that they had both been of age at the date of the suit, and accordingly had been wrongly impleaded. It appeared that the elder plaintiff was in fact a major at the date of the

CHART v. DURAISAMI PILLAI I. L. R., 21 Mad., 167

42. ———— **Sending agent to settle rent.**—Acqu agent by a the rent is a rent demand LALL

43. ———— **Receipt of rent in lieu of grant of land.**—In a suit to recover possession of land it appeared that the defendant's father

unspecified bighas of the same land, but that he never asked to have them marked out and given to him in specie, and that he, and subsequently his sons, the plaintiffs, were content up to the year 1856 to receive from the defendant's family in respect of their grant the rent formerly paid by them to the Government for the same. The District Court reversed the decree of the Munsif, and threw out the

land being marked out as theirs. Held that it was competent for the Assistant Judge to come to that conclusion under the circumstances, and that there was no ground for saying that there was any error of law in his decision, which was accordingly affirmed. SULE v. DHUNDIRAJ VENAYAK 3 Bom., A. C., 55

he pleases and demand the higher rent. ROOCHA RAM MISR v. NAGA DOSS

2 N. W., 92

45. ———— **Long possession by tenant without lease.**—An under-tenant who has dug a tank and been in possession undisturbed by the former proprietor for a long period, such acquiescence

**ACQUIESCENCE**—*concluded.*

being equivalent to a lease, cannot be ejected by the patnidar. *SREEMUNT RAM DEY v. KOOKOOR CHAND*  
[15 W. R., 481]

46. ——— Allowing part owner to work forfeiture of tenure as if full owner—*Waiver of forfeiture—Claim of portion of tenure.*—If A allows B to deal with an occupancy tenure as full owner, and by an attempted transfer, to work a forfeiture thereof without any objection on his part, A will not be allowed to come in afterwards and claim a part of the forfeited holding on the ground that B was only part owner, and could therefore only work a forfeiture of his own share. *MANIRULLAH v. RAMZAN ALI* . . . 1 C. L. R., 293

47. ——— *Equitable estoppel—Landlord and tenant—Lessee taking lease direct from zamindar—Suit by occupancy-tenant to eject zamindar's lessee.*—Where a person took a permanent lease of a cultivatory holding direct from the zamindar without making any inquiries as to who were the cultivators and on what tenure they held; and where, the permanent lessee having commenced to build, one of the cultivators, being an occupancy-tenant, subsequently brought a suit in ejectment against him:—*Held* that the lessee should, by the knowledge that the land was a cultivatory holding, have been put on his guard and have made inquiries as to the exact condition of the title, and not having done so the doctrine of equitable acquiescence could not be applied. *BISHESHAR v. MUIRHEAD*  
[I. L. R., 14 All., 362]

**ACQUISITION OF GAIN.**

——— Association formed for—

*See COMPANY—FORMATION AND REGISTRATION* . . . I. L. R., 1 Bom., 550  
[I. L. R., 17 Calc., 788  
I. L. R., 19 Mad., 31, 200  
I. L. R., 20 Mad., 68]

**ACQUITTAL.**

*See CASES UNDER APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.*

*See CASES UNDER AUTREFOIS ACQUIT.*

*See CASES UNDER COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.*

*See CASES UNDER CRIMINAL PROCEDURE CODE, s. 403.*

*See CASES UNDER DISCHARGE OF ACCUSED.*

*See PRISONS ACT, s. 45.*  
[I. L. R., 2 All., 301]

*See CASES UNDER REVISION—CRIMINAL CASES—ACQUITTALS.*

**ACT.**

——— Application of, to Crown.

*See ENGLISH LAW.*  
[I. L. R., 14 Bom., 213]

——— 1835—VIII—

*See SALE FOR ARREARS OF RENT—ACT VIII OF 1835.*

**ACT**—*continued.*

——— 1836—V—

*See EXECUTION OF DECREE—STRIKING OFF EXECUTION PROCEEDINGS.*  
[18 W. R., 319]

——— X, s. 3—

*See DAMAGES—MEASURE OF DAMAGES—BREACH OF CONTRACT* . . . 5 W. R., 277  
[8 W. R., 257]

*See LIMITATION ACT, 1877, ART. 120 (1859, s. 1, CL. 16)* . . . 5 W. R., 277  
[7 W. R., 401  
8 W. R., 257]

——— 1837—IX—

*See LAND TENURE IN BOMBAY.*  
[4 Bom., O. C., 1]

——— XXVII—

*See SALT—ACTS AND REGULATIONS RELATING TO—BOMBAY.*  
[7 Bom., A. C., 89  
10 Bom., 74]

——— 1838—XI—

*See CONTRIBUTION, SUIT FOR—VOLUNTARY PAYMENTS* . . . 8 W. R., 333

——— XVI—

*See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS.*  
[I. L. R., 1 Bom., 624  
2 Bom., 193, 2nd Ed., 185]

*See LIMITATION ACT, 1877, ART. 47 (1859, s. 1, CL. 7)* . . . 10 Bom., 479

*See MAMLATDAR, JURISDICTION OF.*  
[I. L. R., 14 Bom., 372]

——— XIX, s. 13—

*See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—ACT XIX OF 1838.*  
[5 Bom., Cr., 6]

*See MERCHANT SHIPPING ACT, 1854, ss. 24, 26* . . . I. L. R., 14 Bom., 170

*See SENTENCE—FINE.*  
[I. L. R., 7 Bom., 280]

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*See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.*  
[4 Mad., 277]

——— XXV—

*See WILLS' ACT, 1838.*  
*See WILL—ATTESTATION.*  
[3 Moore's I. A., 395]

——— 1839—II—

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[3 Bom., Ap., 1]

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**ACT—continued.****1839—XXIV—**

See GANJAM AND VIZAGAPATAM AGENCY  
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**XXXII—**

See CONTRIBUTION, SUIT FOR—INTEREST.  
[10 B. L. R., 352, 353 note  
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ACT XXXII OF 1839  
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**1840—IV—**

See CASES UNDER LIMITATION ACT, 1877,  
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**XIV—**

See HINDU LAW, CONTRACT—BREACH OF  
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LATING TO—MADRAS. 4 Mad., Ap., 53  
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ISONMENT IN DEFAULT OF FINE.  
[I. L. R., 4 Mad., 335, 335 note

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[3 B. L. R., 335

**1841—I, s. 2—**

See PRE-EMPTION—RIGHT OF PRE-EMP-  
TION . . . 1 Agra, 186  
[2 Agra, 280  
3 N. W., 243, 272

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TION . . . 3 N. W., 125

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[4 Moore's I. A., 170

**XI—(Military Courts of  
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See APPEAL—ACTS—MILITARY COURTS  
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CERTIFICATE UNDER BOMBAY REGULA-  
TION VIII OF 1827 AND ACTS XIX AND  
XX OF 1841 . . . 1 Ind. Jur., N. S., 385  
[8 W. R., Mis., 53

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RIGHT TO SUE, OR EXECUTE DECREE,  
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See LIMITATION ACT, 1877, ART. 13 (1859,  
s. 1, CL 5) . . . B. L. R. Sup. Vol., 633  
[2 Ind. Jur., N. S., 191; 7 W. R., 199  
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11 Moore's I. A., 405  
1 W. R., 341

**XIX, s. 3—**

See SUPERINTENDENCE OF HIGH COURT—  
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[I. L. R., 10 Mad., 68  
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See RIGHT OF SUIT—ORDERS, SUITS TO  
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[1 Ind. Jur., O. S., 36  
1 Hay, 29, 559  
2 Hay, 86  
2 W. R., 287

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See PRIVY COUNCIL, PRACTICE OF—  
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[I. L. R., 9 Mad., 431

**XII—**

See MILITARY COURTS OF REQUEST.  
[3 N. W., 70

**XVI—**

See STATUTES, CONSTRUCTION OF.  
[6 N. W., 373  
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[1 N. W., Part 3, p. 47, Ed. of 1873, 103

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[4 W. R., P. C., 94  
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[6 Bom., A. C., 243

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[8 Bom., A. C., 35

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[I. L. R., 7 Bom., 420

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[I. L. R., 1 Bom., 607

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[2 Bom., 362, 2nd Ed., 342  
11 Bom., 232

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[8 Bom., A. C., 128  
8 Bom., A. C., 83, 107  
12 Bom., 232

## XIX—

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[1 Mad., 448

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[9 B. L. R., 441

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[L. R., 17 I. A., 103

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## XX—

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## 1845—I, ss. 6 and 14—

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[9 Moore's I. A., 288

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11 Moore's I. A., 241

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## 1845—I, s. 21—

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## s. 26—

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TION FROM ENHANCEMENT, ETC.—PROOF  
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## s. 29—

See LIMITATION ACT, 1877, s. 13 (1871,  
s. 19) . . . I. L. R., 2 Calc., 1

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TORATION OF APPEAL.

[9 Moore's I. A., 28

## XXIX—s. 5—

See JUDGE—APPOINTMENT OF JUDGE.

[1 Bom., 107

## 1846—I—

See BARRISTER . I. L. R., 3 Mad., 138

See CONTRACT ACT, s. 25.

[I. L. R., 5 Bom., 258

See PLEADER—REMUNERATION.

[I. L. R., 8 Bom., 413

7 Bom., A. C., 132

9 Bom., 33

1 Ind. Jur., N. S., 334: 6 W. R., 108

I. L. R., 12 Bom., 557

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[I. L. R., 9 Mad., 431

## XI—

See APPEAL IN CRIMINAL CASES—ACTS  
—ACT XI OF 1846.

[I. L. R., 15 Bom., 505

## 1847—I—

See JURISDICTION OF CIVIL COURTS—  
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—1847—IX—

See JURISDICTION OF CIVIL COURTS—  
REVENUE . . . 19 W. R. 127

[14 B. L. R., 221 note: 18 W. R., 64]

1. ——— Beng. Reg. XI of 1825—*Chur*  
in a navigable river, Right of Government to.—Act  
IX of 1847 does not alter the state of the law under  
pro-  
17 to  
of a

chur, after it has silted up, if the chur be one  
that the Government would be entitled to under  
Regulation XI of 1825. *BUDRUNNISA CHOW-*  
*DRAHIN v. PROSUNNO KUMAR BOSE*

[8 B. L. R., F. B., 255: 14 W. R., F. B., 25]

revenue authorities under Act IX of 1847, assessed

by the proceedings under Act IX of 1847. S. 6 of  
that Act makes the orders passed under its provisions

away from the rightful owner. *Held*, on the facts,  
that the Government had not, by the proceedings  
under Act IX of 1847, or otherwise, interfered with  
the plaintiff's rights so as to entitle him to relief  
against it in the present suit. *COLLECTOR OF*  
*MOORSHEDABAD v. ROY DHUNPUT SINGH BAH-*  
*DOOR* . . . 15 B. L. R., 49: 23 W. R., 38

4. ——— Rights of third parties.—Act  
IX of 1847 does not affect any question between the  
person in possession and any person other than the  
Government. *KALIPRASAD MAZUMDAR v. COLLEC-*  
*TOR OF MYMENSINGH*

[8 B. L. R., 261 note: 13 W. R., 368]

5. ——— Right of assessment by Gov-  
ernment of accreted lands—*Beng. Reg. XI of*  
*1825*. Act IX of 1847 refers to re-surveys of zam-  
indari lands which the Government as such may  
cause to be made at certain intervals, and to assess-  
ment consequent on the changes ascertained by such  
re-surveys, but does not interfere with the rights of  
the Government, in its capacity of zamindar, to take

ACT—1847—IX—continued.

possession of, and assess all accretions to, its own  
estates under Regulation XI of 1825. *OBHOY CHURN*  
*CHOWDHURY v. COLLECTOR OF DACCA* 4 W. R., 59

6. ——— Land added to revenue-pay-  
ing estate.—The words "land has been added to  
any estate paying revenue directly to Government"  
in Act IX of 1847, s. 6, mean added to the estate  
as it is depicted on the survey map. *RAM JEWAN*  
*SINGH v. COLLECTOR OF SHAHABAD*

[19 W. R., 127]

*DEWAN RAM JEWAN SINGH v. COLLECTOR OF*  
*SHAHABAD* . . . 14 B. L. R., 221 note

[18 W. R., 64]

7. ——— ss. 6, 9—Assessment of ac-  
creted land—*Order of Board of Revenue when*  
*final under s. 6 of Act IX of 1847*.—The effect of  
the words "whose order thereupon shall be final" in  
s. 6 of Act IX of 1847 is, that where an assess-

ment of Revenue had jurisdiction under s. 6 of the Act  
to assess. Act IX of 1847 applies to land re-  
formed on the site of a permanently-settled estate.  
*SARAT SUNDARI DABI v. THE SECRETARY OF STATE*  
*FOR INDIA IN COUNCIL* . . . 11 L. R., 11 Calc., 784

8. ——— Assessment of re-  
formed land after diluviation—*Act IX of*  
*1847, ss. 1, 6, 7, and 9, Effect of—Jurisdiction of*  
*Board of Revenue, its extent—Civil Court, Power*  
*of—Survey maps, their evidentiary value*.—Where  
on inspection of a survey map, and after its compari-  
son with a former thak map, the Board of Revenue  
assessed certain land as alluvial increment, which,  
however, the Civil Court, in a suit against the order

the Full Bench, that the language of s. 9 was  
not such as would prohibit the present suit; and,  
unless the meaning were clear, its operation should  
be limited to suits for damages on account of anything  
done in good faith; for instance, in a case of ouster  
under s. 7. *The Collector of Moorshedabad v.*  
*Roy Dhunput Singh*, 15 B. L. R., 49, approved.  
*Held* (MITTAL, J., dissenting), s. 1 of Act IX

**ACT—1847—IX—concluded.**

of 1847 repealed everything in the Regulations which enacted by what officers and how the question of liability to assessment should be tried, and therefore took away from Collectors and Boards of Revenue the power of giving any binding decision on the point. *Held* also (MITTER, J., dissenting) that the effect of the words "shall be final" in s. 6 was to make the assessment final in every case in which there was jurisdiction to assess, but to leave it open to the Civil Courts to inquire in each case whether there was such jurisdiction, or whether the lands assessed were liable to assessment. *Per MITTER, J.*—S. 1 has not abolished the judicial functions of the Revenue authorities under Regulation II of 1819; all that has been abolished by that section are the tribunals constituted by Regulation III of 1828. *Per MITTER, J.*—The proceedings of the Revenue authorities under s. 6 embrace an inquiry upon two questions, *viz.*, the question of the liability to assessment, and the rate of assessment, and under the express wording of the section the finality attaches to the whole order of the Sudder Board of Revenue. **FAHAMDANISSA BEGUM v. SECRETARY OF STATE FOR INDIA IN COUNCIL**

[I. L. R., 14 Calc., 67]

*Held*, on appeal to the Privy Council—A review of the legislation anterior to Act IX of 1847 shows that whilst it was intended to bring under assessment lands not included in the permanent settlement, whether waste or gained by alluvion or dereliction from sea or rivers, yet all such lands as were comprised in permanently-settled estates were to be rigorously excluded from further assessment. Lands included in the permanent settlement having afterwards been covered by water, and having then been formed again on the same site, *held* not to be lands "gained" from the river by alluvion or dereliction within the meaning of Regulation II of 1819, that expression being confined to meaning lands gained since the period of the settlement. The effect of Act IX of 1847 was merely to change the mode of assessment in the case of land already liable to be assessed under legislation in force when that Act became law. It was not the object of that Act to bring under liability land re-formed on the site of land previously lost, within the area of a permanently-settled estate, the revenue upon which had been paid without abatement since the permanent settlement. Where an order of the Board of Revenue, purporting to be made under Act IX of 1847, subjected land included in the permanent settlement to assessment,—*Held* that the District Civil Court had jurisdiction (which, therefore, might be invoked as a matter of right) to entertain a suit brought by the landowner contesting that order, and to declare it unauthorised by law. **SECRETARY OF STATE FOR INDIA v. FAHAMDANISSA BEGUM**

[I. L. R., 17 Calc., 580  
I. L. R., 17 I. A., 40]

**1847—XX—**

*See* COPYRIGHT . I. L. R., 13 Bom., 358  
[I. L. R., 14 Bom., 586  
I. L. R., 19 Bom., 557]

*See* LIMITATION ACT, 1877, ART. 40.

[I. L. R., 3 Calc., 17]

**ACT—1847—XX—concluded.**

*See* SMALL CAUSE COURT, MOFESSIL—  
JURISDICTION—COPYRIGHT.  
[I. L. R., 8 Calc., 499]

**1848—I—**

*See* OFFENCE BEFORE PENAL CODE CAME  
INTO OPERATION.

[5 W. R., Cr., 8: 1 Ind. Jur., N. S., 97]

**XIII—**

*See* SURVEY AWARD . 23 W. R., 173

1. — **Award—Decision on non-appearance of parties.**—Act XIII of 1848 "for the greater security of pre-emptory titles in the Presidency of Bengal, derived from awards made by the revenue authorities under Regulation VII of 1822, Regulation IX of 1825, and Regulation IX of 1833 of the Bengal Code," by s. 3, enacted that no suit should be entertained for contesting the justice of any award of the revenue authorities under any of these Regulations made after the passing of the Act after the expiration of three years from the date of the final award. A suit for the amendment of a map was referred by the Deputy Collector to an Ameen for the purpose of a local investigation, and the Ameen returned that, neither of the parties appearing before him, he was unable to make the investigation, whereupon the Deputy Collector struck the case out. *Held* that this was not an award within the meaning of the Act. **GOLAM KODSEER CHOWDHURY v. RASHU CHUNDER GHOSE** . . . Marsh., 323

2. — In order to apply the provisions of Act XIII of 1848 in regard to limitation, it was necessary to show that there was an award, *i.e.*, an adjudication after a contention between the parties before the survey authorities. **HUNTER MOHUN TILAKOOR v. ANDREWS** . W. R., 1864, 30

3. — **Suit to assess land—Boundary suit.**—Act XIII of 1848 did not apply to bar a suit to assess land as rent-paying. A decision in a boundary suit decides only the question of right to possession of the land, irrespective of the right to assess. **MAHOMED ALI KHAN CHOWDHURY v. JADUB CHUNDER CHUCKERBUTTY** . W. R., 1864, 60

4. — **Awards made by Collectors—Beng. Regs. VII of 1822, IX of 1825, and IX of 1833.**—Act XIII of 1848 was limited to awards made by Collectors under Bengal Regulations VII of 1822, IX of 1825, and IX of 1833, which gave to the revenue authorities judicial power to determine questions of possession and other matters with a right of appeal to the regular Courts against their awards. An order of the Collector for the mutation of names in the register is not an award of the nature contemplated by the Regulation XIII of 1848, and an appeal from it was not subject to the limitation of three years prescribed thereby. **JEWALA BUKSH v. DHARUM SINGH**  
[10 Moore's I. A., 511]

5. — **Settlement award—Suit to set aside.**—Act XIII of 1848 applied only to suits for contesting the justice of an award as between the contending parties, and not to suits for the purpose of amending a settlement and establishing the rights

**ACT-1848-XIII-continued.**

of persons who were not parties contesting between themselves before the Collector. KOMUL KISSEN SUREKUL v. BISSONATH CHUCKERBUTTY

[B. L. R., Sup. Vol., Ap., 3  
W. R., F. B., 128

PUREZAG SINGH v. SHIB RAM CHUNDER MUNDUL  
[3 W. R., 165

6. ———— *Thakbast award-Beng. Reg. IX of 1825-Act XIII of 1848-Evidence of pos-*

sion. PRAHLAD SEN v. RAJENDRA KISHOR SINGH  
[2 B. L. R., F. C., 111  
12 W. R., F. C., 6

*under Bat-*  
*tor under the*  
*in the meaning*  
*48 only applies*

to awards made by the revenue authorities under Regulations VII of 1822, IX of 1825, and IX of 1833. PULTOO ROY v. GREEDHAREE SINGH

[W. R., F. B., 12  
1 Ind. Jur., O. S., 5

S. C. GREEDHAREE SINGH v. PULTOO ROY  
[Marsh., 37

8. ———— *Order of Collector*

years of the order. MODHOOSOODUN SINGH v. PIR-  
TEE BULLUB PAUL . . . W. R., 1864, 140

9. ———— *Order of Collector*  
*rejecting claim to alluvial land.*—The order of a Collector rejecting a claim to alluvial lands on the ground that a settlement of them had already been concluded, was not an award within the meaning of s. 3, Act XIII of 1848. SHURAT SOONDREY DABEE v. THE GOVERNMENT . . . 7 W. R., 42

10. ———— *Rejection of claim*  
*by survey officer.*—The rejection by a survey officer of a claim because it had not been brought forward sooner, was not an award within the scope of the special limitation of Act XIII of 1848. SHAMA SOONDREY DABEE v. PROSONNO COOMAR TAGORE [1 W. R., 114

11. ———— *Award adopting*  
*order under Act IV of 1840.*—An award of survey authorities adopting an Act IV order was not illegal, and was consequently governed by limitation under Act XIII of 1848. RAMGUTTY NAG CHOWDHRY v. BUDODACHURN BOSE . . . 1 W. R., 120

12. ———— *Order of Super-*  
*tendent of Survey striking off appeal.*—An order of a Superintendent of Survey striking off an appeal was not an award within the meaning of Act XIII of 1848. SHAM KANT BANERJEE v. GOPAL LALL TAGORE . . . 1 W. R., 328

**ACT-1848-XIII-concluded.**

13. ———— *Order of Com-*  
*missioner.*—Nor was the order of a Commissioner striking an appeal off the file. JANOKEE CHOWDHREANEE v. DWARKANATH CHOWDHRY

[1 Hay, 555

RAM GOPAL ROY v. OMA SOONDREY DASSEE  
[2 Hay, 41

14. ———— *Deduction for disability.*—No deduction on account of minority or other legal disability could be made from the period of limitation prescribed by Act XIII of 1848. MODHOOSOODUN SINGH v. PUETEE BULLUB PAUL

[W. R., 1864, 140

HURO CHUNDER CHOWDHRY v. KISHEN COOMAR CHOWDHRY . . . 5 W. R., 27

The limitation for awards made under Bengal Regulations VII of 1822, IX of 1825, and IX of 1833, was afterwards provided for by Limitation Act XIV of 1859, s. 1, cl. 6, and Limitation Act IX of 1871, sch. II, art. 44, and is now contained in art. 45 of sch. II of the Limitation Act, 1877.

**—1848-XVIII—**

*See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.* 5 Moore's I. A., 499

*See NAWAB OF SURAT* . . . 12 Bom., 158  
[I. L. R., 12 Bom., 496

**—XXI—**

*See CONTRACT—CONTRACT FOR GOVERNMENT SECURITIES OR SHARES.*

[Cor., 1: 2 Hyde, 131

*See CONTRACT—WAGERING CONTRACTS.*  
[1 Ind. Jur., O. S., 126  
1 Bom., 34  
12 Bom., 51  
I. L. R., 9 Bom., 358  
5 Moore's I. A., 109  
6 Moore's I. A., 251

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[9 Moore's I. A., 256

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*See PROMISSORY NOTE—CONSIDERATION.*  
[8 Bom., A. C., 131

*See TAZI MANDI CHITTIS.*  
[8 B. L. R., 412, 415 note

*See TROVER* . . . 6 B. L. R., 591

—1849—I, s. 9—  
*See CONVICTION* . . . 5 Mad, Ap., 13

**—VI—**

*See CASES UNDER PENSIONS ACT, VI OF 1849.*

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LIABILITY OF.**XXI—***See* HINDU LAW—GUARDIAN—RIGHT OF  
GUARDIANSHIP . . . I. L. R., 1 All., 549*See* CASES UNDER HINDU LAW—INHERIT-  
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AND FORFEITURE OF, INHERITANCE.*See* HINDU LAW—MAINTENANCE—RIGHT  
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*See* CASES UNDER HINDU LAW—WIDOW—  
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[5 Bom., Cr., 61]

**XXXIV—***See* BENG. REG. III OF 1818.

[6 B. L. R., 392, 459]

**XXXV—***See* APPEAL IN CRIMINAL CASES—ACTS—  
BOMBAY FERRIES ACT.

[6 Bom., Cr., 45]

*See* FERRIES ACT, XXXV OF 1850 (BOM-  
BAY) . . . 3 Bom., Cr., 41*See* MAGISTRATE, JURISDICTION OF—  
SPECIAL ACTS—ACT XXXV OF 1850.

[3 Bom., Cr., 11]

**XLII—***See* RAILWAY COMPANY.

[10 B. L. R., 241]

**1851—VIII—***See* CASES UNDER TOLLS**XII—***See* MADRAS TOWN LAND REVENUE ACT.  
[I. L. R., 22 Mad., 100]**ACT—continued.****1853—XI—***See* BOMBAY REVENUE JURISDICTION ACT,  
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[10 Bom., A. C., 471]

I. L. R., 2 Bom., 529

*See* JURISDICTION OF CIVIL COURT—  
CUSTOMARY PAYMENTS.

[I. L. R., 16 Bom., 649]

*See* JURISDICTION OF CIVIL COURT—RENT  
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[I. L. R., 13 Bom., 442]

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[I. L. R., 11 Bom., 222]

**XXV, s. 1—***See* LIMITATION ACT, 1877, ART. 180  
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**s. 2—***See* LIMITATION ACT, 1877, ART. 179  
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TION—SUITS AND OTHER PROCEEDINGS  
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[6 Bom., Cr., 14]

**XV, s. 6—***See* PRIVY COUNCIL, PRACTICE OF—RESTO-  
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[9 Moore's I. A., 28]

**XIX—***See* SUMMONS, SERVICE OF.

[24 W. R., 72]

**s. 28—***See* WITNESS—CIVIL CASES—DEFAULTING  
WITNESSES . . . 1 B. L. R., A. C., 186**1854—VII—***See* EXTRADITION . . . 8 Bom., Cr., 13**IX—***See* SALE FOR ARREARS OF REVENUE—  
SETTING ASIDE SALE—IRREGULARITY.

[9 Moore's I. A., 288]

**XVII—***See* POST OFFICE ACT, 1854.**XVIII—***See* CASES UNDER RAILWAY ACT, 1854.*See* CASES UNDER RAILWAY COMPANY.

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See EVIDENCE ACT, 1855.

**—VI—**

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[1 Hyde, 289: 1 Ind. Jur., O. S., 128

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[Bourke, O. C., 59

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[Bourke, O. C., 59

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[Bourke, O. C., 159  
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[I. L. R., 13 Bom., 677

See RIGHT OF SUIT—INJURIES, SUITS BY AND AGAINST REPRESENTATIVES OF DECEASED FOR

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[2 N. W., 103  
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[7 Bom., O. C., 113, 119, 120 note  
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[I. L. R., 16 Bom., 254

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[5 Bom., Cr., 14

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[Bourke, O. C., 41

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[Bourke Ad., 1, 15  
Bourke, A. O. C., 87  
6 Bom., O. C., 98

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See CASES UNDER HINDU LAW—USURY.

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS

4 Bom., A. C., 202  
[I. L. R., 3 Mad., 125

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[6 N. W., 358  
10 Bom., 382

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21 W. R., 352

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2 C. W. N., 234, 333

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[I. L. R., 9 Bom., 233

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[5 B. L. R., 500: 14 W. R., 308

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[17 W. R., Cr., 11  
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[I. L. R., 18 Calc., 133

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5 C. L. R., 128

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[17 W. R., 226

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**—XV—**

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[I. L. R., 8 All., 143

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1 Agre., 140

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[3 B. L. R., A. C., 100

11 W. R., 52

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## B. 3—

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[8 B. L. R., 83: 17 W. R., 80

2 Ind. Jur., N. S., 124

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[L. R., 22 I. A., 139

## XIII—

See ORPHAN ACT, s. 9.

[I. L. R., 24 Calc., 691

## XIX—

See COMPANIES' ACT, 1857.

## XXV—

See CASE UNDER FORFEITURE OF PROPERTY.

See LIMITATION—STATUTES OF LIMITATION—ACT XXV OF 1857.

[13 B. L. R., 445: 22 W. R., 17

ACT—1857—XXV—*concluded*.

ss. 1, 2, and 3—*Constructive*.—The words in s. 3, Act XXV of 1857, "such an officer as aforesaid" refer to the officers mentioned in s. 2, as well as to the office of mutiny mentioned in s. 1. *Govindlal v. Amir Khan*

[8 B. L. R., 83: 17 W. R., 80

1858—I Compulsory Labour, Madras.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—ACT I OF 1858.

[4 Mad., Ap., 21

2—*Labour class*.—Persons who habitually engage in manual labour, although they may at the same time be employers of labour, are included in the term "labouring class" used in s. 2 of Act I of 1858 (Madras). *Queen v. Muttu Reddi*

[I. L. R., 8 Mad., 199

## III—

See BENG. REG. III OF 1813.

[9 B. L. R., 392, 459

## X—

See FORFEITURE OF PROPERTY.

[2 Agra, 324

2 N. W., 75, 140

## XXX—

See NAWAB OF CAERNATH'S ACT.

[9 Moore's I. A., 456

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See SETTLEMENT—EFFECT OF SETTLEMENT. . . I. L. R., 20 Calc., 732

## XXXIV—

See LUNATIC. . . I. L. R., 7 Bom., 15

[I. L. R., 8 Bom., 280

I. L. R., 18 Mad., 472

## XXXV—

See APPEAL—ACTS—ACT XXXV OF 1858.

[4 C. W. N., 529

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY. . . I. L. R., 18 Calc., 111

[L. R., 17 I. A., 173

I. L. R., 23 Calc., 864

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See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS. . . I. L. R., 15 Bom., 177

## B. 11—

See OUDE LAND REVENUE ACT, ss. 175 AND 176. . . I. L. R., 23 Calc., 720

[L. R., 22 I. A., 90

## B. 23—

See LETTERS PATENT, HIGH COURT, N.W. P., (CL. 12 I. L. R., 4 All., 159



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order. IN THE MATTER OF THE PETITION OF NAZIRUN. MUHAMMAD C. NAZIRUN

[I. L. R., 8 Calc., 19  
8 C. L. R., 310

4. ———— *Minority* ————  
Majority Act (IX of 1875), s. 3.—A certificate of guardianship under Act XL of 1858 takes effect, not from the date when it is applied for, nor when an order granting it is passed, but from the date when it is actually issued. Therefore, where an application for a certificate was made in 1877, and an order granting it was passed in December 1879, but the certificate was not issued until December 1881, —Held that the minor, in respect of whose property the certificate was applied for, who had between the date of the application and the issue of the certificate attained the age of 18 years, and signed a promissory note, was not entitled to take advantage of s. 3 of the Majority Act, 1875, and set up the plea of minority as a defence to a suit on the note. STEPHEN v. STEPHEN . . . I. L. R., 9 Calc., 901

[13 C. L. R., 430

Affirming on appeal the decision in the same case.

[I. L. R., 8 Calc., 714  
10 C. L. R., 533

5. ———— *Guardian, Appointment of—Period from which appointment dates.*—The making of an order appointing a guardian under Act XL of 1858, and not the subsequent taking out of the certificate, is that by which a guardian is appointed of the person and property of a minor within the meaning of s. 3 of the Indian Majority Act. CHUNDER MUL JOHARY v. BROJONATH ROY CHOWDHURY . . . I. L. R., 8 Calc., 967

[11 C. L. R., 315

6. ———— *Period from which authority of guardian dates—Court Fees Act (VII of 1870), s. 6.*—S. 6 of the Court Fees Act (VII of 1870), which says that a certificate under Act XL of 1858 (among other documents) "shall not be filed, exhibited, or recorded in any Court of Justice or received or furnished by any public officer," unless a certain fee be paid, means that such certificate cannot come into existence until the person who has the permission of the Court to obtain it deposits the requisite amount of stamp duty. Independently of this section, however, the preparation of such a certificate after the order granting it is not a purely ministerial act; it must then be applied for by the grantee: and it is from the date of the certificate being actually taken out, and not from the date of the order granting it, that a guardian of the person and property of a minor is to be considered as appointed under Act XL of 1858. Where, therefore, on a petition for such a certificate by J, an order was made that the "application be allowed," and in a suit on certain bonds, in which suit the minor in respect of whose person and property the petition for a certificate was made was a defendant, he was represented by J, by whom no certificate had been actually taken out.—Held, in a suit by the minor to set aside the decree as not binding on him, that without the certificate J had no authority to appear on behalf of the minor, and the latter, not having been properly represented in the suit brought against

## ACT-1858-XL-continued.

him, was entitled to have the decree set aside. *Stephen v. Stephen, I. L. R., 8 Calc., 714*, and on appeal, *I. L. R., 9 Calc., 901*, followed. *Chunee Mul Johary v. Brojonath Roy Chowdhury, I. L. R., 8 Calc., 967*, dissented from. SAHAT NAND v. MUNGSIKRAM MARWARI . I. L. R., 12 Calc., 542

Held, however, on appeal by the Privy Council reversing the above decision, that, when a Court to which application has been made under s. 3 of Act XL of 1858 for a certificate has adjudged the applicant entitled to have one, he then substantially obtains it, although it may not be drawn up or issued at the time. Having obtained such an order, he has in substance complied with the terms of the Act, in the same way as when a plaintiff has judgment that he shall have a decree in his suit, it may be said that he has then obtained his decree. Therefore, when a minor had been represented in a suit by a person who had obtained an order for a certificate under s. 3, but had not had it issued to him, the absence of a certificate was held to be not such an irregularity as entitled the minor, on coming of age, to have the proceedings set aside on the ground that he had not been properly represented. MUNGSIKRAM MARWARI v. GURSAHAI NAND. LIAKET HOSSEIN v. GURSAHAI NAND . . . I. L. R., 17 Calc., 347

L. R., 16 I. A., 195

7. ———— *Guardian—Minority—Suit by minor—Certificate of Administration.*—Whenever an application is made for the appointment of a guardian under Act XL of 1858, and an order is passed appointing a person to be guardian of the minor, even though no certificate be taken out by the person so appointed, the minor becomes a ward of Court, and the period of his minority is extended to 21 years. *Stephen v. Stephen, I. L. R., 8 Calc., 714*, and on appeal, *I. L. R., 9 Calc., 901*, dissented from; *Chunee Mul Johary v. Brojonath Roy Chowdhury, I. L. R., 8 Calc., 967*, followed. GRISH CHUNDER CHOWDHURY v. ABDUL SELAM

[I. L. R., 14 Calc., 55

8. ———— *Appointment of guardian without proof of certificate being taken out—Presumption as to regularity of proceedings—Evidence Act (I of 1872), s. 114, illus. (e).*—In a suit by a puiśne mortgagee against the prior as well as the subsequent mortgagees and the mortgagor's representative it was found that the prior mortgages were executed when the mortgagor was over 18, but under 21. A guardian of his person had been appointed under Act XL of 1858, but there was no evidence as to whether a certificate of administration had also been granted under that Act. The prior mortgagees thereupon contended that under Act XL of 1858 a guardian of the person could not be appointed unless a certificate of administration was also granted, and there being no evidence of the latter being granted, this appointment of a guardian of the person alone was *ultra vires*. Held that, assuming (but without deciding the point) that under Act XL of 1858 a guardian of the person could not be appointed unless a certificate of administration was also granted, an independent appointment of a guardian of the person may be made, and there being no

**ACT-1858-XL-continued.**

evidence to show that such a certificate of administration was not granted, the Court must presume the regularity of the order under illus. (c) to s. 114, Evidence Act. **RAY COOMARIE DASSEE v. PREO MADHUB NUDY** . . . I. C. W. N., 453

of the order directing its issue. **Sahai Nand v. Mungairam Marwari**, I. L. R., 13 Cal., 542, followed. **NOWBAT ROY v. LALA KEDAR NATH** [I. L. R., 13 Cal., 219]

a guardian who has not such a certificate shall be null for the want of one. **SHOOGHURY KORE v. BOSHISHT NARAIN SINGH** . . . 8 W. R., 331

[14 W. R., 453]

under Act XL of 1858 a Court may refuse to hear even a natural guardian as of right. When the Court, in the exercise of the discretion vested in it, does hear him, the absence of the certificate will not

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R., 71

14. **Permission to sue, Proof of.**—Although the proper and regular manner of giving permission to sue on behalf of a minor is by an order recorded in the order-sheet, there is, nevertheless, nothing in the nature of the sanction provided by s. 3 of Act XL of 1858 which takes it out of the general rule of evidence that sanction may be proved by express words or by implication. **BEABA PERSHAD KHAN v. THE SECRETARY OF STATE FOR INDIA** I. L. R., 14 Cal., 159

15. **Suit on behalf of minor—Permission to relative to sue, Proof of—**

**ACT-1858-XL-continued.**

**Civil Procedure Code, ss. 440, 578.**—In a suit conducted on behalf of a minor by a relative, the absence of the certificate of guardianship required by s. 3 of the Bengal Minors Act (XL of 1858) is not a fatal defect; and the fact of the Court allowing such a suit to proceed must be taken as implying that the necessary permission has been given. Even if such permission has not, in fact, been given, the irregularity is covered by s. 573 of the Civil Procedure Code. **Bhaba Pershad Khan v. The Secretary of State for India in Council**, I. L. R., 14 Cal., 159, followed. **PARMESHWAR DAS v. BELA** . . . I. L. R., 9 All., 508

irregular, as being passed in the absence of the party *prima facie* principally interested. **SHIAN SOONDER v. NARAIN DAS** . . . 2 Agra, 343

**MADHO RAO APA v. THAKOOR PERSHAD** [3 Agra, 127]

17. **Grandmother.**—A grandmother is not competent to represent her minor grandson without having obtained the certificate prescribed by s. 3, Act XL of 1858. **RUTNE v. ROGHOBERE DYAL** . . . 2 Agra, 278

18. **Not her.**—A mother may be allowed, under s. 3, Act XL of 1858, to sue as guardian of her minor son without having taken out a certificate. **MUNRA THUNNA KOONWAR v. LALJEE ROY** . . . 1 W. R., 131  
**GOODOY CHAND JHA v. DHUNMONER DEBIA** [3 W. R., 183]

**RAMDHUN DOSS v. RAM RUTTON DUTT** [10 W. R., 425]

19. **Ground for dismissal of suit.**—When a Court of first instance allows a mother to institute a suit on behalf of her minor son, the Judge on appeal has no reason to dismiss the suit on the technical grounds that no certificate had been granted to her under s. 3, Act XL of 1858. **GOONOMONEE DEBIA v. RAM KOWL SANDLE** . . . 17 W. R., 144

**See AUXHIL CHUNDEE v. TRIPOORA SOONDURIE** [23 W. R., 525]

20. **S. 3, Act XL of 1858, gives discretion to the Court to admit a party to sue without a certificate.** **ANUND CHUNDER GHOSE v. KOMUL NARAIN GHOSH** . . . 2 W. R., 210

**LECHMEE KOONWAR v. BHUGWAN DOSS** [6 W. R., 116]

**SHEQUBERUT SINGH v. LALLJEE CHOWDHURY** [13 W. R., 202]

**BONOMALLY KRAH v. HUNGSHESHT ROY** [17 W. R., 493]

**SORHA KOOBEREE v. HURDEY NARAIN MOHANJIN** [25 W. R., 97]

**ACT-1858-XL-continued.**

**21.** ————— *Held* that the plaintiff, not being legally or formally appointed manager or guardian of a minor's estate or person, was incompetent to maintain the suit on his (the minor's) behalf, especially when the minor's natural father has been appointed as such under Act XL of 1858, and has not been discharged from his office. **SETUL PERSHAD v. BIRJ MOHUN DASS** 1 *Agra*, 25

**22.** ————— *Waiver of objection—Duty of Judge.*—That the persons who sue on behalf of minors are their natural guardians is not a sufficient reason for neglecting the directions of law which require that the minors shall be represented by persons who have obtained certificates, or by persons who, when the property is of small value, are specially permitted by the Court to sue or defend the suit on behalf of minors. The fact that the defendant's pleader did not press the objection, does not relieve the Judge from the duty imposed on him of seeing that the minors were properly represented. **ZOBARAW SINGH v. JAWAHIR SINGH** 3 *Agra*, 167

**23.** ————— *Guardian.*—*Held* that the institution of a suit by a guardian on behalf of minors, without due authority having been obtained, is illegal. **DHUNRAJ KOORREE v. ROODUR PERTAB SINGH** 3 *Agra*, 300

[*Agra*, F. B., Ed. 1874, 155

**24.** ————— *Son adopted pending suit.*—When adoption takes place while a suit is pending on the part of the widow and the adopted son is a minor, it is necessary that he should be substituted for his adoptive mother as the party preferring the appeal, and be duly represented in conformity with the provisions of s. 3, Act XL of 1858. **COLLECTOR OF BAREILLY v. NURAH DAY**

[3 *Agra*, 340.

**25.** ————— *Stranger.*—A stranger cannot bring an action on behalf of a minor without a certificate under Act XL of 1858. **GOBERDHUN v. GHILWAR** 3 *Agra*, 92

**26.** ————— *Surbarakar.*—A surbarakar cannot sue on behalf of a minor without permission of the Court or a certificate under Act XL of 1858. **BODH SINGH v. LOCHUN SINGH**

[3 *Agra*, 220

**27.** ————— *Permission of Court.*—From the fact that in a former suit the plaintiff's mother was arrayed among the parties as his guardian as well as from the line of defence she then adopted and in the absence of any evidence to the contrary, it was presumed that she had the permission of the Court to appear and represent the minor's interest in that suit, and therefore the decision in that suit was held to be binding on the minor in a subsequent suit where the same question was raised. **BOSOMALLY KESH v. HUNGSHESWAR ROY**

[17 *W. R.*, 492

**28.** ————— *Suit by unauthorized guardian.*—Where a person representing herself as a guardian neither took out a certificate under Act XL of 1858 nor obtained the permission of the Court under s. 3 of that Act to appear in the suit without a certificate,—*Held* that the minor was

**ACT-1858-XL-continued.**

not bound by any act of the alleged guardian, nor was he bound to sue within three years from the order passed by the Court under s. 246, Act VIII of 1859, rejecting her petition of objection to a sale of attached property. **SURENATH KOONDOL v. HUBREE NARAIN MUDDOOL** 7 *W. R.*, 399

**29.** ————— *Beng. Reg. X of 1793—Suit on behalf of minors.*—In a case in which Regulation X of 1793 has no application, the Court may, under s. 3, Act XL of 1858, allow a friend or relative of the minor to institute a suit on his behalf, and where the guardian omits to take steps for the protection of the infant, the Court may allow another person to sue for the benefit of the latter. **MODHOOL SOODUN SINGH v. PRITHEE BULLER PAUL** [16 *W. R.*, 231

**30.** ————— *Guardian or next friend.*—In a suit brought on behalf of a minor by his next friend, it is not necessary for the next friend to have a certificate under Act XL of 1858, provided he have in fact permission of the Court to sue. **ALIM BAKSH FAKIR v. JHALOL BIRI**

[*I. L. R.*, 12 *Calc.*, 48

**31.** ————— *Next friend—Civil Procedure Code (Act XIV of 1882), s. 440.*—S. 440 of the Civil Procedure Code, read with s. 3 of Act XL of 1858, does not make the receipt from the Court of a written permission to sue compulsory upon the next friend of an infant plaintiff. **NEWAJ v. MAHSUD ALI** . *I. L. R.*, 12 *Calc.*, 131

**32.** ————— *Suit on behalf of minor—Permission to relative to sue.*—The mother of a minor, who had not obtained a certificate under Act XL of 1858, instituted a suit on behalf of the minor for some property of small value. She did not ask the Court in which she instituted the suit for permission to institute it, as required by s. 3 of that Act, but the Court entertained it, the defendant not raising the objection that it had been instituted without permission, and it was decided on the merits in favour of the minor. *Held* that, under these circumstances, it must be taken, notwithstanding there was no order allowing the mother to sue, that the suit was instituted with the Court's permission. **KEDAR NATH v. DEBI DIN** . *I. L. R.*, 4 *All.*, 165

**33.** ————— *Right of holder of certificate to defend suits connected with minor's estate.*—Under s. 3 of the Bengal Minors Act (XL of 1858), the Civil Court has no power to refuse to admit a person who has obtained a certificate of administration under the Act to defend a suit on the minor's behalf, as guardian of such minor. **BALDEO DAS v. GOBIND SHANKAR** . *I. L. R.*, 7 *All.*, 914

**34.** ————— *Right to defend without certificate—Appearance on behalf of minor.*—No judgment or order passed in a suit, to which a minor, subject to the provisions of Act XL of 1858, is a party, will bind him on his attaining majority unless he is represented in the suit by some person who has either taken out a certificate or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of a minor, under s. 3 of

## ACT-1858-XL-continued.

Act XL of 1858, should be formally placed on the record. **MEHNAMOYI DABIA v. JOGODISHURI DABIA**  
[I. L. R., 5 Calo., 450 : 5 C. L. R., 361]

See **PIRTHI SINGH v. LOBHAN SINGH**

[I. L. R., 4 All., 1]

35.

*Permission to relative to defend.*—The mother of a minor, who did not hold a certificate under Act XL of 1858, was sued on behalf of the minor. She did not obtain permission to defend the suit on behalf of the minor, but the Court allowed her to answer to the suit on behalf of the minor. *Held* that, under these circumstances, it must be inferred that the Court had given her permission to defend the suit, as required by s. 3 of Act XL of 1858, and therefore the decree made against her in the suit as representing the minor was binding on the latter. **JANKI v. DHARAM CHAND**  
[I. L. R., 4 All., 177]

Court has the fullest discretion, when the property is of small value, or for any other sufficient cause, to dispense with the production of a certificate. **BREEMUNT KOONDOO v. SHARODA SOONDURER DOSSEE BRUJOHURREE PARAMANICK v. SHARODA SOONDURER DOSSEE**  
[S. W. R., 187]

37.

*Suit on behalf of a minor—Subject of suit of small value.*—A suit can be prosecuted or defended by a relative, on

**PAL** 3 B. L. R., Ap, 130  
**HURENDER LAL SAHOO v. RAVENDER PERTAB SAHOO**  
[1 W. R., 260]

**MAHOMED HOSSEIN v. ARBUR HOSSEIN**  
[17 W. R., 275]

as to the alleged fraud of the manager, and the

## ACT-1858-XL-continued.

state of the accounts and the assets of the property. **MONTEAH CHUNDER SEIN v. THE COLLECTOR OF DINAGEPORE**  
[10 W. R., 313]

to do with the genuineness of the grant. **MEITRON BIBI v. GIBBON**  
[12 W. R., 101]

3.

*Change of guardian.*—One manager cannot shift off the responsibility from himself and resign the appointment and another one take up the appointment without the previous assent of s. 6, Act XL of 1858 (requiring issue of a notice of such application or the fixing of a day for the hearing of the application), being duly carried out. **JOGODUMBA KOYE v. MIRCHA KOYE**  
[17 W. R., 239]

1. s. 7—Qualification for guardianship—*Right to certificate.*—It is not the policy of Act XL of 1858 to prevent parties from per-

2. S. 7 looks as much to the fitness of the relative as to his propriety in the right to disregard the former. **AKIMA**  
[3 W. R., 334]

3. In the grant of a certificate to a guardian under Act XL of 1858, unless under peculiar circumstances, fitness is to be preferred to mere nearness of relationship. **AMAN KHAN v. HOSEENA KHATOON**  
[9 W. R., 543]

4. Before appointing a guardian the Judge should satisfy himself of the applicant's fitness for the office. **RAM LYAT GOOYA v. AMRIT LALL KHAMAROO**  
[9 W. R., 555]

5. In appointing a manager of a minor's estate a Judge has to consider not only the nearness of kindred, but also the suitability of the person to be appointed. **KHOODEE MONER DOSSEE GHOSSEANEE v. KOYLASH CHUNDER GHOSE**  
[4 W. R., Mis., 23]

tion such as takes away the right to a certificate under s. 7. **KURUPPOOL KOYE v. COLLECTOR OF SHAHABAD**  
[20 W. R., 433]

7. Under s. 7, Act XL of 1858, a person claiming a right to have the charge of the property of a minor by virtue of a will is entitled, if the will be a genuine instrument, to a certificate of administration, notwithstanding the existence of a natural guardian of the minor in the person

**ACT-1858-XL-continued.**

of his mother. *HINDON MOHUN DERRA v. Poonoo Chunder Bhowmik* . . . 17 W. R. 90

9. ———— and ss. 4 and 0. *Appointment of guardian.*—Under ss. 4, 5, and 7, Act XL of 1858, the Court has power to appoint a guardian other than the father of a minor for the purpose of maintaining and protecting the property of the minor. *IRAWATI HAN NARAYAN RAO* . . . 4 H. L. R. Ap. 71  
[13 W. R. 230]

9. ———— *Certificate of guardianship.*—In two conditions.—Where an application was made by a Hindu female for a certificate of administration under Act XL of 1858 in respect of an estate which she alleged to be the ancestral property of her husband, the Judge ought merely to have inquired whether the husband was a Hindu, and whether the petitioner being a next relative was a fit person to be entrusted with the charge of the said property. *HINDON MOHUN CHANDRANATH v. CHITRANGIRI CHANDRANATH* . . . 3 W. R. 25

10. ———— *Accounts, filing in Court.*—An administrator filing a certificate under s. 7, Act XL of 1858, is bound to file in Court periodical accounts of moneys received and disbursed on account of the estate. In an *Executors Revenue* [10 W. R. Min. 63]

11. ———— *Account of guardianship.*—*Relinquishment of guardianship.*—Under s. 7, Act XL of 1858, a manager appointed to the estate of a minor cannot in any way get rid of or resign that trust without the permission of the Court, and with duty accounting to his successor for all moneys received and disbursed by him. *KARAN PHURISH SINGH v. Poonoo DERRA* . . . 15 W. R. 339

1. ———— s. 9.—*Procedure where no near relative.*—*Appointment of guardian.*—*Collector.*—*Person not certificate.*—Under Act XL of 1858, s. 9, the Judge has no power to appoint the Collector as manager of the estate of the minor, until he is satisfied that no person has established title to a certificate under a will or deed, and that there is no relative willing and fit to be entrusted with the charge of the property; and in those alternative cases to be proved to the Court in the ordinary way by evidence brought before the Court. *HYDER KHA v. Collector of Purneah* . . . 22 W. R. 490

2. ———— and ss. 10, 11, and 12.—*Procedure where no near relative.*—The powers given by ss. 10, 11, and 12 of Act XL of 1858 only accrue upon the happening of the contingency which is mentioned in s. 9. *Kemreest Kora v. Collector of Shahabad* . . . 20 W. R. 432

——— ss. 10 and 12.—*Power to cancel certificate and grant another.*—When the estate of a minor consists in whole or in part of land, or any interest in land, and when such application is made, the Court can only proceed to act in accordance with the provisions of s. 12 of Act XL of 1858, and has no jurisdiction to grant another certificate to any fit person, such a course being confined to cases in

**ACT-1858-XL-continued.**

which the property is of the description indicated by s. 10. *PANNA CHALLAN v. Nandoojee Bhowmik*  
[11 L. R. 10 Cole, 429]

1. ———— s. 12.—*Appointment of Collector.*—*Power to appoint Collector to take charge of ancestral estate.*—Under the provisions of ss. 9 and 12 of Act XL of 1858, the manager of an estate cannot be appointed the Collector of a district. *Arth-Chunder Singh* is directed under s. 12 of that Act to take charge of the estate of the minor, and he thereupon became invested with authority to appoint a manager of the property and a guardian of the person of the minor. In such matters as the provisions of section 12. . . 23 W. R. 306

2. ———— *Trust created under will for religious and charitable purposes.*—Where a trust is created under a will for certain purposes, and is for the purpose of the maintenance of religious worship, charitable institutions, &c., the trustees are bound to take such steps as may be taken in charge of by the Collector under Act XL of 1858. *Haradonath Panna v. Jaggoboo Nara Roy*  
[23 W. R. 278]

3. ———— *Dispute as to guardianship.*—Where two persons were fighting to get hold of the property, and the property was that the minor would suffer if the property lay in the hands of either, the Court could not say that either person was a fit person to be appointed manager, and therefore, under s. 12, ordered the property to be handed over to the charge of the Collector, with direction to appoint a manager of the property and a guardian of the person of the minor. *Jagoboo Nara v. Minna Kora* . . . 17 W. R. 260

4. ———— *Joint property, Interest in application of share of minor.*—Where, on an application for the appointment of a manager to the estate of a deceased Rajah, a Zilla Judge, notwithstanding a contention raised before him as to the extent of the minor's interest in the property, passed an order strictly within the provisions of s. 12, Act XL of 1858, his decision was held to have acted without jurisdiction in having, upon a subsequent application, passed an order specifying the share of the minor and the opposing party. *Collector of Tanjore v. Balasobhan Deo Nandan Singh*  
[10 W. R. 218]

5. ———— *Certificate under Act XL of 1858 in respect of interest of sons in ancestral property.*—Under Hindu law, the interest in ancestral property taken by sons immediately on their birth is an estate and interest in immovable property in respect of which a certificate of administration under Act XL of 1858 may be granted during the lifetime of their father. *DERRA KORA v. Abjoobhya Bex Singh* . . . 3 N. W. 91

6. ———— *Property of minor.*—*Share of minor in joint family property under Mitakshara Law.*—Where the joint property of an undivided joint family governed by the Mitakshara law is enjoyed in its entirety by the whole family, and not in shares by the members, one member has not such an interest therein as is capable of being taken

**ACT-1858-XI—continued.**

charge of and separately managed under the provisions of Act XL of 1858. **SHEO NUNDUN SINGH v. GHUNSAM KOOREE** 21 W. R., 143

**AJHOLA KOOREE v. DIGAMBER SINGH**

[23 W. R., 206]

7. *Partition.*—*B*, a Hindu governed by the Mitakshara law, died, leaving two minor sons, *J* and *K*, and also a widow, *L*, and two minor sons by her, the mother of *J* and *K* having predeceased him. On *J*'s attaining majority, the Court of Wards, which had taken possession of all the property, withdrew from the management; and *L* then applied under Act XL of 1858 and obtained a certificate with respect to the shares of *K* and her

perly obtained, *H* was not entitled to one, as, no partition having taken place since *B*'s death, the property was still the joint family property. **HOO-LASH KOEB v. KASHE PROSHAD**

[I. L. R., 7 Calc., 369]

allow her the management until some cause to remove her was duly made out. **NISTABINEE DEBEE v. COLLECTOR OF 24-PERGUNNAHS** 23 W. R., 330

9. *Power of Court to limit nature or extent of property.*—Where a manager is appointed under Act XL of 1858, the Civil Court has no authority to restrict or limit, by description or otherwise, the nature or extent of the minor's property. **SHEO PRASUNO CHOBER v. GOPAL SUBU** [15 W. R., 529]

1. *s. 18—Power of guardian—Certificated guardians—Power of uncertificated guardians—Managers.*—The rules laid down in Act

should have the previous sanction of the Court; such provisions are altogether unsuitable to the case of a manager entirely unconnected with the Court. **RAM CHUNDER CHUCKERBUTTY v. BROJONATH MOZUMDAR** I. L. R., 4 Calc., 920; 4 C. L. R., 247

**ACT-1858-XI—continued.**

2. *Power of guardian*

the Court. **GOPALNARAIN MOZUMDAR v. MUDDO-MUTTY GUPTEE** 14 B. L. R., 21

3. *Mortgage by guardian without sanction of the Court.*—Where a guardian had mortgaged certain property of a minor without previously obtaining the sanction of the Court under s. 18 of Act XL of 1858, but it was found that the mortgage transaction was a proper one, and there had since been a decree in a suit in

**GOLUCK CHUNDER SEN**

[15 B. L. R., 353 note]

4. *Grounds for recall of certificate.*—Where a guardian, appointed under Act XL of 1858, mortgaged certain immoveable property of the minor without obtaining the sanction of the Court under s. 18 of that Act, and it appeared he was related to, and jointly interested with, the minor in the management of the property.—*Held* that it was not a sufficient cause to recall the certificate unless it was made clear that in the mortgage transactions he had acted in bad faith, or had injured, or was likely, or had intended to injure, the interests of the minor. **IN THE MATTER OF THE PETITION OF BUSUNTO COOMAR GHOSH** 15 B. L. R., 351 note  
**BROJENDRO NARAIN ROY v. BUSUNTO COOMAR GHOSH** 13 W. R., 300

5. *Sale by guardian without sanction of the Court—Invalidity of sale—*

**RAJAKHISEN MOOKERJEE** 15 B. L. R., 350

6. *Mortgage by Administrator of a minor's property—Purchaser with notice, Title of—Duties of Purchaser.*—A mortgage

the mortgage in that capacity.—*Held* that the

**ACT-1958-XL-continued.**

decree did not protect the mortgagee who purchased at the Court sale, nor her vendee, from suit by the minor for recovery of the property. **DANI DUTT SANKU v. SUBODHA DEB**. I. L. R., 2 Calc., 283 25 W. R., 410

7. *Mortgage by certificate-holder without sanction—Contract Act IX of 1872, s. 23.*—A mortgage by a person holding a certificate of administration in respect of the estate of a minor under Act XL of 1858 of immovable property belonging to the minor without the sanction of the Civil Court previously obtained is void with reference to s. 18 of that Act and s. 23 of the Contract Act, even though the mortgage-money was advanced to liquidate ancestral debts and to save ancestral property from sale in the execution of a decree. **CHIDAMBI SINGH v. SUBHAM KHAJ**

[I. L. R. 2 All., 903]

8. *Purchaser from guardian.—Per GUPTA, C.J.*—Previously to the passing of Act XL of 1858, where a suit was brought by a minor on coming of age, to recover property sold by his guardian during his minority, it was generally incumbent upon the purchaser to prove that he acted in good faith; that he made proper enquiry as to the necessity for the sale and had honestly satisfied himself of the existence of that necessity. Now under s. 18 of that Act, the Civil Court must only pass the power, but is bound to enquire into the circumstances of each case, and to determine whether, as a matter of law and prudence, it is right that any property sold or mortgage of the minor's property should take place; and if the Court, upon the materials and information brought before it by the guardian, makes an order for sale, a purchaser under such an order is not bound to make the same enquiry, which the Judge has made, and to determine for himself whether the Judge has done his duty properly and come to a right conclusion. Where a plaintiff alleges fraud or illegality as a ground for setting aside a sale made under s. 18, the onus lies upon him to make out a *prima facie* case of fraud or illegality, and to show that the debt, which formed the consideration for the sale in such case, was one for which the minor was not responsible. *Per PRINSEY, J.*—A stranger purchasing from a guardian, acting under the authority granted under s. 18 of Act XL of 1858, will be entitled to every protection from the Courts, so long as it is not shown that he acted in a fraudulent or collusive manner, knowing that the debts for the liquidation of which the purchase-money would be applied, were not debts lawfully binding on the minor. The burden of proof in such a case will lie heavily on the person seeking to set aside the alienation. But where the purchaser is himself the creditor, and therefore has the means of satisfying a Court as to the origin and nature of the debts and how they are binding on the minor, the burden of proof is shifted on the purchaser, when the plaintiff has established a *prima facie* case. **IKKER CHUND v. DELPUTTY SINGH**

I. L. R., 5 Calc., 363 [5 C. L. R., 374]

9. *Mortgage by guardian without sanction of the Court.*—A mortgage

**ACT-1959-XL-continued.**

without the sanction of the Judge by a guardian of a minor appointed under Act XL of 1858 is absolutely void, and a decree obtained upon a mortgage so executed cannot be enforced against the property of the minor. **BECHUMI RAY v. RAN KISHORE SINGH**

[11 C. L. R., 345]

**LALA HIRMO PRASAD v. BASANTH ALI**

[I. L. R., 25 Calc., 809]

10. *Guardian and minor—Mortgage by certificated guardian without sanction of District Court—Mortgage money applied partly to benefit of minor's estate—Suit by minor to set aside the mortgage—Contract Act (IX of 1872), s. 65.—S. 18 of the Bengal Minors Act (XL of 1858) does not imply that a sale or mortgage or a lease for more than five years, executed by a certificated guardian without sanction of the Civil Court, is illegal and void *ab initio*; but the proviso means that in the absence of such sanction the certificated guardian, who otherwise would have all the powers which the minor would have if he were of age, shall be relegated to the position which he would occupy if he had been granted no certificate at all. If any one chooses to take a mortgage or a lease for a term exceeding five years under these circumstances, the transaction is on the basis of no certificate having been granted. In a suit brought by the guardian of a Mahomedan minor for a declaration that a mortgage deed executed by the minor's mother was null and void to the extent of the minor's share and for partition and possession of such share, it was found that a considerable portion of the moneys received by the mortgagee had been applied for the benefit of the minor's estate by discharging incumbrances imposed on it by his deceased father. It appeared that at the time of the mortgage, the mother held a certificate of guardianship under the Bengal Minors Act, and that she had not obtained from the Civil Court any order sanctioning the mortgage under s. 18 of that Act.—*Held* that the omission to obtain such sanction did not make the mortgage illegal or void *ab initio*, but relegated the parties to the position in which they would have been if no certificate had been granted, i.e., that of a transaction by a Mahomedan mother affecting to mortgage the property of her minor son, with whose estate she had no power to interfere. *Held* that this fell within the class of cases in which it has been decided that if a person sells or mortgages another's property, having no legal or equitable right to do so, and that other benefits by the transaction, the latter cannot have it set aside without making restitution to the person whose money has been applied for the benefit of the estate. *Held* that, even if mortgages executed by a certificated guardian without the sanction required by s. 18 of the Bengal Minors Act were void, the section did not make them illegal; and, with reference to s. 65 of the Contract Act, the plaintiff could not obtain a decree for a declaration that the mortgage was inoperative as against his share, except on condition of his making restitution to the extent of any moneys advanced by the defendant under the mortgage-deed which had gone to the*

## ACT-1858-XL—continued.

benefit of the plaintiff's estate, or had been expended on his maintenance, education, or marriage. *Manj Ram v. Taji Singh*, I. L. R., 3 All., 52, distinguished, *Sarut Chunder v. Raykissen Mookerjee*, 15 B. L. R., 350, *Pana Ali v. Sadik Hossein*, 7 N. W., 201, *Sahes Ram v. Mahomed Abdool Rahman*, 6 N. W., 253, *Hamir Singh v. Zakia*, I. L. R., 1 All., 57, and *Gulshere Khan v. Naubey Khan*, *Weekly Notes*, All., 1881, p. 16, referred to. *GIR-RAJ BAKSH v. HAMID ALI*, I. L. R., 9 All., 340

11. ————— *Certificated*

ject the lessee as trespasser in respect of his own share without making his co-shareis parties to the suit. *Quere* whether such a lease granted by a certi-

certificated guardian before the actual issue of the certificate, but after the orders for its issue have been made in his favour, and after his recognition as a certificated guardian, is a transfer within s. 1 of Act XL of 1858. *HARENDRA NARAIN SINGH CHOWDHURY v. MOHAN*, I. L. R., 15 Calc., 40

obtained a certificate under Act XL of 1858 for a term exceeding five years without the sanction required by s. 18 of that Act is invalid. *BHUPENDRO NARAYAN DUTT v. NEMYE CHAND MONDUL*

[I. L. R., 15 Calc., 627]

13. ————— Procedure on application for leave to deal with property—*Order of Civil Court authorizing lease of minor's property*.—On an application under s. 18 of Act XL of 1858 for leave to deal with the property of an infant, the Civil Court is bound to determine the question whether the proposed dealing with it would, if sanctioned, be for the benefit of such infant; and the petition should contain all the materials reasonably required to enable the Court to decide that question. The decision of *GABTE, C.J.*, in *Sikher Chand v. Dulpaty Singh*, I. L. R., 5 Calc., 363, followed IN THE MATTER OF THE PETITION OF *SHRISH CHUNDER MOOKHOPADHAY*

[I. L. R., 6 Calc., 161]

## 1. ————— s. 21—ss. 7 and 10—Recall of

## ACT-1858-XL—continued.

KHAN . . . . . B. L. R., Sup. Vol., 720  
[2 Ind. Jur., N. S., 200]

NAUNEE BIBEZ v. SURWAR HOSSEIN [7 W. R., 522]

2. ————— *Mode of revocation*—It is not necessary to institute a regular civil suit in order to obtain the revocation of a certificate of guardianship. *MAHOMED NUKSHUND KHAN v. AFZUL BEGUM*, 3 N. W., 149

3. ————— An order cannot be

JUBBAR . . . . . 17 W. R., 171

cient cause for such course being taken, and the Court should thereupon proceed to enquire judicially whether such sufficient cause is established. *SAKHA-WAT ALLY v. NOORJEHAN BEGUM*

[I. L. R., 10 Calc., 429]

5. ————— *Ground for recall*—An order for a certificate may be revoked under s. 21, Act XL of 1858, if the Judge sees sufficient cause for its revocation in the conduct of the party in whose favour it was granted. *TUSNEEF HOSSEIN v. SOOKHOO*, 14 W. R., 453

or objecting, set aside his order and directed the Collector to take charge of the estate. *Held* that the order.

under s. 1  
under s. 21  
OF JESSORE. *BESSANT COOMARZEE DOSSEER v. COLLECTOR OF JESSORE*, 13 W. R., 243

7. ————— *Ground for recall—Marriage of minor*—The marriage of a minor is not a sufficient cause, within the meaning of s. 21, Act XL of 1858, for withdrawing a certificate as manager granted under that Act; there must be some neglect in the performance of duty, or some cause of a similar kind rendering it improper to continue the manager in the appointment. *JUGO-DUMBA KOER v. MIRCHA KOER*, 17 W. R., 389

8. ————— *Neglect of duty by manager of estate—Enquiry—Manager appointed by will*.—Where a case is started showing that

## ACT-1858-XL-continued.

elder sons are neglecting their duty as managers of an estate to the material injury of a minor son, the Judge is bound to institute inquiry. **ANUND COOMAR GANGOOY v. RAKHAL CHUNDER ROY** [8 W. R., 278]

9. *Failure to produce accounts.*—An applicant for a certificate under Act XL of 1858 having alleged that the appointed guardians had neglected their charge in various ways, the Judge called upon the guardians to produce their accounts, and on their failing to do so took away their certificate, and gave it to the applicant. *Held* that the Judge would have been justified, if s. 21 in cancelling the guardians' certificate, if sufficient cause were shown; but he had no authority to do what he did, the accounts which a Judge can call for under that section being those which a discharged guardian is to furnish to his successor in office, and the only way in which a guardian retaining a regular suit brought by a relative or friend of the minor. **RAM DYAL GOOYE v. AMRIT LALL KHANNA** 9 W. R., 555

10. *Waste by Hindu widow.*—Acts of waste on the part of the widow in regard to her husband's property, if proved, would be a ground for withdrawing a certificate granted to her under Act XL of 1858. **BUGWANEE KOONWAR v. PARBUTTY KOONWAR** 2 W. R., 13

11. *Interference of Court with guardians of minors.*—A person apprehending danger to the health or life of a minor should ask the Court's interference under s. 21, Act XL of 1858. **LUCKHEE NARAIN AVS G BHEEM v. SOOBUJ MONER PAT MOHADAYE** 2 W. R., 13

12. *Mismanagement.*—A certificate having been granted to A under Act XL of 1858 in 1872 on the death of the father of a minor, in 1882 the mother of the minor applied that the certificate should be recalled on the ground of mismanagement, and that another should be granted to herself. The District Judge, assuming that the minor was a member of a joint family, held that the original certificate ought never to have been granted, recalled the certificate, and dismissed the application. *Held* that A, having obtained the certificate, brought himself within the jurisdiction of the Court under Act XL of 1858, and that the Court ought to have considered the charges against him. **DEORANI KOER v. PARUSMAN NARAIN** [12 C. L. R., 546]

13. *Selling the minor's property, or allowing portions of it to be unnecessarily sold, justifies the recall of a certificate of guardianship.* **GOONOOMONEE DOSSEE v. BHABSOONDUREE DOSSEE** 18 W. R., 258

14. *Removal of guardian.*—Where charges of immorality were brought against the holder of a certificate under Act XL of 1858, it was held to be the duty of the Judge to enquire into the truth of the charges and the fitness of the certificate-holder. **MOHUNDY BAGUM v. OOMDUTTOONISSA** 13 W. R., 454

## ACT-1858-XL-continued.

15. *Summary procedure.*—Act XL of 1858 does not empower a Judge to remove summarily a guardian not appointed by the Court, but under a will of the minor's grandfather. **LAENI PRIYA DAS v. NADIN CHUNDER NAG** [3 B. L. R., A. C., 37] 11 W. R., 370

16. *Ground for removal.*—A certificate of guardianship was cancelled under s. 21, Act XL of 1858, in a case where the guardian, without any sufficient cause or justification, and without legal advice, withdrew an appeal made to set aside a sale of the estate of the minors, and at the same time dealt with the auction-purchaser and obtained a putnee of a portion of that very property in the name of his own wife. **PITAMBER DEY MOZOOMDAR v. ISHAN CHUNDER DUTT BISWAS** [18 W. R., 189]

17. *Ground for removal.*—An application for the removal of guardians or parties appointed to take charge of the estate of a minor under Act XL of 1858, s. 7, must be supported by proof of malversation or misconduct such as would afford sufficient ground for removal. **RAJESWARIE DEBIA v. JOGENDRO NATH ROY** 23 W. R., 278

18. *Removal of manager of estate.*—A manager of the estate of a minor appointed by will is liable to removal only upon proof of actual malversation, or that by reason of mental incapacity, conviction of felony, or by some other incapacitating cause, he has become incapable of managing the property; but not merely on the ground that another person would manage the property better. He is, it seems, subject to removal upon summary application under Act XL of 1858, s. 21; but if the ground upon which his removal is applied for involves an investigation of accounts, such investigation must be made in a regular suit under s. 19, previous to such summary application under s. 21. **MUDHOOSODH SINGH v. MARSH**, 244

19. *Power of Judge to order accounts from Guardian.*—Discharged guardian.—A Judge has no power under s. 16 or 21, Act XL of 1858, to order a discharged guardian of a minor to file his account. S. 21 refers to the procedure as between discharged guardians and their successors, and not to a case where the contest is between the owner of the estate and a discharged guardian. **DOOLUN SINGH v. NARAIN SINGH** 4 W. R., 13

20. *Procedure—Objections to certificate.*—A certificate under Act XL of 1858 having been granted to a party as guardian of an adopted minor, it was objected that the minor's adoption had not been legal. *Held* that, as there was no doubt of the fact of adoption, whether the certificate was rightly given, and as the objector did not claim to be appointed guardian, he had no *locus standi* to object to the appointment of another person. **KISTO KISHORE ROY v. ISSUR CHUNDER ROY** 15 W. R., 186

1858—XL—concluded.

*Party asserting adversely to minor—Discretion of Court as will is propounded.*—Where an application is made for a certificate under Act XL of 1858, a

ing the existence of any "natural guardian," secretion being left to the Court in such a case. *MA SOONDUREE DOSSEE v. TABA SOONDUREE* 9 W. R., 343

*Security-bond, Or—*

Act XL of 1858 to furnish security; and her, where he has done so and security-bonds been given to him, he can assign them in the Act provided in s. 257 of the Succession Act, *ANAB NATH v. THAKUR DAS* [I. L. R., 5 All., 248]

*Application for*

s. 28 and s. 6—Right of ap-  
I—Creditor—Enquiry.—Only persons who claim

in the proceedings before the Judge, and no it to have his objections gone into. *MELROON v. GIBSON* 12 W. R., 101

s. 29, Jurisdiction—"Civil  
rt."—The Court of the Judicial Commissioner of am is the Civil Court contemplated by s. 29, XL of 1858. *KALBEKA PRESHAD BHUTTA-REJEE v. DRUKHINA KALI DABER*

[W. R., 1864, Mis., 34]

2. *Court of District charge of y Act XL is district.*

[15 W. R., 271]

3. *Estate in terra-*  
s of *Maharajah of Benares*.—An application for certificates under Act XL of 1858 regarding estates ate in the territories of the Maharajah of Benares ould be made in the Court of the Judge of mare. *KUDUM KOONER v. BUDIA SINGH* [N. W., Ed. 1873, 163]

ACT—1859—I—

*See MERCHANT SEAMEN'S ACT.*

III—

*See CANTONMENT MAGISTRATE.*

[4 Bom., A. C., 187  
I. L. R., 9 Bom., 454]

VIII—(Civil Procedure Code, 1859.)

*See CASES UNDER CIVIL PROCEDURE CODE, 1852.*

IX, Decree under—

*See GOVERNMENT OFFICERS, ACTS OF.*  
[5 B. L. R., 312]

s. 20—

*See LIMITATION—STATUTES OF LIMITA-  
TION—IX OF 1859.*

[13 B. L. R., 292  
I. L. R., 13 All., 108]

X—

*See BENGAL RENT ACT, 1869.*

*See EXECUTION OF DECREE—DECREES  
UNDER RENT LAW.*

[I. B. L. R., A. C., 177, 216  
5 B. L. R., 115  
7 W. R., 8]

*See CASES UNDER LIMITATION ACT, XIV  
OF 1859—APPLICATION OF.*

*See REVIEW—ORDERS SUBJECT TO RE-  
VIEW* 3 N. W., 22  
[4 N. W., 171  
12 W. R., 195]

*See WITHDRAWAL FROM SUIT.*

[2 B. L. R., S. N., 11  
10 W. R., 373  
11 W. R., 3  
15 W. R., 280]

I. L. R., 21 Calc., 423, 514

Decision under—

*See CASES UNDER RES JUDICATA—COMPE-  
TENT COURT—REVENUE COURT.*

*See CASES UNDER RES JUDICATA—ESTOP-  
PEL BY JUDGMENT—DECREES IN RENT  
SUITS.*

to destroy those rights. If, therefore, the plaintiff

2. *Date of passing of Act.*—The period of limitation within which a suit might be brought for rent due at the time of the passing of Act X of 1859 must be reckoned from 29th April

**ACT-1859-X—concluded.**

1859 (the date of the passing of the Act), and not from 1st August 1859 (the date on which the Act came into operation). *LAOHIMPAT SING v. MAHOMED MOONEER* . . . *B. L. R., Sup. Vol., 32*  
*[W. R., F. B., 32]*

— s. 77—

See STATUTES, CONSTRUCTION OF.

*[3 N. W., 51]*  
*Agra, F. B., Ed. 1874, 243*

**—XI—**

See CASES UNDER ONUS OF PROOF—SALE FOR ARREARS OF REVENUE.

See CASES UNDER PUBLIC DEMANDS RECOVERY ACT.

See CASES UNDER SALE FOR ARREARS OF REVENUE.

— s. 5—Manager of estate under attachment.—*Sale for arrears of revenue—Portion of estate.*—Act XI of 1859 is, to a great extent, a remedial Act, passed for the benefit of the subject, and in order to relax the stringency of former Statutes, whereby the Crown was empowered to sell estates for non-payment of revenue. S. 5 of the said Act applies to estates which are under attachment issued under Act VIII of 1859, and which are in the hands of a manager appointed on the application of the judgment-debtor for the purpose of liquidating the debts. Such attachments are not superseded by the appointment of such manager. The words "arrears of estates under attachment" apply to cases where a portion only of an estate is under attachment, as well as to cases in which the whole estate has been attached. *BUNWARI LALL SAKU v. MOHABER PERSAD SINGH*  
*[12 B. L. R., 237]*  
*L. R., 1 I. A., 89*

Affirming on appeal the decision of High Court. *MOHABEER PERSAUD SINGH v. COLLECTOR OF TIRHOOT* . . . *13 W. R., 423*

— ss. 5 and 6—Notification of sale, specification of—"Estate," Meaning of.—Under s. 6 of Act XI of 1859, it is not necessary that a notification should specify the owners of an estate or the owners of shares in the estate. *Secretary of State, v. Rashbehary Mookerjee, I. L. R., 9 Calc., 591*, followed. All that is necessary under that section is that the notification should specify the estate or shares in the estate to be sold, and in selling a share in an estate it is unnecessary to specify the shares or mouzahs of which that share is composed. The word "estate," as there used, ordinarily means "mehal," but the term also applies to a portion of a mehal with regard to which a separate account has been opened, but not to an undivided portion of a mehal as to which separate accounts are not kept. *RAM NARAIN KOER v. MAHABER PERSHAD SINGH.*

*[I. L. R., 13 Calc., 203]*

— s. 8—

See CONTRACT ACT, ss. 69 AND 70.

*[I. L. R., 12 Calc., 213]*

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

*[I. L. R., 14 Calc., 809]*

**ACT-1859-XI—continued.**

— ss. 10 and 11—

See CO-SHARERS—SUITS WITH RESPECT TO JOINT PROPERTY—POSSESSION.  
*21 W. R., 38*

— ss. 13, 14—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.  
*[I. L. R., 15 Calc., 546]*

— s. 31—

See LIMITATION ACT, 1877, s. 10.  
*[I. L. R., 13 Calc., 234]*

See LIMITATION ACT, 1877, ART. 120.  
*[I. L. R., 20 Calc., 51]*

— s. 33—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

*[I. L. R., 25 Calc., 876]*

See LIMITATION ACT, 1877, ART. 95 (1871, ART. 95) *I. L. R., 3 Calc., 300*

See RIGHT OF SUIT—ROAD AND OTHER CESSSES, SALE FOR ARREARS OF.  
*[I. L. R., 25 Calc., 85]*

1. ——— Suit for damages.—

S. 33, Act XI of 1859, contemplates an action against the individual wrong-doer, irrespective of Government and co-parceners. *GUNGA NARAIN BOSE v. CORNELL*  
*[10 W. R., 442]*

2. ——— Receipt of sale-pro-

ceeds.—The receipt by a decree-holder of a portion of the surplus sale-proceeds lying in deposit in a Collector's Court without opposition on the part of the judgment-debtor is not such a receipt as is contemplated by s. 33, Act XI of 1859. *MOHABEER PERSHAD SINGH v. COLLECTOR OF TIRHOOT* . . . *13 W. R., 423*

— s. 34.—Public Demands Recovery Act (Bengal Act VII of 1880), ss. 2 and 20—Limitation.—S. 2 of the Public Demands Recovery Act (Bengal Act VII of 1880) does not make the provision of limitation in s. 34 of Act XI of 1859 applicable to the execution of a decree annulling a sale under s. 20 of Bengal Act VII of 1880. *MAHOMED ABDUL HYE v. GAJRAJ SAHAI*  
*[I. L. R., 25 Calc., 283]*

— s. 36—

See CASES UNDER BENAMI TRANSACTION—CERTIFIED PURCHASERS—ACT XI OF 1859, s. 36.

— s. 37—

See ASSAM LAND AND REVENUE REGULATION, s. 65. *I. L. R., 28 Calc., 194*

See GHATWALI TENURE.

*[B. L. R., Sup. Vol., 559]*  
*11 B. L. R., 71*

*14 Moore's I. A., 247*

See PARTIES—PARTIES TO SUITS PURCHASERS . . . *I. L. R., 24 Calc., 334*

*[1 C. W. N., 314]*  
*2 C. W. N., 229*

**ACT-1859-XI-concluded.**

See CASES UNDER SALE FOR ARREARS OF  
REVENUE-INCUMBRANCES-ACT XI OF  
1859.

See CASES UNDER SALE FOR ARREARS OF  
REVENUE-PROTECTED TENURES.

"Settlement."—In Act XI of  
1859, s. 37, the word "settlement" refers not to the  
permanent settlement, but to the settlement which  
took place after resumption by Government of the  
lands previously held as *lakbiraj*. *RAJ CHUNDER  
CHOWDHRY v. BUSHNER MAHOMED* 24 W. R., 476

**s. 39—**

See EVIDENCE-CIVIL CASES-MISCELLA-  
NEOUS DOCUMENTS-REGISTERS.

[I. L. R., 9 Calc., 116

**s. 54—**

See ABATEMENT OF RENT.

[I. L. R., 21 Calc., 1005

L. R., 21 I. A., 118

**XIII—**

See COMPENSATION-CRIMINAL CASES-TO  
ACCUSED ON DISMISSAL OF COMPLAINT.

[4 Mad., Ap., 68

See JURISDICTION OF CRIMINAL COURT-  
OFFENCES COMMITTED ONLY PARTLY IN  
ONE DISTRICT-CRIMINAL BREACH OF  
CONTRACT . I. L. R., 7 Mad., 354

See MAGISTRATE, JURISDICTION OF-  
SPECIAL ACTS-MADRAS ACT III OF 1865.

[4 Mad., Ap., 64

See WARRANT OF ARREST-CRIMINAL  
CASES.

[I. L. R., 20 Mad., 235, 457

I. L. R., 20 All., 124

1859, means "Presidency Magistrate." *LAL MOHAN  
CHOWHRY v. HARI CHARAN DAS BAIRAGI*

[I. L. R., 25 Calc., 637

**s. 2—**

See CONVICTION . . . 4 Bom., Cr., 27

See SENTENCE-IMPRISONMENT-IMPRISONMENT  
GENERALLY 6 Mad., Ap., 24

4 Bom., Cr., 37

s. 2 to recover an advance made to a labourer. *IN RE  
KITTU* . . . [I. L. R., 11 Mad., 332

**2.**

*Jurisdiction—*

*Breach of contract to labour in foreign territory.*

**ACT-1859-XIII-continued.**

—V, having received an advance of money from G,  
contracted to labour for him in foreign territory.  
Having broken the contract, V was prosecuted under  
Act XIII of 1859, ordered to repay, and sentenced to  
imprisonment in default.—*Held*, that the order was  
illegal. *GREGORY v. VADAKASI KANGANI*

[I. L. R., 10 Mad., 21

3. ——— *Bricklayer-Workman-Contractor, Liability of.*—A person whose ordinary business was that of a contracting bricklayer, and who did not himself work, received an advance, contracted to get certain earthwork done on a race-course and committed a breach of contract. *Held* that he was not an artificer, workman, or labourer within the meaning of Act XIII of 1859. *GILBY v. SAKHU PILLAI*

[I. L. R., 7 Mad., 100

4. ——— *Butcher-Supplying skins by contract.*—A butcher contracting to supply skins is not within Act XIII of 1859. *ANONYMOUS*

[7 Mad., Ap., 13

5. ——— *Coolies-Contract for coolies to work for specified time, Breach of.*—Where a contract was made by the defendant that a number of coolies should be brought by him to an estate, and remain at work on the estate for a specified time, and there had been a breach of the contract.—*Held* that the case was within s. 2 of Act XIII of 1859. *ANONYMOUS* . . . 3 Mad., Ap., 25

6. ——— *Advances to coolies in Assam.*—Coolies in Assam who have received advances in contemplation of work to be done may be proceeded against under Act XIII of 1859. *QUEEN v. GAUR GORAN* . . . 8 W. R., Cr., 6

7. ——— *Mahout or elephant-driver.*—A mahout or elephant-driver does not come within the provisions of Act XIII of 1859. *MUNI CHUNDRA v. HARIRAM AHOM* . . . 8 C. L. R., 254

8. ——— *Sub-contractor-Liability for breach of contract for work undertaken upon an advance-Workman.*—The petitioner, who as sub-contractor had engaged to do certain work for which he was paid an advance, but did not himself work, 2 of Act contract, ianction

*Held* that he was not an artificer, workman, or labourer within the meaning of s. 2 of Act XIII of 1859. The conviction and sentence were accordingly set aside. *IN RE THE PETITION OF BALKISHA SHAHJIRAM* . . . I. L. R., 10 Bom., 96

9. ——— and Preamble—*Wilful breach of contract-Construction of Statute-Preamble, Construction of-Summary trial-Criminal Procedure Code, s. 260.*—Offences under s. 2 of Act XIII of 1859 are triable summarily under s. 260 of the Criminal Procedure Code. The offence made punishable by s. 2 of Act XIII of 1859 is the wilful and without lawful and reasonable excuse neglecting or refusing to perform the contract entered into by persons whom the Act concerns. Notwithstanding the preamble of the Act, it is not necessary to prove that a breach of contract is fraudulent in

**ACT-1859-XIII-continued.**

order to sustain a conviction under s. 2. *Taradoss Bhuttacharjee v. Bhaloo Sheikh*, 8 W. R., Cr., 69, dissented from. Where the enacting sections of a statute are clear, the terms of the preamble cannot be called in aid to restrict their operation, or to cut them down. *QUEEN-EMPRESS v. INDARJIT*

[I. L. R., 11 All., 262]

10. ——— Domestic servants—*Artificers—Workmen—Labourers*.—Act XIII of 1859 does not apply to contracts for a "chakri," domestic or personal service, but to contracts to serve as artificer, workman, or labourer. *IN THE MATTER OF DOMESTIC SERVANTS* . . . 2 B. L. R., A. Cr., 32  
*QUEEN v. SOOBHOI* . . . 12 W. R., Cr., 26

11. ——— Breach of contract to supply wood.—A breach of contract to supply wood does not fall within the purview of Act XIII of 1859. *IN THE CASE OF THE UPPER ASSAM TEA COMPANY v. THOPOOR* . . . 4 B. L. R., Ap., 1

12. ——— Service for agricultural and other purposes.—*Breach of contract by artificers, workmen, and labourers*.—Act XIII of 1859 (to provide for the punishment of breaches of contract by artificers, workmen, and labourers in certain cases, extended to all the collectorates of the Bombay Presidency by notification of the Government of Bombay dated 10th of May 1860) does not apply to a contract whereby a person, in consideration of receiving Rs45, bound himself to another to render service for "agricultural and other purposes" for the period of one year. *EMPRESS v. BHAGABAN BHIVSAN* . . . I. L. R., 7 Bom., 379

13. ——— Labourer in silk factory.—*Breach of contract by labourer*.—Where a labourer contracted with the manager of a silk factory for a money-consideration to work at the factory for four months in a year for a period of three years, and broke the terms of his contract, he was held liable to a prosecution under Act XIII of 1859, and the order of the Magistrate holding that such a contract was an unreasonable one, and therefore one which ought not to be enforced by him, was set aside. *KOONJOBHARRY LALL v. DOOMNEY*. *KOONJOBHARRY LALL v. RUGHONATH DOME* . . . 14 W. R., Cr., 29

See *LYALL & Co. v. RAM CHUNDER BAGDEE*  
[18 W. R., Cr., 53]

14. ——— Non-specification of nature and extent of work.—*Contract to supply labourers and get labour performed*.—A contract to supply labourers and to get labour performed by them, even though the nature and extent of the work are not clearly specified, falls within the provisions of Act XIII of 1859. *ROWSON v. HANAMA MESTRI*  
[I. L. R., 1 Mad., 280]

15. ——— Advance to labourer.—*Breach of contract*.—Act XIII of 1859 relates to fraudulent breaches of contract, and does not apply where an advance has not only been worked off by a labourer, but an actual balance is due to him. *TARADOSS BHUTTACHARJEE v. BHALOO SHEIKH*  
[8 W. R., Cr., 69]

**ACT-1859-XIII-continued.**

16. ——— *Contract to supply labourers*.—A contract, in consideration of an advance of money to supply labourers to do certain work on an estate, falls within the scope of Act XIII of 1859, and the fact that such contract contains covenants to pay penalties in default of supplying the labourers, and to repay the advance, if necessary, by personal labour for five years, does not take the contract out of the operation of the Act, so as to make illegal an order directing the contractor to be imprisoned for failure to comply with an order to repay the advance. *RĀMĀSĀMI v. KĀNDASĀMI*  
[I. L. R., 8 Mad., 379]

17. ——— *Contract to work until repayment of advance made*.—Defendant, in consideration of an advance of money received from complainant, bound himself to work for complainant until the repayment of the sum advanced. For breach of this contract the complainant proceeded against the defendant under Act XIII of 1859. *Held* that the contract was not within the Act. *ANONYMOUS* . . . 7 Mad., Ap., 31

18. ——— *Money advanced on account of work to be performed—Loan on condition that the workman should enter into a contract of service*.—A workman agreed in writing to work for the proprietors of an estate for four years and one month, from 1st March 1899 to 31st March 1903, for an initial advance of one rupee which was not to be repaid till after the expiration of the agreement. The same person subsequently obtained an advance of Rs10, to be re-imbursed by a monthly deduction of one rupee from his wages. He worked from 1st March 1899 till 18th September 1899 when he ceased to work, leaving in all a sum of Rs5 to be accounted for in the adjustment of the total advance. He was subsequently charged and convicted under s. 2 of the Criminal Breach of Contract Act XIII of 1859:—*Held* that the initial advance of one rupee was not money advanced on account of work to be performed, but rather a loan made without interest on the condition that the workman would enter into a contract of service for the duration of the loan; and that the Criminal Breach of Contract Act, 1859, was inapplicable to this case; that, with reference to the ten rupees to be repaid out of wages, the Act applied, and an order should be made directing the workman to work until the expiration of the term of the contract on account of which this sum had been advanced. *TANGI JOGHI v. HALL* . . . I. L. R., 23 Mad., 203

19. ——— *Loan—Deduction from wages*.—Having agreed to work for wages in a tannery and received Rs10 from M, his employer, T promised to work off the advance by allowing M to deduct 8 annas a week from his weekly wages. *Held* that the provisions of Act XIII of 1859 were applicable to this contract. *QUEEN v. TALUKANAM*  
[I. L. R., 7 Mad., 131]

20. ——— *Gold and silver given to workman*.—On the construction of s. 2 of Act XIII of 1859,—*Held* that gold and silver money given to an artificer as raw material wherewith to

**ACT-1859-XIII-continued.**

make the article contracted for, is an "advance of money" within the meaning of the section. **ANONYMOUS** . . . . . 6 Mad., Ap., 24

21. ————— *Criminal breach of contract—Labourer—Carrier by boat.—An advance was made under a contract by which the*

22. ————— *Advance of grain and money—Order to repay value of work not performed.—An advance of money and grain having been made to a labourer for work to be done, the labourer failed to*

was illegal. **KONDADU v. RAMUDU**

[I. L. R., 8 Mad., 294]

23. ————— *Working off previous*

of Act XIII of 1859, and because, further, no money in advance was received, the consideration for the agreement to serve being an old debt. **REG. v. JETHYA VALAD VESTYA** . . . . . 9 Bom., 171

24. ————— *Jurisdiction of*

been an advance of money on account of any work,

against him by civil process. **QUEEN-EMPRESS v. RAJAS** . . . . . I. L. R., 18 Bom., 368

25. ————— s. 2—*Limitation of civil claim—Order by the Magistrate for repayment of advances.—In a prosecution for breach of contract under Act XIII of 1859, it appeared that the complainant had advanced certain sums of money to the*

**ACT-1859-XIII-continued.**

accused, but that a suit to recover the same was barred by limitation; and the Magistrate thereupon dismissed the charge:—*Held* that there was no reason why the Magistrate should not have ordered repayment to be made by the accused under s. 2. **QUEEN-EMPRESS v. KONDADA** . . . . . I. L. R., 18 Mad., 347

26. ————— *Advance in consideration of exclusive services until repayment—Masters and workmen—Breach of contract on the part of workmen—"Station."—An employer of workmen residing and carrying on business in the city of Mirzapur, alleging that he had advanced*

had been extended to the "station" of Mirzapur by the Local Government. It appeared that such money was advanced by way of loan, and without any reference to the wages of such workmen or the payment for the work performed by them, and that no deduction

zapur. **IN THE MATTER OF THE PETITION OF RAM PRASAD v. DIRGAPAL** . . . . . I. L. R., 3 All., 744

27. ————— *Enquiry under Act—Breach of contract by artificer.—The enquiry to be made under s. 2 of Act XIII of 1859 is not an enquiry into a offence which may be tried summarily. POLLAED v. MOTHIAL . . . . . I. L. R., 4 Mad., 234*

28. ————— *Imprisonment—Criminal breach of contract—Procedure—Imprisonment.—Where an order has been made by a Magistrate under Act XIII of 1859, s. 2, for the fulfilment of a labour contract, a sentence of imprisonment for disobeying such order without complaint made and without taking statements from the accused, is illegal, although the accused, before the order was made, may have stated their inability to perform the work stipulated for. SRINIVASA v. PONNAMBALAM*

[I. L. R., 5 Mad., 376]

29. ————— *Order of Magistrate for imprisonment for breach of contract—Right of civil suit.—The imprisonment of a defendant by order of the Magistrate under Act XIII of 1859 does not preclude the plaintiff from proceeding by civil suit for recovery of money advanced to the defendant for the performance of work. VERVEDE v. ABDEL GIBI CHINNA SWAMI* . . . . . 2 Mad., 427

30. — *Breach of Cap. 34, breach of 1859, is*

**ACT—1859—XIII—concluded.**

same contract for a further breach for not returning to service. *GRIFFITHS v. TEZIA DOSADH*

[I. L. R., 21 Calc., 252

**31.** ————— *Breach of contract—"Offence," meaning of—Criminal Procedure Code, 1898, ss. 4 and 250.—Compensation for breach of contract.—A mere breach of contract is not, under the first part of s. 2 of Act XIII of 1859, an offence within the meaning of the term in s. 4 of the Code of Criminal Procedure, and no compensation can therefore be legally awarded under s. 250 of the Code in respect of such breach. IN THE MATTER OF THE PETITION OF RAM SARUP BHAKAT*

[4 C. W. N., 253

————— *s. 3 and s. 2, cl. 1—Procedure under, whether summary or not—Criminal Procedure Code (Act V of 1898), s. 370.—In the trial of a case under the Workman's Breach of Contract Act (XIII of 1859), the Magistrate is not bound to frame his record in accordance with the provisions of s. 370 of the Criminal Procedure Code. It is doubtful whether a proceeding under the first clause of s. 2 and under s. 3 of Act XIII of 1859 is a criminal proceeding. There is no offence committed, and there is no accused. The provisions of s. 370 of the Criminal Procedure Code are therefore inapplicable to a case of this nature. AVERAM DAS MOCHI v. ABDUL RAHIM*

I. L. R., 27 Calc., 131

[4 C. W. N., 201

**XIV—**

*See LIMITATION ACT, 1859.*

*See CASES UNDER LIMITATION ACTS IX OF 1871 AND XV OF 1877.*

**XV—**

*See CASES UNDER PATENT.*

**s. 22—**

*See LIMITATION ACT, 1871, ART. 11.*

[I. L. R., 3 Calc., 17

*See TRANSFER OF CIVIL CASE—GENERAL CASES*

I. L. R., 5 All., 371

**XXIV—**

*See MADRAS POLICE ACT.*

**1860—XXII—**

*See CHITTAGONG HILL TRACTS ACT.*

**XXVII—**

*See CASES UNDER APPEAL—CERTIFICATE OF ADMINISTRATION.*

*See CASES UNDER CERTIFICATE OF ADMINISTRATION—ACT XXVII OF 1860.*

*See LETTERS OF ADMINISTRATION.*

[Bourke Test, 6

*See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION.*

[2 B. L. R., A. Cr., 27

11 W. R., Cr., 24

25 W. R., Cr., 16

**ACT—1860—XXVII—concluded.**

*\*See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF . Bourke Test, 3*

[I. L. R., 6 Bom., 452, 703

*See REPRESENTATIVE OF DECEASED PERSON*

I. L. R., 18 Mad., 405

*See REVIEW—ORDERS SUBJECT TO REVIEW*

[I. L. R., 1 Calc., 101

5 Mad., 417

I. L. R., 1 All., 287

*See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS*

I. L. R., 14 Mad., 473

*See RIGHT OF SUIT—ORDERS, SUITS TO SET ASIDE*

5 Mad., 283

[22 W. R., 312

*See SUCCESSION ACT, s. 331*

7 Mad., 121

**XXVIII—**

*See MADRAS BOUNDARY MARKS ACT.*

**XXXI—**

*See ARMS ACT.*

**XXXII—**

*See INCOME TAX ACT, 1860.*

*See RIGHT OF SUIT—INCOME TAX.*

[14 W. R., 276

11 W. R., 425

**XXXVI—**

*See STAMP ACT XXXVI OF 1860.*

**s. 13—**

*See STAMP ACT, 1879, s. 34.*

[I. L. R., 14 Mad., 255

**XLII—**

*See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—GENERAL CASES.*

12 B. L. R., 224, 261

[8 W. R., 7

I. L. R., 2 All., 112

**XLV—**

*See PENAL CODE.*

**XLVIII—**

*See POLICE ACT, 1860.*

**LIII, s. 2—**

*See REVIVAL OF SUIT.*

[1 Ind. Jur., O. S., 5

**1861—V—**

*See POLICE ACT, 1861.*

*See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15.*

[10 B. L. R., Ap., 4

**IX—**

*See APPEAL—ACTS—ACT IX OF 1861.*

[17 W. R., 551

*See CUSTODY OF CHILDREN.*

[10 B. L. R., 125

14 Moore's I. A., 309 : 17 W. R., 77

*See GUARDIAN—LIABILITY OF GUARDIANS.*

[I. L. R., 5 All., 248

**ACT-1861-IX—concluded.**

See MAHOMEDAN LAW—GUARDIAN.

[I. L. R., 8 All., 322]

See CASES UNDER MINOR—CUSTODY OF MINORS

See MURDER, JURISDICTION OF.

[I. L. R., 9 Mad., 31]

**X—**

See OATH . . . 4 Mad., Ap, 3

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES . 1 B. L. R., A. C., 136

[10 W. R., 233]

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**XXIII—**

See CIVIL PROCEDURE CODE, 1882 (1877).

s. 10—

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—DECREES.

[I. L. R., 18 Calc., 164]

**XXV—**

See CRIMINAL PROCEDURE CODE.

1862—IV, s. 10—

See BANK OF BENGAL.

[7 B. L. R., 653; 16 W. R., 203]

**VIII, s. 4—**

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RIVERS.

[7 W. R., 168]

**X—**

See CASES UNDER STAMP ACT, X OF 1862.

—XV, s. 1—

See SENTENCE—TRANSPORTATION.

[B. L. R., Sup. Vol., 869]

**XVII—**

See EXTRADITION . . . 8 Bom., Cr, 13

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[1 Bom., 100]

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[I. L. R., 2 Calc., 225]

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See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.

s. 27—

[6 Bom., Cr, 76]

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s. 35—

See JURISDICTION OF CRIMINAL COURT—OFFENCE COMMITTED DURING JOURNEY . . . 1 Mad., 183

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[1 B. L. R., O. Cr., 1, 15  
15 W. R., Cr., 71 note]

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[1 Ind. Jur., O. S. 49]

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See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I. L. R., 3 Calc., 522

**XIV—**

See APPEAL—ACTS—ACT XIV OF 1863.

[2 Agra, 339]

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See JURISDICTION OF REVENUE COURT—N. W. P. RENT AND REVENUE CASES.

[1 N. W., Pt. 13, p. 211, Ed. 1873, 334]

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2 N. W., 33

5 N. W., 40, 238

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See PARTIES—PARTIES TO SUITS—CO-SHARERS . . . 2 Agra, 239

See PARTIES—PARTIES TO SUITS—RENT, SUITS FOR . . . 2 Agra, Pt. II, 165

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—XIX—(Partition of Revenue Paying Estates)—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.

[4 N. W., 7, 169]

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See JURISDICTION OF REVENUE COURT—N. W. P. RENT AND REVENUE CASES.

[2 Agra, 241]

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[3 Agra, 238]

1 N. W., 81, Ed. 1873, 134

s. 8—

See APPEAL—ACTS—ACT XIX OF 1863.

[1 Agra, Rev., 44]

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[I. L. R., 18 Calc., 382  
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See HINDU LAW—ENDOWMENT—SUCCESSION  
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GENERAL JURISDICTION.

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25 W. R., 542See RIGHT OF SUIT—CHARITIES AND  
TRUSTS . . . I. L. R., 8 Calc., 32[I. L. R., 11 Calc., 33  
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CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 10 Mad., 98, 98 note

See VALUATION OF SUIT—SUITS.

[I. L. R., 11 Mad., 143, 149 note

1. ——— Suit for declaration of trusts of a temple.—In bringing a suit under Act XX of 1863 it is not necessary to show that the temple was one which was formerly under control of the Board of Revenue. The Act applies to property in Calcutta. *GANES SINGH v. RAMGOPAL SINGH* . . . 5 B. L. R., Ap., 55

2. ——— Suit to establish right to share in management of temple.—The suits referred to in Act XX of 1863, as needing the authority of the Court for their jurisdiction, are solely suits charging trustees, managers, or committees

**ACT-1863-XX—continued.**

with misfeasance, malversation of the temple property, or neglect of duty. There is nothing in the Act to oust the jurisdiction of the ordinary Courts over suits to establish a right to share in the management. *AGRI SARMA EMBRANDRI v. VISTNU EMBRANDRI. JANADHANA EMBRANDRI v. PALA BUL KASAVA EMBRANDRI* . . . 3 Mad., 198

3. ——— Right of person interested to sue for misfeasance by managers, etc.—*Public endowment.*—In the case of a public endowment transferred to trustees, managers, or superintendents of such lands under Act XX of 1863, any person or persons interested (and the interest need not be a pecuniary one) in the religious establishment, in its worship or service, or in its trusts, has a right of suit, after leave obtained from a Civil Court against such trustees, etc., for misfeasance, or breach of trust, or neglect of duty. *KUNDEZ FATIMA v. SAHEBA JAN* . . . 8 W. R., 313

4. ——— Suit for removal of mohunt and appointment of another.—A suit for the removal of the present mohunt of a religious endowment and for the appointment of the petitioner in his place is not of such a nature as is contemplated by Act XX of 1863. *KISHORE BOY MOHUNT v. KALEE CHURN GREE* . . . 22 W. R., 364

5. ——— Suit to compel heir of manager to make good deficiency.—*Leave of Court.*—Act XX of 1863 does not apply to a suit brought by the dharmakarta of a temple and one of its worshippers to compel the defendant, as heir of the late manager, to make good, out of the property inherited by him, the deficiency in the devasthanam funds caused by breach of trust and misappropriation by the late manager. The leave of the Civil Court for the institution of such a suit is not necessary, and the suit is maintainable. The right of instituting such suits is not a privilege accorded by Act XX of 1863, but a pre-existing right. *JAYANGARU LATARU v. DURMA DOSSJI* . . . 4 Mad., 2

6. ——— Suit to eject Dharmakarta or agents from temple.—*Right of Government to divest itself of power of interfering with appointment.*—*Mad. Reg. VII of 1817.*—Plaintiffs, members of the committee appointed under Act XX of 1863, sued to eject defendants (the dharmakarta and his agents) from the possession and management of the temple dedicated to Sri Viraragava Swami at Trivellore and to establish their (plaintiffs') right to the possession and control of the said temple. Defendants denied the right of the plaintiffs to exercise any control whatever over the temple. This right depended upon whether, at the period of the passing of Act XX of 1863, the nomination vested in, was exercised by, or was subject to the confirmation of, the Government, or any public officer. It was admitted that in 1842 the Board of Revenue did, so far as it could, divest itself of all right to interfere with the appointment of a dharmakarta, but it was contended for the plaintiffs that it was not in the power of the Board of Revenue so to divest itself of the duties imposed upon it by Regulation VII of 1817. *Held* that, assuming the Board of Revenue

**ACT—1863—XX—continued.**

to have had such a right, there was nothing in Regulation VII of 1817 to prevent them from renouncing that right if they chose. *VENKATESA NAYADU v. SHAGATOFA SHRI SHAGATOFA SWAMI* 7 Mad., 77

[23 W. R., 150]

8. ————— *Madras Regulation VII of 1817, s. 13—Discretionary power of*

*HUSSAIN SAIBA* . . . I. L. R., 17 Mad., 212

9. ————— *Duties and Powers of committee of management—Meetings of committee—Number of members present—Resolution appointing quorum—Resolution by three out of seven—Failure of trustee to submit accounts—*

1895, when the committee also consisted of seven, a meeting was held after due notice to all its members,

not have been necessary in the event of business having been transacted otherwise than at a meeting: *Quare*.—Failure on the part of a trustee to submit accounts to the committee is a breach of one of the most important duties cast upon him by law, and is sufficient to justify his dismissal. *ANANTHARAYANA AYYAR v. KUTTALAM PILLAI* . I. L. R., 23 Mad., 481

1. ————— s. 3—Power of committee

**ACT—1863—XX—continued.**

suit; but such power can only be exercised on good and sufficient grounds. *CHINNA RANGAIYANGAR v. SUBRAYA MUDALI* . . . 3 Mad., 334

2. ————— *Removal by Committee of Superintendent of Pagoda—Ground for removal*.—Where there were not good and sufficient grounds for the removal from office of the defendants, superintendents of a pagoda, within s. 3 of Act XX of 1863, by the committee appointed under that Act, the High Court confirmed the decree of the Civil Judge dismissing a suit brought by the plain-

ing to it. *CHINNA RANGAIYANGAR v. SUBRAYA MUDALI* . . . 3 Mad., 338

lish their right of control under s. 3 of the Act as when it is sought to enforce such control against the officers of the temple subordinate to them. *VENKATASA NAIDU v. SADAGOPASWA IYER* [4 Mad., 404

4. ————— ss. 3, 4, 11, 12—*Suit by members of a temple committee—Burden of proof—Form of decree*.—Suit by the members of a temple committee appointed under Act XX of 1863 against one claiming to be the hereditary trustee of a Hindu temple for

by the Government, as also were his successors in the office of trustee, of whom all were not members of his family:—*Held* (1) the plaintiffs were

[I. L. R., 13 Mad., 366]

1. ————— s. 4—Power of committee to call for accounts from trustees of temple.—A District Committee appointed under Act XX of 1863 has no right to call for accounts from trustees of temples which are within s. 4 of the Act. *VENKATABALA KRISHNA CHETTIYAR v. KALITHANABAKAIYANGAR* . . . 5 Mad., 48

*RAMJENGAR alias RAMANUGA CHARIYAR v. GUANASAMBANDA PANDARASANNADA*

[6 Mad., 63

**ACT-1863-XX—continued.**

2. ———— **Right to restoration of endowment of which plaintiff had been deprived under Mad. Reg. VII of 1817.**—The plaintiff, claiming to be the owner of a muth and certain land attached to it under a grant from the Rajah of Tanjore, from the possession of which he had been ejected by the Collector of Tanjore in 1856 on charges of breach of trust and other misconduct, sued to recover the possession of the lands and mesne profits. The Civil Judge found that the grant was for the performance of religious ceremonies and pious observances only, and that the plaintiff had led a vicious life and been guilty of malversation in his office, and, being of opinion that the plaintiff had been properly deprived of the lands belonging to the muth, under Madras Regulation VII of 1817, dismissed the suit. *Held* that, under s. 4 of Act XX of 1863, the plaintiff became entitled, on the passing of the Act, to the restoration of the endowment. **JESU GHEBI GOSAMIER v. COLLECTOR OF TANJORE**

[5 Mad., 334]

3. ———— **Right to control affairs of temple—Transfer of property—Form of order—Right of suit.**—In 1849, the Board of Revenue, acting under Bengal Regulation XIX of 1810, interfered in the management of the affairs of a temple. In a suit relating to the affairs of the temple instituted in 1878, it did not appear whether any transfer of property had been made under s. 4 of Act XX of 1863, but it did appear that, in 1865, the Judge of Patna had appointed a manager of the temple. *Held* that the right of the Government officers to control the affairs of the temple had been sufficiently proved. **DHUBBUN SING v. KISHEN SINGH**

[I L. R., 1 Calc., 767; 9 C. L. R., 410]

ss. 4 and 5—**Power to appoint trustees on vacancy in office—Malabar Decasams—Jurisdiction of District Courts.**—The District Courts have no power to appoint trustees under s. 5 of Act XX of 1863 upon a vacancy occurring in the office of trustee, unless property has been actually transferred to the former trustee under the provisions of s. 4. **ITTUNI PANIKKAR v. IRANI NAMBU-DRIPAD**

I L. R., 3 Mad., 401

s. 5—**Appointment of trustee to religious endowment—Jurisdiction of District Judge—Collector as Agent of Court of Wards.**—Where a hereditary trustee of a temple died, and application was made by the Collector as agent of the Court of Wards, in whom the management of deceased's estates during the minority of the sons of the deceased had vested, to be appointed trustee on behalf of the said sons:—*Held* that the case fell within s. 5 of Act XX of 1863, and that the Court (the District Judge) had jurisdiction to make the appointment. **SOMASUNDARA MEDAIAR v. VITHILINGA MEDAIAR**

I L. R., 19 Mad., 235

s. 7—**Power of appointment in committee.**—The defendant was sued as the trustee of a pagoda to recover a certain sum of money for which he had not accounted. The defendant was dismissed by three members of the district committee, which consisted of six members, the other three members refusing to sign the order of dismissal.

**ACT-1863-XX—continued.**

The plaintiffs were appointed trustees in place of the defendant by the members who dismissed the defendant. *Held* that the appointment of the plaintiffs was invalid under s. 7, Act XX of 1863, and that they were not entitled to sue the defendant. **PANDURUNGY ANNACHARIYAR v. IYATHORY MEDAIAR**

[4 Mad., 443]

s. 8—**Resignation of member of a committee of a temple.**—A member of a committee of a temple, appointed under s. 8 of Act XX of 1863, can retire from his office of his own will. **TIRUVENGADA v. RANGATTANGAR. GOPAL RAM v. RANGATTANGAR**

I L. R., 6 Mad., 114

s. 10—**Powers of Judge to appoint new committee of an endowment when the memberships are all vacant.**—Under s. 10, Act XX of 1863, the powers of a Judge are not confined to filling up vacancies in the memberships of committee of a religious endowment, but the Judge may appoint a new committee when the memberships of the committee are all vacant. **MAHOMED ATHOR v. SULTAN KHAN**

4 C. W. N., 527

ss. 11 and 12 and s. 3—**Suit by Manager for rent on muchalkas granted by the committee of religious institution—Right of suit.**—Where the committee of a religious institution governed by Act XX of 1863 obtained muchalkas in its own name from the tenants of land belonging to the institution instead of in the name of its manager:—*Held*, with reference to the provisions of the Act, that this fact constituted a mere irregularity, and that a suit brought by the manager on such muchalkas was maintainable. **KALYANARAMAYYAR v. MUSTAK SHAH SAHEB**

I L. R., 19 Mad., 395

1. ———— s. 14—**Suit for wrongful dismissal from temple by officer.**—A suit by an officer of a mosque, temple, or religious establishment for wrongful dismissal from his office is not a suit for misfeasance within the meaning of s. 14, Act XX of 1863. **AMIN SAHEB v. IBRAHIM SAHEB**

[4 Mad., 112]

2. ———— **Right to sue for removal of trustees—Religious endowment.**—S. 14 of Act XX of 1863 is sufficiently general in its terms to empower any person interested in any temple, mosque, or religious endowment, or in the performance of the trusts relating thereto, to sue the trustee, manager, or superintendent, or the member of a committee appointed under the Act for misfeasance, and also to empower the Court to order the removal of a trustee, etc. The tomb of a reputed saint became a place of pilgrimage, and an endowment was made for the maintenance of the shrine and for the performances of certain religious ceremonies. There was a practice on the part of the proprietors and the managers of the institution to divide among themselves the residue of the income and to dispose by way of sale or mortgage of the share enjoyed by them. *Held* that this was a religious institution within the meaning of Act XX of 1863. The 14th section of the Act empowers the Civil Court to remove trustees for misfeasance, etc., and it does not recognize any difference in respect of

**ACT—1863—XX—continued.**

trustees, whether hereditary or selected. **FAKURUDIN SAHIB v. ACKERI SAHIB** I. L. R., 2 Mad., 197

3. — *Suit to remove trustee of religious endowment though unlawfully appointed.*—Act XX of 1863 is applicable to an endowment whereby certain shops have been purchased by subscription and dedicated to the support of a mosque, and is also applicable in respect of a person in possession of the endowed property and professing to act as mutawalli, even though he may not have been lawfully appointed. **Dhurrum Sing v. Kissen Sing**, I. L. R., 7 Cal., 767, and **Sheoratan Kuari v. Ram Pargash**, I. L. R., 18 All., 227, referred to **MUHAMMAD SIRAJUL HAQ v. IMAM-UD-DIN** I. L. R., 19 All., 104

4. — *Suit to restrain manager from allowing property to be removed.*—

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ing with cases against trustees of religious endowments, it gives special facilities for suits in the principal Civil Court of the district by any of the persons interested in those endowments. *Quare*—Whether, considering the provisions of s. 30 of the Civil Procedure Code, the retention of s. 14 of Act XX of 1863 is at all necessary? An order under s. 14, Act XX of 1863, should be mandatory, and not prohibitory. Where a sacred book was kept at a temple, and was an object of veneration to the members of the sect entitled to worship there: *Held* that a suit would lie under s. 14 of Act XX of 1863 by some of the persons interested in the temple, to restrain the superintendent from removing the book to another place, and that he should be directed to retain it as a portion of the furniture of the temple. **DHURRUM SINGH v. KISHEN SINGH**

[I. L. R., 7 Cal., 767: 9 C. L. R., 410]

5. — *Trustee of Temple, qualifications of.—Duty of Committee.—Misfeasance.*—Act XX of 1863 does not require that a per-

son who is a trustee of a temple does not amount to an act of misfeasance, neglect, or breach of trust on the part of the committee within the meaning of s. 14 of the Act. **GANDAVATHARA AYTANGAR v. DEVANAYAGA MUDALI** I. L. R., 7 Mad., 232

the Government; and s. 14 of that Act, although in its terms it appears to be more general than the earlier sections, applies in fact only to the same religious endowments to which the rest of the Act applies. **Panch Cowrie Mull v. Chunnoo Lall**, I. L. R., 3 Cal., 563: 2 C. L. R., 121, cited and followed. **KALI CHURN GIRI v. GOLABI**, 2 C. L. R., 138

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7. — *Suit to recover land on behalf of temple.*—The provisions of s. 14 of Act XX of 1863 (*Religious Endowments Act*) do

defendants (the managers of the temple) had forged documents and usurped temple property, without any prayer for the removal of the managers, or for damages, or for a decree for specific performance of any act by the managers, is not a suit for which a special jurisdiction is provided by the Act. **MAHALINGA RAU v. VENCORA GHOSAM** I. L. R., 4 Mad., 157

8. — *Suit by persons*

to show that there are any special funds constituting an endowment of the institution. If it be proved that the ceremonies in question have been conducted

guilty of neglect of duty rendering him liable to a suit under s. 14 of the Act. Where it has been usual for the trustee to celebrate festivals with the aid of voluntary contributions, it is a breach of duty on the part of the trustee to refuse to celebrate them with out adequate reasons if funds are available, and the trustee

**ACT-1863-XX—continued.**

cannot be called upon to decide questions of ritual and worship unconnected with civil rights, it is perfectly competent for them to adjudicate upon such questions also when the adjudication is necessary for the determination of civil rights. *Amin Sahib v. Ibram Sahib, 4 Mad., 112*, explained. *ELAYALWAR REDDIAR v. NAMBERUMAL CHETTIAR*

[I. L. R., 23 Mad., 298]

9. ———— **Trustee, manager, or superintendent of mosque—Application of Act.**—The words “trustee, manager, or superintendent of a mosque,” etc., mentioned in Act XX of 1863, mean the trustee, manager, or superintendent of a mosque, etc., to which the provisions of the Act are applicable, not the trustee, etc., of any mosque. And such persons are those to whom the provisions of Regulation XIX of 1810 were applicable. The mosques, etc., to which the provisions of that Regulation were applicable, were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals; and the mosques, etc., to which the provisions of Act XX of 1863 apply are, not any mosques, etc., but any mosques for the support of which endowments in land have been made by the Government or private individuals. *JAN ALI v. RAM NATH MUNDUL* . . . I. L. R., 8 Calc., 32 [9 C. L. R., 433.]

10. ———— **Suit by committee against manager for misappropriation—Jurisdiction of Civil Court—Leave to sue.**—A committee appointed under Act XX of 1863 may, without leave of the Court, previously obtained, sue their manager, or superintendent, for damages for misappropriation and for an injunction. The provisions of Act XX of 1863, s. 14, do not apply to such suits by the committee themselves. *PUDOLAH ROY v. RAMGOPAL CHATTERJEE* . . . I. L. R., 9 Calc., 133 [11 C. L. R., 333.]

11. ———— **Suit against dismissed trustee to recover temple property.**—A suit by the trustees to recover the property of a temple from an ex-trustee who has been properly dismissed from his office by the temple committee is not governed by s. 14 of Act XX of 1863. *VERASAM NAYADU v. SUBBA RAM* . . . I. L. R., 6 Mad., 54

12. ———— **Hereditary trusteeship—Suspension from trusteeship and right of puja—Maintenance in office on terms.**—Suit by certain dikshadars or hereditary trustees of the Chitambaram temple against others of the dikshadars praying for their removal from office and for a money decree alleging that they had been jointly guilty of misconduct in respect of temple property in their custody and had obstructed the repair of certain shrines. The District Judge passed a decree suspending some of the defendants from the office of trustee and the right of puja for a period which was not defined; he also passed a decree for the money claimed:—*Held* that the operation of Act XX of 1863 was not excluded by the admission that the trusteeship was hereditary in certain families; and that the District Judge had jurisdiction under Act XX of 1863 to deprive the defendants of the right of puja. *Held*,

**ACT-1863-XX—continued.**

further, on the evidence that the defendants merited the punishment which had been inflicted on them. Decreed that the suspension of the defendants be withdrawn on the terms that they file an undertaking with two sureties that they would restore certain property belonging to the temple now missing, and that they would duly conform to the decision of the majority of dikshadars as to the management of temple affairs, etc. *NATESA v. GANAPATHI*

[I. L. R., 14 Mad., 103]

13. ———— **Suit to carry out endowment.**—In a suit by the mutwalli of a large Mahomedan establishment, acting on behalf of the Mahomedans of the neighbourhood, to secure the performance of trusts of a deed of appropriation by a Mahomedan, the plaintiff was held, with reference to the words of ss. 14 and 15, Act XX of 1863, to be a person interested in the preservation of the trust, and a proper person to bring the suit. He was not required under those sections to have any interest in the trust, direct or immediate, or any share in the management of the property. *DOYAL CHUND MULLICK v. KERAMUT ALI*

[12 W. R., 382]

14. ———— **Religious endowment—Applicability of the Act—Madras Regulation VII of 1817.**—In a suit brought with the leave of the District Court under Act XX of 1863, to remove the trustees of a Hindu temple, it did not appear that the trustees were nominated by or subject to the confirmation of the Government or any public officer:—*Held* that Act XX of 1863 was not applicable to the temple unless it was admitted or proved by evidence that the endowment was one which would have fallen under the provisions of Regulation VII of 1817. *MUTHU v. GANGATHARA* . I. L. R., 17 Mad., 95

15. ———— **Madras Regulation VII of 1817—Joinder of purchasers in a suit against trustee.**—A temple having been endowed with immoveable property after the passing of Madras Regulation VII of 1817 and before the Religious Endowments Act (XX of 1863), and the trustee having without authority sold the same, a suit was instituted under Act XX of 1863 against the trustee and the purchasers of the property, to annul the sales and to declare the right of the temple thereto:—*Held* (1) that a transferee of trust property, under a transaction which amounts to a breach of trust on the part of the trustee of the institution, cannot be proceeded against under the provisions of the Religious Endowments Act, 1863; and (2) that the trustee of a public religious institution can be sued under the provisions of the Religious Endowments Act, 1863, notwithstanding the fact that the institution came into existence after Regulation VII of 1817 was passed. *SIVAYYA v. RAM REDDI*

[I. L. R., 22 Mad., 223]

16. ———— **Endowment—Endowment for benefit of family idol—Suit to remove shebait from office—Arbitration, Reference to—Bengal Regulation XIX of 1810.**—Act XX of 1863 does not apply to an endowment which is not a public one, but which is made for the benefit of an ancestral family idol. Two plaintiffs, members of a

**ACT-1863-XX—continued.**

Hindu family, applied for and (in the presence of the defendants) obtained leave to institute a suit against the defendants, who were the shebais of a certain idol, for the purpose of having them removed from their public worship. After issues had been framed, the Court of first instance made an order, under s. 16 of

suit, and that the endowment was not made for the benefit of the public. They further in their award laid down certain definite rules according to which the sheba ought to be conducted, and repairs to the

manner, and should execute certain repairs to the temple within six months, and declaring that, if the

that the decree was not one authorised by the terms of s. 14 of the Act:—*Held* that, on the facts as found by the arbitrators, Act XX of 1863 did not apply to the case, and that the compulsory reference to arbitration and the decree made thereon were illegal and void. *Held*, further, that the decree itself was bad on the ground that it was not one coming within the scope of s. 14 of the Act. **PROTAP CHANDRA MISSEY v. BROJONATH MISSEY**

[L. L. R., 19 Cal., 275]

**17. ——— Suspension and dismissal of**

constituted under that Act. Subsequently the com-

trustee refused to acquiesce in the order of suspension and to give up certain records, etc., which he was by that order required to deliver, and denied the

of the committee, the first for damages for the

**ACT-1863-XX—continued.**

suspension, and the second for an injunction to restrain the defendants from interfering with the discharge of his duties as trustee. Both of these suits were dismissed, and the plaintiff preferred appeals to the High Court. In the appeal relating to the claim for an injunction, it was found that no misconduct had

Procedure Code, s. 576, and was heard by him sitting with the two other Judges.—*Held* by COLLINS, C.J., and SHEPARD, J. (DAVIES, J., diss.), that the order of suspension was illegal, and the plaintiff was entitled to substantial damages. *Per* COLLINS, C.J.—The power of suspension by

1. ——— s. 18—Leave to sue—Public and private endowments—Reg. XIX of 1810—Jurisdiction of Civil Court—Suit to remove mutwalli.—A, a Mahomedan lady, executed a wakf

B, and caused the names of herself and B as mutwallis to be substituted in the Collector's register for her own name as owner. On the death of B, A acted as the sole mutwalli. The wakfnama was publicly registered. But though the property was styled "wakf," and A the mutwalli thereof, in all documents connected with the estate, A all along continued to deal with it as absolute proprietress, and the dedication, though made in 185, was never under the control of the Board of Revenue or of local agents. In a suit, which the plaintiffs obtained leave to institute under s. 18 of Act XX of 1863, to remove A from the mutwalliship, on the ground of misfeasance,—*Held*, the wakfnama did not constitute a public religious establishment within the meaning of Act XX of 1863, and that, therefore, the Judge below had no authority to give the plaintiffs, under s. 18, leave to sue; and that his decision was consequently *ultra vires*. S. 18 of Act XX of 1863 applies only to such religious establishments as were under the control or superintendence

**ACT—1863—XX—concluded.**

of the Board of Revenue or of local agents under Regulation XIX of 1810, and were transferred to trustees or managers under s. 4 of the Act. **DELROOS BANOO BEGUM v. ASHGAR ALLY KHAN**  
[15 B. L. R., 167; 23 W. R., 453]

Affirmed by the Privy Council. So far as it held that the endowment created by the document was not of such a public character as would sustain a suit under Act XX of 1863, not dissented from. **ASHGAR ALI v. DELROOS BANOO BEGUM**  
[I. L. R., 3 Calc., 324]

2. ————— *Right of beneficiaries under deed of endowment.*—Act XX of 1863, while it empowers persons to sue whose right to sue, independently of the Act, may be doubtful, does not deprive persons claiming to be beneficiaries under a deed of endowment of the right to sue, which they have independently of the Act, nor does it impose on them the necessity of obtaining the sanction to institute the suit required by s. 18 of the Act. **KULAB HOSSEIN v. MEHRUM BEEBEE**  
[4 N. W., 155]

3. ————— *Suit to have trusts of endowment carried out.*—An appropriator, who sues on the ground that the trust created, so far as it related to the appointment of mutwallis, had never been acted upon, and that the original rights of the appropriator remain, is at liberty to bring such a suit without leave of the Court, under s. 18 of Act XX of 1863. **HIDAITOONNISSA v. ABZUL HOSSEIN**  
[2 N. W., 420]

4. ————— *Sanction to suit—Suit brought different from the suit sanctioned—Rejection of plaint.*—A and B, being worshippers at a Hindu temple, obtained sanction under s. 18 of the Religious Endowments Act to sue for the removal of the managers of the temple on the ground of breach of trust and for damages. A and B sued to remove the managers, but claimed no damages in their plaint:—*Held* that, as the suit instituted differed from the one for which sanction was given, the plaint was properly rejected. **SRINIVASA v. VENKATA** . . . I. L. R., 11 Mad., 148

5. ————— *Order of Civil Court as to title, Effect of.*—*Semble*—That an order of the Civil Court, under s. 18 of Act XX of 1863, refusing leave to institute a suit, and deciding that the temple was governed by a hereditary dharma-karta, and therefore within s. 3 of the Act, was not conclusive upon the question of title between the parties. **VENKATASA NAIKAR v. SRINIVASSA CHARIYAR. SRINIVASSA CHARIYAR v. VENKATASA NAIKAR** . . . 4 Mad., 410

6. ————— *Costs—Suit for benefit of a trust.*—Where a suit under Act XX of 1863 is for the benefit of a trust, and no party to the suit is in fault,—*e.g.*, where the right to the succession is disputed, and it is necessary to secure the property,—the Court may order the costs to be paid out of the estate; but where a person is in fault, no such order ought to be made. **SOOKRAM DASS v. NUND KISHORE DASS** . . . 22 W. R., 21

**ACT—continued.****1863—XXI—**

*See* CASES UNDER RECORDERS ACT.

*See* SMALL CAUSE COURT, RANGOON.  
[6 B. L. R., 196]

*See* SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15 . 6 B. L. R., 180

**XXIII—**

*See* CASES UNDER WASTE LANDS.

**s. 5—**

*See* VALUATION OF SUIT—SUITS—WASTE LANDS, SUIT FOR . . . 7 W. R., 349

**1864—II—**

*See* APPEAL IN CRIMINAL CASES—ACTS—ACT II OF 1864.

[I. L. R., 10 Bom., 258]

*See* JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT THEFT.

[I. L. R., 10 Bom., 258, 263]

*See* LOCAL GOVERNMENT, POWER OF.

[I. L. R., 10 Bom., 274]

*See* TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 10 Bom., 274

**III—**

*See* FOREIGNERS.

[I. L. R., 18 Bom., 636]

*See* WARRANT OF ARREST.

[I. L. R., 18 Bom., 636]

**VI—**

*See* CASES UNDER WHIPPING.

**XI—**

*See* MAHOMEDAN LAW—ENDOWMENT.

[I. L. R., 18 Bom., 401]

*See* MAHOMEDAN LAW—KAZI.

[I. L. R., 1 Bom., 633]

I. L. R., 3 Bom., 72

**XIII—**

*See* CONTRACT—BREACH OF CONTRACT.

[1 Ind. Jur., N. S., 131]

*See* JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—EMIGRANTS.

[4 Mad., Ap., 4]

**XVI—**

*See* REGISTRATION ACTS.

**XVII—**

*See* OFFICIAL TRUSTEE'S ACT.

**XX—**

*See* COSTS—BOMBAY MINORS' ACT.

[I. L. R., 2 Bom., 360]

*See* GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R., 12 Bom., 636

[I. L. R., 20 Bom., 61]

**ACT-1864-XX—concluded.**

See **HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION.**

[I. L. R., 17 Bom., 271

See **MINOR—CASES UNDER BOMBAY MINORS' ACT, 1864.**

ss. 11 and 15—

See **COLLECTOR . I. L. R., 1 Bom., 318**

**XXVI—**

See **CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS.**

s. 9—

See **CONTRACT ACT, s. 27.**  
[14 B. L. R., 76

See **COSTS—SMALL CAUSE COURT SUITS.**

[1 B. L. R., O. C., 27, 68

10 B. L. R., 358

2 Hyde, 237

I. L. R., 4 Bom., 407

**1865-III—**

See **CARRIERS ACT.**

See **CASES UNDER CARRIERS.**

**V—**

See **MARRIAGE ACT (CHRISTIAN), 1865.**  
[6 Mad., Ap., 20

**VII—**

See **FOREST ACT, 1865.**

**X—**

See **SUCCESSION ACT.**

**XI—**

See **CASES UNDER SMALL CAUSE COURT, MORTGAGE.**

See **SMALL CAUSE COURT, RANGOON.**  
[8 B. L. R., 196

See **CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS.**

**XII—**

See **WARRANT OF ARREST.**  
[1 Ind. Jur., 315

**XIII—**

See **CHARGE . 1 Ind. Jur., N. S., 404**  
See **OFFENCE COMMITTED ON THE HIGH SEAS . 1 B. L. R., O. Cr., 1**

**XV—**

See **HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL.**

[I. L. R., 13 Bom., 303

I. L. R., 16 Bom., 138

See **Parsi MARRIAGE AND DIVORCE.**

See **CASES UNDER PARSIS.**

See **RESTRICTION OF CONJUGAL RIGHTS.**  
[9 Bom., 29

**ACT—continued.****1865-XX—**

See **COSTS—SUMMARY SUIT FOR POSSESSION . 15 W. R., 268**

See **CASES UNDER MOORTGAGE.**

See **CASES UNDER PLEADER.**

**XXI—**

See **CASES UNDER PARSIS.**

**XXVIII—**

See **INSOLVENCY—CASES UNDER ACT XXVIII OF 1865 . 3 Bom., O. C., 25**

[5 Bom., O. C., 167

9 Bom., 27

**1866-X—**

See **CASES UNDER COMPANY.**

**XIII—**

See **OUDE REDEMPTION ACT.**

**XIV—**

See **ABETMENT . 7 W. R., Cr., 54**

See **CARRIERS . 3 N. W., 195**

See **MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—POST OFFICE ACTS.**

[3 Bom., Cr., 8

5 Bom., Cr., 38

See **POST OFFICE ACT, 1866.**

**XX—**

See **REGISTRATION ACT, 1866.**

See **CASES UNDER REGISTRATION ACT, 1877.**

**XXI—**

See **NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT.**

**XXVI—**

See **OUDE ESTATES ACT.**

[I. L. R., 4 Calc., 839

See **OUDE SUB-SETTLEMENT ACT.**

**XXVIII—**

See **TRUSTEES AND MORTGAGEES ACT, 1866.**

**1867-III—**

See **GAMBLING ACT (III of 1867).**

See **CASES UNDER GAMBLING.**

**X, s. 1—**

See **SMALL CAUSE COURT, MORTGAGE—PRACTICE AND PROCEDURE REFERENCE TO HIGH COURT.**

[3 B. L. R., A. C., 135

**XII, s. 14—**

See **WARRANT OF ARREST.**

[3 Ind. Jur., N. S., 340

**ACT—1863—XX—concluded.**

of the Board of Revenue or of local agents under Regulation XIX of 1810, and were transferred to trustees or managers under s. 4 of the Act. **DEBROOS BANOO BEGUM v. ASHGAR ALLY KHAN**  
[15 B. L. R., 167; 23 W. R., 453]

Affirmed by the Privy Council. So far as it held that the endowment created by the document was not of such a public character as would sustain a suit under Act XX of 1863, not dissented from. **ASHGAR ALI v. DEBROOS BANOO BEGUM**  
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I. L. R., 11 Mad., 148

5. *Order of Civil Court as to title, Effect of.*—*Semble*—That an order of the Civil Court, under s. 18 of Act XX of 1863, refusing leave to institute a suit, and deciding that the temple was governed by a hereditary dharmakarta, and therefore within s. 3 of the Act, was not conclusive upon the question of title between the parties. **VENKATASA NAIKAR v. SRINIVASSA CHARIYAR**  
**SRINIVASSA CHARIYAR v. VENKATASA NAIKAR**  
4 Mad., 410

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22 W. R., 21

**ACT—continued.****1833—XXI—**

See CASES UNDER RECORDERS ACT.

See SMALL CAUSE COURT, RANGOON.

[6 B. L. R., 196]

See SUPERINTENDENCE OF HIGH COURT—  
CHARTER ACT, s. 15 . 6 B. L. R., 180

**XXIII—**

See CASES UNDER WASTE LANDS.

**s. 5—**

See VALUATION OF SUIT—SUITS—WASTE  
LANDS, SUIT FOR. . 7 W. R., 349

**1864—II—**

See APPEAL IN CRIMINAL CASES—ACTS—  
ACT II OF 1864.

[I. L. R., 10 Bom., 258]

See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY IN  
ONE DISTRICT THEFT.

[I. L. R., 10 Bom., 258, 263]

See LOCAL GOVERNMENT, POWER OF.

[I. L. R., 10 Bom., 274]

See TRANSFER OF CRIMINAL CASE—GEN-  
ERAL CASES . I. L. R., 10 Bom., 274

**III—**

See FOREIGNERS.

[I. L. R., 18 Bom., 636]

See WARRANT OF ARREST.

[I. L. R., 18 Bom., 636]

**VI—**

See CASES UNDER WHIPPING.

**XI—**

See MAHOMEDAN LAW—ENDOWMENT.

[I. L. R., 18 Bom., 401]

See MAHOMEDAN LAW KAZI.

[I. L. R., 1 Bom., 633]

I. L. R., 3 Bom., 72

**XIII—**

See CONTRACT—BREACH OF CONTRACT.

[1 Ind. Jur., N. S., 131]

See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY  
IN ONE DISTRICT—EMIGRANTS.

[4 Mad., Ap., 4]

**XVI—**

See REGISTRATION ACTS.

**XVII—**

See OFFICIAL TRUSTEE'S ACT.

**XX—**

See COSTS—BOMBAY MINORS' ACT.

[I. L. R., 2 Bom., 380]

See GUARDIAN—DUTIES AND POWERS OF  
GUARDIANS . I. L. R., 12 Bom., 686

[I. L. R., 20 Bom., 61]

**ACT-1884-XX-concluded.**

See HINDU LAW-PARTITION-RIGHT TO  
ACCOUNT ON PARTITION.

[1 L. R., 17 Bom., 271

See MINOR-CASES UNDER BOMBAY  
MINORS' ACT, 1864.

ss. 11 and 15-

See COLLECTOR . I. L. R., 1 Bom., 318

**XXVI-**

See CASES UNDER SMALL CAUSE COURT,  
PRESIDENCY TOWNS.

s. 9-

See CONTRACT ACT, s. 27.

[14 B. L. R., 76

See COSTS-SMALL CAUSE COURT SUITS.

[1 B. L. R., O. C., 27, 68

10 B. L. R., 358

2 Hyde, 237

I. L. R., 4 Bom., 407

**1865-III-**

See CARRIERS ACT.

See CASES UNDER CARRIERS.

**V-**

See MARRIAGE ACT (CHRISTIAN), 1865.

[6 Mad., Ap., 20

**VII-**

See FOREST ACT, 1865.

**X-**

See SUCCESSION ACT.

**XI-**

See CASES UNDER SMALL CAUSE COURT,  
MORTGAGE.

See SMALL CAUSE COURT, RANGOON.

[6 B. L. R., 196

See CASES UNDER SPECIAL OR SECOND  
APPEAL-SMALL CAUSE COURT SUITS.

**XII-**

See WARRANT OF ARREST.

[1 Ind. Jur., 315

**XIII-**

See CHARGE . 1 Ind. Jur., N. S., 404

See OFFENCE COMMITTED ON THE HIGH  
SEAS . 1 B. L. R., O. C., 1

**XV-**

See HIGH COURT, JURISDICTION OF-  
BOMBAY-CIVIL.

[1 L. R., 13 Bom., 302

1 L. R., 13 Bom., 138

See PARSİ MARRIAGE AND DIVORCE.

See CASES UNDER PARSİS.

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[9 Bom., 29

**ACT-continued.****1885-XX-**

See COSTS-SUMMARY SUIT FOR POSSES-  
SION . 15 W. R., 268

See CASES UNDER MOORTGAGE.

See CASES UNDER PLEADER.

**XXI-**

See CASES UNDER PARSİS.

**XXVIII-**

See INSOLVENCY-CASES UNDER ACT  
XXVIII OF 1865 . 3 Bom., O. C., 25

[5 Bom., O. C., 187

9 Bom., 27

**1866-X-**

See CASES UNDER COMPANY.

**XIII-**

See OUDE REDEMPTION ACT.

**XIV-**

See ABETMENT . 7 W. R., Cr., 54

See CARRIERS . 3 N. W., 195

See MAGISTRATE, JURISDICTION OF-SPE-  
CIAL ACTS-POST OFFICE ACTS.

[3 Bom., Cr., 8

5 Bom., Cr., 38

See POST OFFICE ACT, 1866.

**XX-**

See REGISTRATION ACT, 1866.

See CASES UNDER REGISTRATION ACT, 1877.

**XXI-**

See NATIVE CONVERTS' MARRIAGE DIS-  
SOLUTION ACT.

**XXVI-**

See OUDE ESTATES ACT.

[1 L. R., 4 Calc., 639

See OUDE SUB-SETTLEMENT ACT.

**XXVIII-**

See TRUSTEES AND MORTGAGEES ACT,  
1866.

**1867-III-**

See GAMBLING ACT (III OF 1867).

See CASES UNDER GAMBLING.

**X, s. 1-**

See SMALL CAUSE COURT, MORTGAGE-  
PRACTICE AND PROCEDURE REFERENCE  
TO HIGH COURT.

[3 B. L. R., A. C., 135

**XII, s. 14-**

See WARRANT OF ARREST.

[3 Ind. Jur., N. S., 340

ACT—continued.

1867—XIII, ss. 20 and 30—

*Criminal Procedure Code (Act XXV of 1861), s. 404—Distribution of fine—Possession of opium.*—Upon the conviction of certain persons under s. 20, Act XIII of 1867, for illicit possession of opium, the Magistrate sentenced them to payment of a fine, and directed that, upon the realisation thereof, one-half should be paid to the Inspector of Police who had apprehended the prisoners, but refused to pay the other half in accordance with s. 30 (for reasons set forth in his order) to the person who gave the information. On a reference by the Sessions Judge to the High Court, *Held* the High Court could not interfere under s. 404 of the Code of Criminal Procedure. The distribution of the fine under s. 20, Act XIII of 1867, formed no part of the Magistrate's judgment. *QUEEN v. RAMDYAL SINGH* . . . 8 B. L. R., Ap., 7 [18 W. R., Cr., 85]

XVIII—

*See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N. W. P.* [3 N. W., 85]

XXI, s. 15—

*See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.* [5 Bom., Cr., 44]

XXIV—

*See ADMINISTRATOR GENERAL'S ACT, 1867.*  
*See ILLEGITIMACY* . . . 11 B. L. R., Ap., 8

XXV—

*See COPYRIGHT* . . . I L. R., 14 Bom., 588  
*See DEYAMATION* . . . I L. R., 9 Mad., 387  
*See PRINTING PRESSES AND NEWSPAPERS ACT.*

s. 3—

*See NEWSPAPER* . . . I L. R., 16 Mad., 443

XXVI—

*See CASES UNDER APPEAL—ACTS—ACT XXVI OF 1867.*

*See CASES UNDER COURT FEES—ACT XXVI OF 1867.*

*See VALUATION OF SUIT.*

[6 B. L. R., Ap. 11, 12  
3 Mad., 352]

XXIX—

*See FINE* . . . 9 W. R., Cr., 82, 84

*See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.*

[5 Bom., Cr., 44]

1868—I—

*See GENERAL CLAUSES CONSOLIDATION ACT.*

VI (N. W. P. Municipal Improvement Act)—

*See N. W. P. AND OUDH MUNICIPALITIES ACT, 1883, ss. 69, 71.*

[I L. R., 8 All., 776]

ACT—continued.

1868—VIII, s. 1—

*See STATUTES, CONSTRUCTION OF.*

[8 N. W., 373]

IX—

*See TAX* . . . 4 Mad., Ap., 82  
[2 B. L. R., Ap., 40  
11 W. R., Cr., 13, 58]

XIII—

*See RIGHT OF SUIT—KING OF OUDE, SUIT AGAINST* . . . 11 W. R., 116

XIV—

*See PROSTITUTES* . . . 3 B. L. R., A. Cr., 70  
[I L. R., 8 Cal., 183; 7 C. L. R., 197]

s. 11—

*See APPEAL IN CRIMINAL CASE—ACTS—ACT XIV OF 1863* . . . 17 W. R., Cr., 11

XVI, s. 9—

*See APPEAL—ORDERS* . . . 14 W. R., 328

*See MINISTERIAL OFFICERS, APPOINTMENT OF.*

[11 W. R., 354]

13 W. R., 187

14 W. R., 378

s. 12—

*See MUNSIF, JURISDICTION OF.* [19 W. R., 414]

s. 18—

*See BENGAL CIVIL COURTS ACT, 1871.*  
s. 22 . . . 1 N. W., 117, Ed. 1873, 203  
[5 N. W., 108 : Agra, F. B., Ed. 1873, 378  
5 N. W., 175]

s. 19—

*See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.*

[1 N. W., 113, Ed. 1874, 189]

15 W. R., 574

17 W. R., 551

XIX—

*See OUDE RENT ACT.*

1869—I—

*See OUDE ESTATES ACT.*

IV—

*See DIVORCE ACT.*

VIII—

*See CRIMINAL PROCEDURE CODE.*

IX—

*See APPEAL IN CRIMINAL CASE—ACTS—INCOME TAX ACT, 1869.*

[14 W. R., Cr., 71]

*See ESTOPPEL—STATEMENTS AND PLEADINGS* . . . 24 W. R., 173

[6 W. R., 262]

## ACT-1869-IX--concluded.

See FALSE EVIDENCE . 5 Mad., 326

See INCOME TAX ACT, 1869.

[2 N. W., 113

See SENTENCE-IMPRISONMENT-IMPRISONMENT IN DEFAULT OF FINE.

[7 Bom., Cr., 76

14 W. R., Cr., 70

## XIV--

See BOMBAY CIVIL COURTS ACT.

## XV--

See PRISONER'S TESTIMONY ACT.

## XVI--

See BHOOTAN DUARS ACT.

## XVIII--

See STAMP ACT, 1869.

## XXII, s. 8--

See JURISDICTION OF CRIMINAL COURT--GENERAL JURISDICTION.

[I. L. R., 3 Calc., 69

I. L. R., 4 Calc., 172

## XXIII--

See SENTENCE-IMPRISONMENT-IMPRISONMENT IN DEFAULT OF FINE.

[7 Bom., Cr., 76

## 1870-VII--

See COURT FEES ACT.

## VIII--

See INFANTICIDE I. L. R., 6 All., 380

## X--

See LAND ACQUISITION ACT, 1870.

## XI, s. 2--

See EXCISE ACT, 1871.

[I. L. R., 3 All., 404

## XIV--

See LIMITATION ACT, 1877, ART. 132.

[I. L. R., 9 Bom., 233

See STATUTE, CONSTRUCTION OF.

[6 N. W., 373

## XXI--

See HINDU WILLS ACT, 1870.

See CASES UNDER HINDU LAW--WILL--CONSTRUCTION OF WILLS.

See CASES UNDER PROBATE.

## XXIV--

See Oude TALUQDARS' RELIEF ACT.

## XXVI--

See PRISONS ACT.

## ACT--continued.

1870-XXVII, ss. 10, 294A--

Lottery office--70.

[6 B. L. R., Ap., 98  
15 W. R., Cr., 2

## 1871-I--

See CATTLE TRESPASS ACT, 1871.

## IV--

See CORONERS ACT.

## VI--

See BENGAL CIVIL COURTS ACT, 1871.

## VIII--

See REGISTRATION ACT, 1871.

See CASES UNDER REGISTRATION ACT, 1877.

## IX--

See LIMITATION ACT, 1871.

## X--

See EXCISE ACT, 1871.

## XV--

See BROACH TALUQDARS' RELIEF ACT, 1871.

See JURISDICTION OF CIVIL COURT--RENT AND REVENUE SUITS--BOMBAY.

[I. L. R., 5 Bom., 135

## XXIII--

See PENSIONS ACT.

## XXV--

See RAILWAY ACT, 1871.

## XXXII, s. 18--

See APPEAL TO PRIVY COUNCIL--CASES IN WHICH AN APPEALIES OR NOT--APPEALABLE ORDERS . I. L. R., 3 Calc., 522

## 1872-I--

See EVIDENCE ACT, 1872.

## III, s. 10--

See HINDU LAW--INHERITANCE--DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

[I. L. R., 19 Calc., 289

## V--

See INSOLVENT ACT, s. 5 21 Bom., 405

## VI--

See OATHS ACT, 1872 31 W. R., Cr., 31

## VII, s. 58--

See ADVOCATE . 31 W. R., 297-

## IX--

See CONTRACT ACT.

## ACT—continued.

## —1872—X—

See CRIMINAL PROCEDURE CODE.

## —XI—

See EXTRADITION ACT.

## —XV—

See MARRIAGE ACT, 1872.

## —XIX—

See COUNTERFEITING COIN 5 N. W., 187

## —XXII—

See COLLECTOR . . . 5 N. W., 221  
[6 N. W., 153]

See RIGHT OF SUIT—FRESH SUIT.  
[6 N. W., 34]

## —1873—III—

See MADRAS CIVIL COURTS ACT, 1873.

## —VIII—

See NORTHERN INDIA CANAL AND DRAIN-  
AGE ACT, 1873.

## —X—

See OATHS ACT, 1873.

## —XV—

See NORTH-WESTERN PROVINCES AND  
ODDH MUNICIPALITIES ACTS.

## —XVII—

See NAWAB NAZIM'S DEBTS ACT, 1873.

## —XVIII—

See NORTH-WESTERN PROVINCES RENT  
ACTS.

## —XIX—

See NORTH-WESTERN PROVINCES LAND  
REVENUE ACT.

## —1874—I—

See COLLECTOR . . . 6 N. W., 153

## —II—

See ADMINISTRATOR GENERAL'S ACT, 1874.  
See LETTERS OF ADMINISTRATION.  
[I. L. R., 4 Calc., 770]

## —III—

See MARRIED WOMAN'S PROPERTY ACT.

## —VI—

See CASES UNDER APPEAL TO PRIVY  
COUNCIL.

## —s. 10—

See EXECUTION OF DECREE—ORDERS AND  
DECREES OF PRIVY COUNCIL.  
[22 W. R., 102]

## —XI, s. 6—

See MAGISTRATE, JURISDICTION OF—  
WITHDRAWAL OF CASES.  
[I. L. R., 8 Calc., 851]

## ACT—1874—XI—concluded.

## —s. 26—

See APPEAL IN CRIMINAL CASES—  
PRACTICE AND PROCEDURE.  
[24 W. R., Cr., 29]

## —s. 28—

See REVISION—RE-TRIAL.  
[24 W. R., Cr., 24]

See SESSIONS JUDGE, POWER OF.  
[2 C. L. R., 511]

## —XIV—

See APPEAL IN CRIMINAL CASE—ACTS—  
ACT XXXVII OF 1855.

[I. L. R., 12 Calc., 536]

See LOCAL GOVERNMENT, POWER OF.  
[I. L. R., 10 Bom., 274]

See SCHEDULED DISTRICTS ACT, 1874.

## —XV—

See LAWS LOCAL EXTENT ACT.

## —XVI—

See MAGISTRATE, JURISDICTION OF—  
SPECIAL ACTS—MADRAS ACT III of  
1865 . . . I. L. R., 1 Mad., 223  
[I. L. R., 2 Mad., 161]

## 1875—IX—

See MAJORITY ACT.

## —X—

See CRIMINAL PROCEDURE CODE, CH.  
XXIII, ss. 266—336.

## —s. 147—

See CASES UNDER TRANSFER OF CRIMINAL  
CASE—GENERAL CASES.

## —XII—

See PORTS ACT, 1875.

## —XIII—

See LETTERS OF ADMINISTRATION.  
[I. L. R., 4 Calc., 770]

See PROBATE—POWER OF HIGH COURT TO  
GRANT, AND FORM OF.

[I. L. R., 1 Calc., 52  
24 W. R., 206]

## —s. 6—

See COURT FEES ACT, s. 19D.  
[I. L. R., 23 Calc., 980]

## —XVII—

See APPEAL IN CRIMINAL CASES—ACTS—  
BURMA COURTS ACT, 1875.

[I. L. R., 4 Calc., 667]

See BURMA CIVIL COURTS ACT.

See TRANSFER OF CRIMINAL CASE—GEN-  
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## ACT—continued.

1876—V—

See REFORMATORY SCHOOLS' ACT.

VI—

See CHOTA NAGPORE ENCUMBERED  
ESTATES ACT.

X—

See BOMBAY REVENUE JURISDICTION ACT.

XI—

See BANK OF BENGAL.

[I. L. R., 3 Calc., 392]

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[I. L. R., 8 Calc., 300]

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See SMALL CAUSE COURT, MOPURIL—  
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[I. L. R., 8 Calc., 499]

XVII—

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1877—I—

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III—

See REGISTRATION ACT, 1877.

IV—

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X—

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[I. L. R., 6 Bom., 251]

1878—I—

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See OPIUM . . . 11 C. L. R., 464

VI—

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[I. L. R., 10 Bom., 124]

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XI—

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## ACT—continued.

1879—I—

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IV—

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[I. L. R., 10 Calc., 166, 210]

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VIII—

See NORTH-WEST PROVINCES LAND RE-  
VENUE ACTS.

s. 23—

See GUARDIAN DISQUALIFIED PROPRIE-  
TORS . I. L. R., 5 All., 264, 467

XII—

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See CIVIL PROCEDURE CODE, 1882, s. 258.  
[I. L. R., 4 Bom., 235]

s. 102—

See EXECUTION OF DECREE—EFFECT OF  
CHANGE OF LAW PENDING EXECUTION.  
[I. L. R., 3 Mad., 98]

XIII—

See Oude CIVIL COURTS ACT, 1879.

XVII—

See DEAKHAN AGRICULTURISTS' RELIEF  
ACT, 1879.

XVIII—

See LEGAL PRACTITIONERS ACT.

See MOOKTEAR . I. L. R., 4 All., 375  
[4 C. W. N., 369]See CASES UNDER PLEADER—REMOVAL,  
SUSPENSION, AND DISMISSAL.

[I. L. R., 4 All., 375]

XXI—

See EXTRADITION ACT, 1879.

1880—III—

See CANTONMENTS ACT, 1880.

IV—

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XV—

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1880.

1881—V—

See PRACTICE—CIVIL CASES—TESTAMENT-  
ARY MATTERS . I. L. R., 6 Bom., 638

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XII—

See NORTH-WESTERN PROVINCES RENT  
ACTS.

**ACT—continued.****1881—XXI—**

See BROACH AND KAIRA ENCUMBERED  
ESTATES ACT.

**XXIII—**

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**1882—II—**

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**IV—**

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**V—**

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See WASTE LANDS . I. L. R., 8 All., 69

**VI—**

See COMPANIES ACT.  
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**VIII—**

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**X—**

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**XII—**

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**XIV—**

See CIVIL PROCEDURE CODE, 1882.

**XV—**

See SMALL CAUSE COURT, PRESIDENCY  
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**XX—**

See PAPER CURRENCY ACT.

**XXII—**

See CASES UNDER DEKKHAN AGRICUL-  
TURISTS' RELIEF ACT.

**1883—XV—**

See N.-W. P. AND OUDE MUNICIPALITIES  
ACT, 1883.

**1884—III—**

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[I. L. R., 9 Bom., 333

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See MAGISTRATE, JURISDICTION OF—  
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[I. L. R., 9 All., 420

**—continued.****1884—V—**

See CHOTA NAGPORE ENCUMBERED Es-  
TATES ACT, 1884.

**XII—**

See AGRICULTURISTS' LOANS ACT.

**1885—III—**

See TRANSFER OF PROPERTY ACT AMEND-  
MENT ACT.

**VIII—**

See BENGAL TENANCY ACT, 1885.

**1886—II—**

See INCOME TAX ACT.

**IX—**

See DEO ESTATES ACT.

**XIV—**

See N.-W. P. RENT ACT AMENDMENT  
ACT.

**XVII—**

See JHANSI AND MORAR ACT.

**s. 8—**

See RES JUDICATA—CAUSES OF ACTION.  
[I. L. R., 10 All., 517

**1887—I—**

See GENERAL CLAUSES CONSOLIDATION  
ACT.

**VII—**

See SUITS VALUATION ACT.

**IX—**

See PROVINCIAL SMALL CAUSE COURTS  
ACT.

See SMALL CAUSE COURT, MOPUSSIL.

See SUBORDINATE JUDGE, JURISDICTION  
OF . . . I. L. R., 12 Bom., 48

**XII—**

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CIVIL COURTS ACT.

**1888—V—**

See INVENTIONS AND DESIGNS ACT.

**VI—**

See ATTACHMENT—ATTACHMENT OF PER-  
SON . . . I. L. R., 16 Calc., 85

See INSOLVENCY—INSOLVENT DEBTORS  
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[I. L. R., 16 Calc., 85

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See SECURITY FOR COSTS—SUITS.  
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**ACT—continued.****1888—VII—**

See CIVIL PROCEDURE CODE AMENDMENT ACT (VII of 1888).

**X—**

See CIVIL PROCEDURE CODE AMENDMENT ACT (X of 1888).

**XII, s. 3—**

See APPEAL—BOMBAY ACTS—BOMBAY MUNICIPAL ACT, 1888.

[I. L. R., 18 Bom., 184]

**1889—IV—**

See MERCHANDISE MARKS ACT.

**VI—**

See PROBATE AND ADMINISTRATION ACT AMENDMENT ACT.

**VII—**

See SUCCESSION CERTIFICATE ACT.

**X—**

See PORTS ACT.

**XI—**

See BURMA COURTS ACT, 1889.

**XIII—**

See CANTONMENTS ACT, 1889.

**1890—VIII—**

See GUARDIANS AND WARDS ACT.

**IX—**

See RAILWAYS ACT, 1890.

**XI—**

See PREVENTION OF CRUELTY TO ANIMALS ACT.

**XX—**

See N.-W. P. AND OUDH ACT, 1890.

**1891—III [Amending the Evidence Act (I of 1872) and the Criminal Procedure Code (X of 1882)]—**

See EVIDENCE—CRIMINAL CASES—CHARACTER . . . I. L. R., 27 Calc., 139

**IV—**

See CRIMINAL PROCEDURE CODE AMENDMENT ACT, 1891.

**VIII—**

See EASEMENT . . . I. L. R., 18 Bom., 616

See PRESCRIPTION—EASEMENTS—RIGHT OF WAY . . . I. L. R., 14 All., 185

**XIII—**

See BANKERS BOOKS EVIDENCE ACT.  
[4 C. W. N., 433]

**ACT—concluded.****1891—XIV—**

See OUDH COURTS ACT, 1891.

**1892—VI—**

See CIVIL PROCEDURE CODE AMENDMENT ACT, 1892.

**1893—IV—**

See PARTITION ACT, 1893.

**1894—I—**

See LAND ACQUISITION ACT, 1894.

**V—**

See CIVIL PROCEDURE CODE AMENDMENT ACT, 1894.

**VIII—**

See TARIFF ACT, 1894.

**1895—I—**

See PRESIDENCY TOWNS SMALL CAUSE COURTS ACT (I of 1895).

**VI—**

See DEKKHAN AGRICULTURISTS RELIEF ACTS AMENDMENT ACT.

**VIII (Police Act Amendment Act)—**

See POLICE ACT, s. 34.

[I. L. R., 27 Calc., 855]

**1896—XI (Amending Legal Practitioners Act)—**

See LEGAL PRACTITIONERS ACT.

See MOOKTEAR.

[I. L. R., 27 Calc., 1023]

**XII—**

See EXCISE ACT, 1896.

**1897—VIII—**

See REFORMATORY SCHOOLS' ACT.

**1899—VI—**

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY COURT.

[I. L. R., 23 All., 224]

**XI—**

See COURT FEES ACT AMENDMENT ACT, 1899.

**ACT, CONSTRUCTION OF—**

See STATUTES, CONSTRUCTION OF.

**ACT DONE IN OFFICIAL CAPACITY.**

See SUBORDINATE JUDGE, JURISDICTION OF . . . I. L. R., 15 Bom., 441

**ACT OF FOREIGN POWER**

See HUSBAND LAW—ESPIONAGE—DUTY OF MANAGER.  
[I. L. R., 17 Bom., 800, 821, 822]

**ACT OF GOD.**

See **CARRIERS** . I. L. R., 18 Calc., 427

**ACT OF STATE.**

See **GRANT—RESUMPTION OR REVOCATION OF GRANT** . I. L. R., 14 Mad., 431

See **PARTIES—PARTIES TO SUITS—GOVERNMENT** . 10 W. R., P. C., 25  
[11 Moore's I. A., 517]

See **RIGHT OF SUIT—ACT DONE IN EXERCISE OF SOVEREIGN POWERS.**

[I. L. R., 4 Mad., 244]

I. L. R., 5 Mad., 273

I. L. R., 1 Calc., 11: 24 W. R., 309

**1. ——— Seizure of Raj of Tanjore—Jurisdiction of Municipal Courts—Independent States.**—The transactions of Independent States between each other are governed by other laws than those which Municipal Courts administer. The seizure by the British Government, acting as a sovereign power, through its delegate, the East India Company, of the Raj of Tanjore, with the property belonging thereto, was, with its consequences, an act of State over which a Municipal Court has no jurisdiction. **THE EAST INDIA COMPANY v. KAMACHEE BOYE SAHIBA** . 4 W. R., P. C., 4  
**S. C. SECRETARY OF STATE FOR INDIA v. KAMACHEE BOYE SAHIBA** . 7 Moore's I. A., 476

**2. ——— Arrest under Beng. Reg. III of 1818—Jurisdiction of Municipal Courts.**—A Mahomedan subject of the Crown was arrested in Calcutta, taken into the m'fussil, and there detained in jail, under a warrant of the Governor-General in Council in the form prescribed by Reg. III of 1818. *Held* that such arrest and detainer were not acts of State, but matters cognizable by a Municipal Court. **IN BE AMEER KHAN** . 6 B. L. R., 392

**3. ——— Resumption of Jagir by East India Company—Regulation law.**—Where lands were held by a jagirdar under the sovereign of an independent State on a jaidad tenure, i.e., on a grant of land, together with the public revenues thereof, on the condition of keeping up a body of troops to be employed when called on in the service of the sovereign, and on the conquest of the State by the East India Company the jagirdar remained in the same position to the Company. *Held* that the resumption of the lands by the Company, and the seizure of the arms and stores appertaining to the tenure, on the death of the jagirdar, was not an act of State, and therefore the Municipal Courts had jurisdiction to entertain a suit by the representatives of the jagirdar against the Government for the possession of the land and for the value of the arms and stores. This was so, although, at the time of the resumption, the Regulation law was not introduced into the territories in which the jagir was comprised. **FORRESTER v. SECRETARY OF STATE**

[12 B. L. R., 120: 18 W. R., 349]

L. R., I. A., Sup. Vol., 10

**4. ——— Confiscation of territories of King of Delhi—Forfeiture.**—The status of the King of Delhi was that of a King recognized by the British Government; and the confiscation of his

**ACT OF STATE—continued.**

territories in 1857 was an act of State, and not an act done under color of any legal right of which a Municipal Court could take cognizance. His tenure of the territories assigned him by the Government was a tenure merely *durante regno*, and no power was conferred upon him of creating incumbrances which would survive his deposition. The word 'confiscation' does not necessarily import that the appropriation is to be made as a penalty for a crime, nor, when used in that sense, does it necessarily imply that the forfeiture has accrued upon conviction; but it may also be properly used as applicable to appropriations of property by Government as an act of State. **SALIGRAM v. SECRETARY OF STATE**

[12 B. L. R., 167: 18 W. R., 389]

L. R., I. A., Sup. Vol., 119

**5. ——— Confiscation by Governor of Foreign State—Title to timber.**—The plaintiff brought a suit at Tonghoo in British Burma to recover possession of certain timber which he alleged the defendants had wrongfully, and in collusion with the Burmese Governor of Ninghan, taken out of his possession in foreign territory and removed to Tonghoo. The defendants stated that they had acquired the timber from the Governor of Ninghan in terms of an agreement between them and the Burmese Government. It appeared that the Governor of Ninghan had confiscated the plaintiff's timber in contravention of a royal mandate. After the institution of the suit, the defendants removed the timber from Tonghoo to Rangoon. *Held* that a British Municipal Court might enquire into the character of the act of the Governor of Ninghan, and was not bound to accept it as an act of State. **BOMBAY-BURMAH TRADING CORPORATION v. MAHOMED ALI SHERAGEE** . 10 B. L. R., 345: 19 W. R., 123

**6. ——— Resumption by Government—Act of State—Jurisdiction of Civil Court.**—By the treaty of the 31st July 1801 between the then Nawab of the Carnatic and the Governor in Council at Madras, the sovereign rights of the Nawab in the Carnatic were vested in the East India Company. *Held* that a resumption by the Madras Government of a jagir granted by former Nawabs, as *Altamghah inam*, before the date of the treaty and a re-grant by Madras Government to another for a life estate only, was such an act of sovereign power by the East India Company as precluded the Supreme Court at Madras from taking cognizance of a suit by the heirs of the original grantee in respect of such resumption. **EAST INDIA COMPANY v. SYEDALLY** . 7 Moore's I. A., 555

**7. ——— Resumption of village granted by Peishwa of the Deccan.**—A village, having been granted in inam by the Peishwa of the Deccan, was, after the death of the grantee, seized by the mamlatdar or farmer of the revenues for an alleged debt due to him, and retained until the treaty of Poona in 1818 when it came into the possession of the British Government. In a suit instituted by the representatives of the original grantee for possession of the village, and payment of the arrears of revenue so sequestered, it was held by the Judicial Committee, affirming the decree of the Provincial and

## ACT OF STATE—continued.

Ordinance to remove the revenue of Reg. V of 1827, s. 3, with only six years' arrears of revenue. *MILLS v. MOORE* PESTONJEE KHOR-  
BRIDJEE 2 Moore's L. A., 37

but *aliter* where there is no such ratification.  
*ZULFEY ALI v. YESHWADABAI SANEH* 9 Bom., 314

9. — Seizure by right of conquest — Jurisdiction of Municipal Court. — Where an estate is seized by the Crown in right of conquest, and not by virtue of any legal title, such seizure must be regarded as an act of State, and is not liable to be questioned in a Municipal Court. *Secretary of State for India in Council v. Komachee Bove Sahiba*, 7 Moore's L. A., 476, followed. *BRAGWAN SINGH v. SECRETARY OF STATE FOR INDIA IN COUNCIL* L. R., 21 A., 38

10. — Resumption of inam village and re-grant, Effect of—*Waiakars*. Status of—*Treaties of 1820*—Effect of grant of inam under construction—Attachment by Government of such village, Effect of.—From the year 1800 down to the year 1872 the Waiakar family had been in the enjoyment of the village of Pasarni under a treaty between the East India Company and one M A and K M, who were brothers and the last male descendants of M. For an alleged fraud of K M Government restricted the enjoyment of the said village to his lifetime only. A predeceased K. On the death of K M, Government, on the 31st December 1872, placed an attachment over the village. On the 13th July 1874, a judgment-creditor of A caused the lands in dispute, which were mirasi lands of the Waiakar family situated at Pasarni, to be sold in execution of his decree against A, and they were purchased by the defendant, who

the 3rd April 1876. The plaintiff, being dispossessed, sued the defendant, contending (*inter alia*) that A, having predeceased his brother, had no interest in the lands, which had been purchased by the defendant. The Court of first

village were acts of State, and he varied the decree of the lower Court by cutting down the plaintiff's

## ACT OF STATE—concluded.

costs, made payable by the lower Court's decree, to

an exemption from assessment, and the resumption and re-grant to the plaintiff did not give the plaintiff any title to the lands in question. The proceedings of Government in 1873 and 1876, by which the plaintiff was recognised as the representative of the Waiakar family, were not acts of State. The status of the Waiakars and other persons, with whom the agreements of 1820 were entered into, was not that of an independent sovereign. They

*Bhaskar*, Printed Judgments, 1893, p. 244, distinguished. *HARI SADASHIV v. AJNODHIN*

[L. R., 11 Bom., 235]

## ACTION IN REM.

by the N against the tug to recover damages, including any damages that the N might have to pay to the owners of the S F. The defence set up by the tug was protection under its towage contract, which was to the effect that the proprietors of the

the towage contract; but inasmuch as the action was one *in rem* and not against the proprietors, the clause was no answer to the suit. *Held, on appeal*, that

ship must always be considered as indirectly impleaded. *THE "MARY STUART" v. THE "NEVADA"*  
[L. R., 10 Cal., 888]

## ACTIONABLE CLAIM.

See CASES UNDER TRANSFER OF PROPERTY ACT s. 135.

**ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.**

See CASES UNDER ACT OF STATE.

See RIGHT OF SUIT—ACT DONE IN EXERCISE OF SOVEREIGN POWER.

[I. L. R., 1 Calc., 11  
I. L. R., 3 All., 829  
I. L. R., 4 Mad., 344  
I. L. R., 5 Mad., 273]

**ADDRESS, SUFFICIENCY OF—**

See MADRAS MUNICIPAL ACT, 1884, s. 433.  
[I. L. R., 14 Mad., 386]

**ADEN, COURT OF RESIDENT AT—**

See APPEAL IN CRIMINAL CASE—ACTS—  
ACT II OF 1864.  
[I. L. R., 10 Bom., 258]

See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY IN  
ONE DISTRICT—THEFT.

[I. L. R., 10 Bom., 258, 263]

**ADJOURNMENT.**

See CIVIL PROCEDURE CODE, 1862, ss. 100,  
101 (1859, s. 111) . 9 B. L. R., Ap., 15  
[18 W. R., 141]

See CIVIL PROCEDURE CODE, 1882, s. 158.  
[18 W. R., 325  
24 W. R., 202]

See PENSIONS ACT, s. 4.  
[I. L. R., 17 Bom., 169]

See PRACTICE—CIVIL CASES—ADJOURN-  
MENT . . . I. L. R., 7 Calc., 177

See WITNESS—CIVIL CASES—SUMMONING  
AND ATTENDANCE OF WITNESSES.  
[I. L. R., 9 Bom., 308  
I. L. R., 20 Calc., 740]

———— for convenience of Counsel.

See PRACTICE—CIVIL CASES—AFFIDAVITS.  
[9 B. L. R., Ap., 10  
10 B. L. R., Ap., 57]

———— for final disposal, Dismissal of  
suit after—

See CASES UNDER CIVIL PROCEDURE  
CODE, 1882, s. 158.

———— of Criminal Trial.

See CRIMINAL PROCEDURE CODE, s. 526A.  
[I. L. R., 15 Calc., 455]

See CRIMINAL PROCEEDINGS.  
[I. L. R., 19 Mad., 375]

See PRACTICE—CRIMINAL CASES—AD-  
JOURNMENT . . . 6 Mad., Ap., 30

**ADMINISTRATION.**

See CASES UNDER CERTIFICATE OF ADMINISTRATION.

**ADMINISTRATION—continued.**

See LETTERS OF ADMINISTRATION.

———— Effect of—

See COMPANY — RIGHTS OF SHARE-  
HOLDERS . . . I. L. R., 19 Bom., 1  
[I. L. R., 21 I. A., 139]

———— Suit for—

See HINDU LAW—PRESUMPTION OF  
DEATH . . . I. L. R., 1 All., 53

See MAHOMEDAN LAW—DEBTS.  
[I. L. R., 21 Calc., 311]

See SECURITY FOR COSTS—SUITS.  
[10 B. L. R., Ap., 25  
I. L. R., 21 Calc., 832]

See WILL—RENUNCIATION BY EXECUTOR.  
[I. L. R., 4 Calc., 508]

1. ——— Petition for administration  
summons—*Plaint.*—A petition for an adminis-  
tration summons may be ordered to be taken as a  
plaint, and as the foundation of an administration  
suit. IN THE MATTER OF THE ESTATE OF FENN.  
MACKINTOSH v. WILKINSON . 3 B. L. R., Ap., 3

2. ——— Suit for share of estate of  
deceased—*Recorder, Power of.*—Where one son of  
a deceased party sued in the Recorder's Court another  
son who had obtained a certificate under Act XXVII  
of 1860 for his share of the deceased's estate, it  
was held that the Recorder had no power to trans-  
form the suit into a general administration suit. ON  
LING TEE v. AWKINIFFE . . . 10 W. R., 86

3. ——— Heirs-at-law under Mahomedan law opposing grant of probate—*Right to bring administration suit pending probate proceedings—Probate and Administration Act (V of 1881), s. 34.*—The plaintiffs as heirs-at-law had entered caveat in an application by the executor for the probate of an alleged will of the deceased. The application was set down as a contentious cause, and the executor appointed administrator *pendente lite*. As heirs under Mahomedan law, the plaintiffs were entitled to two-thirds share in the property left by the deceased, even if the Will was not established. Held that the plaintiffs were entitled to maintain a suit for administration by the Court against the administrator *pendente lite*, even though the probate proceedings have not been determined. KURATUL AIN BAHADUR v. BROUGHTON . 1 C. W. N., 336

4. ——— Suit by creditor—*Misjoinder—Multifariousness—Practice.*—The principle of the rules that the creditor of a deceased person suing for administration is in the same situation with regard to all other persons as if he were bringing an action at law against the administrator, and that a debtor to the estate of a deceased person can only be made answerable as such debtor by the representative of the deceased's estate, is to be adhered to in this country, where there is a different procedure. Therefore, where, to a suit brought against the Administrator-General as administrator of the estate of one W B by a creditor of the deceased, other persons who also had a claim against the estate were made defendants, on the allegation that they had realized and were in

**ADMINISTRATION—continued.**

possession of assets of the estate of the deceased,—*Held* that, there being nothing to show that such persons were in the position of an executor or administrator *de son tort*, or that they had been partners with the deceased, or that they could not be sued, if necessary, by the legal representative himself, and there being no other circumstances which would make it equitable that they should be sued jointly with the legal representative, they were wrongly made parties, and the suit ought to be dismissed as against them for misjoinder. Even assuming the facts were such that the plaintiff was entitled to sue them as legal representatives of the estate, he should not mix his own claim with that which the Administrator-General might have against them. **DHUNRAJ v. BROUGHTON . . . 15 B. L. R., 296**

5. ——— **Claims in administration suit containing complaint of dealings by executors as acts of maladministration—Separate causes of action.**—Where the suit is one to administer the assets of a deceased person, and in the claim various dealings by the executors of the estate are complained of as acts of maladministration and sought to be redressed, such dealings do not constitute separate causes of action, and such a suit is not multifarious. **NISTARINI DASSI v. NUNDO LALL BOSE . . . I. L. R., 26 Calc., 891 [3 C. W. N., 670]**

6. ——— **Suit by creditor on behalf of all other creditors—Legal personal representative—Receiver, Suit by.**—Persons interested in the estate of a testator, not being the legal personal representatives of the testator, will not be allowed to sue persons possessed of assets belonging to the testator, unless it is satisfactorily made out that there exist assets which might be recovered, and which, but for

to the prosecution by the legal personal representative of a suit against the debtor to recover the assets of the testator, and where there is a strong probability of the loss of such assets unless such a suit be allowed. But where there is an administration suit already pending, the proper course to pursue is to obtain an order in the administration suit, directing

[I. L. R., 10 Calc., 713]

mons obtained by another creditor, under s. 24 of Act VI of 1854, for the administration of the same estate. **LUTHERMUND SETH v. KOMULMONEY DOSSETT . . . 1 Ind. Jur., N. S., 9**

8. ——— **Dividend in respect of debt against the estate—Proof of debt—Date from which amount of debt is to be estimated.**—In the

**ADMINISTRATION—continued.**

administration by the Court of the estate of a

**ROBINSON IN THE MATTER OF THE LAND MORTGAGE BANK OF INDIA . . . 6 B. L. R., Ap., 140**

9. ——— **Decree in administration suit, Effect of—Subsequent suit to set aside sale by executor.**—A decree in an administration suit brought by the parties whose interest had been sold against the executor of their father's will, by whom the sale had been made, held to be no bar to the maintenance of a suit against the purchaser to have the sale set aside. **DHONENDRO CHUNDER MOOKERJEE v. MUTTY LALL MOOKERJEE [14 B. L. R., 276 23 W. R., 6 L. R., 2 I. A., 18]**

10. ——— **Supplemental suit—Debts due by appointed managing members under the will of the testator—Limitation.**—A and B, two of the sons of one N, had been declared, in a suit brought

suit, the descendants of the sons of N, amongst

first satisfying the debt due by their ancestors to the estate. **LOKENATH MULLICK v. ODORCHURN MULLICK . . . I. L. R., 7 Calc., 644**

by the Court of Equity in England, whereby,

to the deceased, though barred at the date of the death of the latter, is to be applied in the Courts of British India. **DHANJIRHAI BOMANJI GUGAT v. NAVAZDAI . . . I. L. R., 2 Bom., 75**

12. ——— **Accounts—Liability of Executor.**—Without intending to rule that, in all cases when an ordinary administration account has been directed, the value in money of a specific chattel

**ADMINISTRATION—continued.**

account, and, within the competency of the Court upon the report, to charge the executor for the value of certain property, it being impossible to doubt that the original executor had possessed himself of the property, and that the property so possessed was not forthcoming and accounted for. As to payments stated in the schedule and in the discharge, as made on account of just demands on the estate, it is competent to the executor to prove them as having been made on other dates than those stated in the schedule and discharge. *AGA MAHOMED ROHIM SHERAZEE v. ALLY MAHOMED SHOOSTRY*

[4 W. R., P. C., 108]

13. ——— Civil Procedure Code, ss. 213, 276, 295—*Administration decree, Effect of—Attachment after date of institution under decree obtained prior to such suit—Injunction.*—On the 22nd July 1886, one *R L* obtained a money-decree against one *P C*. On the 5th November 1886, *P C* died; and on the 18th December 1886, *R L* applied to attach certain properties belonging to the estate of his judgment-debtor, which properties were actually attached on the 8th and 12th January 1887. On the 21st December 1886, one *S* filed a suit to administer the estate of the deceased, and on the 20th January 1887 obtained the usual administration decree. On the 5th May 1887, *S* applied for an order staying all proceedings taken by *R L* against the estate of *P C*, and directing him to come in, should he think fit so to do, and prove his claim in the administration suit:—*Held* that the attachment did not create any interest in, or charge upon, the properties in favour of the attaching creditor as against other creditors, and that the order asked for ought to be granted. *IN THE MATTER OF THE APPLICATION OF SOOBUL CHUNDER LAW. SOOBUL CHUNDER LAW v. RUSSICK LALL MITTER*

[I. L. R., 15 Calc., 202]

14. ——— Succession Act (X of 1865), s. 202—*Estate of intestate Native Christian—Suit for partition of estate by purchaser of widow's share before completion of administration—Dismissal of suit—Only remedy by way of administration suit.*—A person to whom the Indian Succession Act, 1865, applied having died intestate in April 1884, his widow and son were in September of the same year granted letters of administration, which were cancelled for want of stamp duty, a fresh grant being made on 19th January 1885. Plaintiff, alleging that the said widow had executed a promissory note in her favour in September 1884, filed a suit against her on 6th January 1885, and, there being no appearance of the defendant, obtained an *ex-parte* decree. In execution of the decree so obtained, plaintiff attached portions of the estate of the deceased and brought them to sale, becoming herself the purchaser of the one-third share of the widow in each lot sold. In March 1885 the son was appointed sole administrator; in January 1888 he died, and the letters of administration were revoked in consequence, and the *amin* of the District Court was appointed administrator of the estate until October 1894, when the son's widow was so appointed in his stead. Plaintiff now sued for

**ADMINISTRATION—concluded.**

partition of the property comprised in the estate of the deceased in order that she might obtain delivery of the portions of it which she had purchased in execution of the decree against the widow previously obtained as aforesaid. The estate of the deceased had never been administered or distributed. The defence was that the said previous decree had been obtained by fraud:—*Held* that, under s. 44 of the Indian Evidence Act, the defendants were entitled to set up this defence; and that, the property of the deceased having become vested in his administrator under the Indian Succession Act, it remained so vested until the administrator had distributed the estate, and that, in consequence, the widow had no saleable interest in any part of the estate until in the course of the administration thereof her share had been determined and allotted to her. Until such allotment (which had not yet taken place) the only process by which plaintiff could legally claim the widow's interest in the estate was by a suit for the administration of the estate, to which suit the widow, if alive, would be a necessary party. If not alive, letters of administration to her estate would be necessary, the administrator being made a party. *Held, also*, that the suit could not be treated, as an administration suit. *SRIRANGAMMAL v. SANTHAMMAL* . . . . . I. L. R., 23 Mad., 216

**ADMINISTRATION BOND.**

1. ——— Assignment of Bond—*Succession Act, s. 257.*—Upon a petition presented to the High Court for the transfer of an administration bond under s. 257 of the Succession Act, on the allegation that the administratrix had refused to pay certain moneys due to the petitioners on a promissory note given to them by the deceased, and it being admitted that the estate of the deceased was capable of meeting the alleged claim,—*Held*, on a *prima facie* case having been made out, that under the circumstances it was competent for the High Court, on a petition being presented to it for the assignment of an administration bond, to pass an order authorizing the transfer of it, and empowering the assignee to sue as a trustee for the benefit of the creditors. *IN THE GOODS OF SAUNDERS*

[6 N. W., 62]

2. ——— Breach of condition—*Compensation—Succession Act, ss. 256, 257—Contract Act (IX of 1872), s. 74—Exception—Damages.*—An administration bond executed by an administrator in accordance with s. 256 of the Succession Act is not an instrument of the kind referred to in the exception to s. 74 of the Contract Act, so as to make the obligor liable, upon breach of the condition thereof, to pay the whole amount mentioned therein; and an assignee of the bond under s. 257 of the Succession Act cannot recover more damage than he proves to have resulted to himself or to those interested in the bond:—*Held*, therefore, where neither the assignee of such a bond nor any one else had suffered any damage by reason of the breach of a condition requiring the obligor to file an inventory of the estate within a specified period, that the assignee was not entitled to recover from the

**ADMINISTRATION BOND—concluded.**

obligor any compensation in respect of such breach.  
**LACHMAN DAS v. CHATER** I. L. R., 10 All., 29

**ADMINISTRATOR.**

See LAND REGISTRATION ACT, s. 42.

[I. L. R., 22 Calc., 454

See CASES UNDER LETTERS OF ADMINISTRATION.

**Right of—**

See DECLARATORY DECREE, SUIT FOR—  
 DECLARATION OF TITLE.

[I. L. R., 17 Bom., 197

See INSOLVENCY—PROPERTY ACQUIRED  
 AFTER VESTING ORDER.

[I. L. R., 18 Mad., 24

1. **Liability of administrator in distribution of assets—Actual knowledge.**—  
*Semble* that an administrator who pays such debts as he knows of otherwise than equally and rateably as far as the assets of the deceased will extend, in accordance with the provisions of s. 282 of Act X of 1865, is personally liable for any loss occasioned to a creditor of the deceased by such improper distribution of the assets.

8 B. L. R., O. C., 29

2. **Liability of administrator**

property  
 for Rs 2  
 debt.

A, the  
 the deceased's estate, and contested H's claim. H  
 obtained a decree in the Court of first instance for  
 the sale of the mortgaged property, and in execution  
 of this decree the property was sold for Rs10 and

of Rs10 which he had realized by the sale of the  
 mortgaged property, and that H should pay to A  
 Rs240 on account of his costs incurred in the suit  
 and in taking out letters of administration. This  
 compromise was effected on 16th November 1883.  
 In the meantime, on 14th September 1883, the plaintiff

Having failed in this attempt, the plaintiff filed a  
 suit against A for a declaration that the compromise  
 of the 16th November 1883 had been fraudulently  
 effected with the object of defeating his (the plaintiff's)  
 claim, and to recover Rs1,000 as damages

**ADMINISTRATOR—concluded.**

would enable the Court to assess the claims of all

ject, however, to a deduction, under s. 280 of that

**HORMAJSHA PHIROZSHA** I. L. R., 17 Bom., 637

3. **Sale by administrator not so described—Administrators who are also heirs—Purchaser, title and rights of**—Certain persons who were heirs of a deceased lady, and had also taken out administration to her estate, limited to certain Government securities, sold such Government securities to a

securities, yet the entire purchase money having come to their hands, they, as administrators, were bound to administer the same as part of the assets of the estate, the question whether they did so or not not being one which would affect the title of the purchaser. *West of England and South Wales District Bank v. Murch*, L. R., 23 Ch. D., 138, and *Corser v. Castwright*, L. R., 7 H. L., 731, followed in principle. **PREONATH KARAB v. SURJA COOMAR GOSWAMI** I. L. R., 19 Calc., 26

**ADMINISTRATOR-GENERAL.**

See ILLEGITIMACY. 11 B. L. R., Ap., 6

See CASE UNDER LETTERS OF ADMINISTRATION.

See SUCCESSION ACT, s. 282.

[I. L. R., 10 Calc., 929

**Certificate of—**

See INTEREST ACT, 1839.

[I. L. R., 25 Calc., 54

**Office of—**

See ADMINISTRATOR-GENERAL'S ACT, s. 31.

[I. L. R., 21 Calc., 732

I. L. R., 22 Calc., 788

I. L. R., 22 I. A., 107

**ADMINISTRATOR GENERAL—continued.****Petition by—**

See PRACTICE—CIVIL—CASES—PROBATE  
AND LETTERS OF ADMINISTRATION.

[I. L. R., 20 Calc., 879  
I. L. R., 28 Calc., 404

**Rights of—**

See APPEAL TO PRIVY COUNCIL—EFFECT  
OF PRIVY COUNCIL DECREE OR ORDER.

[I. L. R., 22 Calc., 1011  
L. R., 22 I. A., 203

1. ———— **Authority to pay debt barred by limitation.**—The Administrator-General of Madras is authorized to pay a barred debt. *ADMINISTRATOR-GENERAL v. HAWKINS*

[I. L. R., 1 Mad., 267

2. ———— **Liability of Administrator-General in respect of breaches of trust by Intestate Executor.**—*Held, per NORMAN, J. (PHEAR, J., dissenting),* that the Administrator-General, who had taken out administration to the estate of an executor by whom a breach of trust had been committed by his pledging for his own benefit certain assets of his testatrix, and had redeemed the said assets with office money and applied the money recovered as part of the defaulting executor's estate, was not personally liable to make good the amount to the testatrix's estate. *GREENWAY v. HOGG*

[Cor., 97

2 Hyde, 3

Bourke, A. O. C., 111

3. ———— **Right of retainer in satisfaction of his own debt.**—The Administrator-General appointed under Act VIII of 1855 has the same right of retainer in satisfaction of his own debt as that which an ordinary executor or administrator has. *RITCHIE v. STOKES*

2 Mad., 255

4. ———— **Right of, to retain assets.**—Right of Administrator-General to retain assets in his hands in respect of contingent debts. *SHEPHERD v. HOGG*

Cor., 67

5. ———— **Grant of letters of administration to—Act XXIV of 1867, s. 17.**—When ordinary letters of administration to the estate of a deceased Hindu are granted to the Administrator-General under Act XXIV of 1867 (but not under s. 17 of that Act), his title does not relate back to the death of the deceased, nor to the date of the Judge's order directing such letters to be issued, but accrues only as from the date of the grant of such letters. *Quere*—Whether, if letters are issued to the Administrator-General under s. 17 of that Act, the case would be otherwise, or his powers greater. *LALLCHAND RAMDAYAL v. GUMTIBAI. GHELLA PENA v. GUMTIBAI*

8 Bom., O. C., 140

6. ———— **Administrator-General's Act (II of 1874), ss. 17 and 18—Order to collect assets—Decree against deceased's estate passed prior to such order—Attachment of part of deceased's estate subsequently to above order—Claim of Administrator-General prior to that of attaching creditor.**—On the 16th April 1898, the plaintiff obtained an *ex-parte* decree against the defendant as heir and

**ADMINISTRATOR GENERAL—concluded.**

legal representative of his deceased father. Previously to the date of the decree (*viz.*, on 4th March 1898), an order had been made by the High Court under ss. 17 and 18 of the Administrator-General's Act (II of 1874), authorizing the Administrator-General to collect the assets of the deceased and ordering him, if necessary, to take out letters of administration to his estate. On the 29th April 1898, the plaintiff, under s. 268 of the Civil Procedure Code (Act XIV of 1882), attached certain money in the hands of a third party due to the deceased's estate. On the 2nd July 1898, letters of administration were granted to the Administrator-General. *Held* that, as against the Administrator-General, the attachment was void *ab initio*. At the date of the decree obtained by the plaintiff, the Administrator-General was entitled, by virtue of the High Court's order, to take possession of the estate of the deceased. As soon as that order was made, his right to possession became paramount, and excluded that of the defendant (the son of the deceased), who was then no longer entitled to recover payment of debts due to his father. A decree, therefore, subsequently obtained against the defendant could not, as against the Administrator-General, confer any rights on the decree-holder, who could not stand in a better position than the defendant, his judgment-debtor. Under ss. 278 and 280 of the Civil Procedure Code, the Administrator-General had the right to have the attachment removed, because he was exclusively entitled, at first by reason of the order under s. 18 of Act II of 1874 and subsequently by his letters of administration, to recover the debt, and was not subject to any decree which affected his title. *Lallchand Ramdayal v. Gumtibai*, 8 Bom., 140, distinguished. *BHAIJI BHIMJI v. ADMINISTRATOR-GENERAL OF BOMBAY*

[I. L. R., 23 Bom., 428

**ADMINISTRATOR-GENERAL'S ACT VIII OF 1855.**

See LETTERS OF ADMINISTRATION.

[1 Bom., 103

1 Ind. Jur., O. S., 139

Bourke Test, 6

1. ———— **Recall of letters of administration granted to Administrator-General—Commission.**—When letters of administration which had been granted to the Administrator-General of Madras were recalled, and he had merely taken manual possession of cash, Government promissory notes, and the title deeds of leaseholds belonging to the deceased, the High Court, under s. 22 of Act VIII of 1855, allowed him commission at the rate of 2½ per cent. on the cash and the value of the notes, but refused to allow it on the leaseholds. *IN THE GOODS OF SIMPSON*

1 Mad., 171

2. ———— **Danger of misappropriation—Debts of deceased person.**—The bare possibility that the Act of Limitation may ultimately become a bar to the recovery of assets is not such danger of misappropriation as warrants the granting to the Administrator-General of an order under s. 12 of Act VIII of 1855. *Semble*—A debtor to the estate of a

# ADMINISTRATOR GENERAL'S ACT VIII OF 1855—concluded.

deceased person cannot apply for an order under that section. IN THE GOODS OF GIRIDI DAS VALLABA DAS . . . 1 Mad, 234

## ACT XXIV OF 1867, s. 15—

See ILLEGITIMACY . 11 B. L. R., Ap., 8

## s. 17—

See ADMINISTRATOR-GENERAL.

[8 Bom., O. C., 140

# ADMINISTRATOR GENERAL'S ACT II OF 1874—continued.

nistrator-General, an order under s. 27, Act II of

SOMASUNDARAM CHETTI v. ADMINISTRATOR-GEN-  
ERAL . . . I. L. R., 1 Mad, 148

## s. 31—

See APPEAL TO PRIVY COUNCIL—EFFRAT  
OF PRIVY COUNCIL DECREE ON ORDER.

[I. L. R., 22 Calc., 1011

L. R., 22 I. A., 203

executors appointed by the will took out probate on the

Held by PRINSEP and TREVELLYAN, JJ., affirming  
the decision of SALE, J. (PETTERHAM, C.J., dissenting),  
that the transfer was not a valid one. The executor of

SANNAPPA v. COOK . . . 6 Mad., 348

## s. 60—

See RES JUDICATA—ADJUDICATIONS.

[I. L. R., 3 Calc., 340

See REVIEW—ORDERS SUBJECT TO RE-  
VIEW . . . I. L. R., 3 Calc., 340

## ACT II OF 1874—

See LETTERS OF ADMINISTRATION.

[I. L. R., 4 Calc., 770

See STATUTES, CONSTRUCTION OF.

[I. L. R., 21 Calc., 732

I. L. R., 22 Calc., 788

L. R., 22 I. A., 107

## ss. 12, 16, and 17—

See PRACTICE—CIVIL CASES—PROBATE  
AND LETTERS OF ADMINISTRATION.

[I. L. R., 20 Calc., 879

I. L. R., 26 Calc., 444

## s. 18—

See PARTIES—SUBSTITUTION OF PARTIES—  
APPELLANTS . . . 21 Bom., 102

## s. 27—

See LETTERS PATENT, HIGH COURTS. CL 15

[I. L. R., 1 Mad., 148

Commission payable to—Col-  
lection of debts.—Where there has been only collec-  
tion, but no distribution of the assets by the Admini-

interest and estate under a will to the Administrator-  
General, as constituted under Act II of 1874. The  
course of legislation with reference to the creation  
of the office of the Administrator-General and to his  
duties and powers reviewed and considered in construing  
Act II of 1874. ADMINISTRATOR-GENERAL OF  
BENGAL v. PREM LALL MULLICK

[I. L. R., 21 Calc., 732

ferred by s. 31 of Act II of 1874, is not confined to  
any particular class of executors or of estates. The  
right is given to any executor in whom estate of the  
deceased has been vested by virtue of the probate  
upon the one condition that the Administrator-General  
shall consent. It is not required that in a consolidat-  
ing statute each enactment, when traced to its source,  
must be construed according to the state of things

## ADMINISTRATOR GENERAL'S ACT II OF 1874—continued.

which existed at a prior time when it first became known that the object being that the statutory law bearing on the subject should be collected and made applicable to the existing circumstances of the case, a positive enactment be abolished by indication of a date, or at a prior time, gathered from prior legislation on the matter. Executors, having obtained probate of the will and possession of the estate of a Hindu testator, executed a deed purporting to be in terms of s. 31, Act II of 1874, transferring the property vested in them by the probate to the Administrator-General. *Held*, reversing the judgment of a majority of the Appellate Court, and ordering that of the Chief Justice, that this transfer was valid under that section. *ADMINISTRATOR-GENERAL v. BEHAR L. PANT v. MULLICK*. . . I. L. R., 23 Calc., 769

[L. R., 29 I. A., 107]

2. ————— s. 31—*Transfer by executor to Administrator-General*. Where the executor of a will transfers their interest in the estate of the deceased under s. 31 of the Administrator-General's Act to the Administrator-General *Held*, such a transfer would only transfer such portion of disposition over the estate as the executor to themselves possessed. *IN THE GOODS OF NUNDO LALL MULLICK*

[I. L. R., 23 Calc., 808]

— s. 35—

*See Costs—COSTS OF ESTATE.*

[I. L. R., 10 Bom., 248, 350]

*See Costs—SUIT ON APPEAL ONLY PARTIALLY REVERSED.* I. L. R., 12 Calc., 357

*See Succession Act, s. 282.*

[I. L. R., 10 Calc., 920]

— s. 35—*Right of creditor to immediate payment in full of assets sufficient—"Rateable payment." Meaning of—Costs—Meaning of—"shall be liable to pay"—Succession Act (X of 1865), s. 282—Probate and Administration Act (V of 1881), s. 104.*—In a suit by a creditor, if his demand be uncontroverted or proved and the executor admits assets, the plaintiff is entitled at the hearing to an order for immediate payment without taking the accounts. The admission of assets for the payment of a debt is also an admission of assets for the purposes of the suit, and extends to costs if the Court thinks fit to give them. There is nothing in s. 35 of the Administrator-General's Act (II of 1874) which qualifies or restricts or otherwise interferes with the right of a creditor to demand immediate payment of his claim in full when the realizable assets in the hands of the Administrator-General are sufficient for the immediate payment of all claims in full. The "rateable payment" referred to in the above section as well as in s. 282 of the Succession Act (X of 1865), and in s. 104 of the Probate and Administration Act (V of 1881), is rateable payment out of the assets; it is nowhere provided that it shall be made out of the net income of the estate or any other specific part of the assets. The language ("shall be liable to pay the costs") used in cl. 1 of s. 35 of the Administrator-General's Act (II of 1874) shows that it was intended not to impose upon a creditor, to

## ADMINISTRATOR GENERAL'S ACT II OF 1874—continued.

act in the execution of a claim which was inapplicable, on a later admission to pay the costs of the suit, but to leave a claimant to the Court to relieve him of the liability if the circumstances of the case required it. *JAMES V. YOUNG, L. R. 27 Q. B. 664*, referred to. *ADMINISTRATOR-GENERAL v. BEHAR L. PANT*. . . I. L. R., 23 Calc., 54

*ADMINISTRATOR-GENERAL v. BEHAR L. PANT*. . . 1 C. W. N., 500

3. ————— s. 31—*Continuation—Collection of Assets*.—Under s. 31 of Act II of 1874, the Administrator-General is entitled to charge a bonded sum on the death and distribution of all assets. "Collection of assets" implies the duty of an act in connection with such assets. Where part of the estate consisted of a annuity of which the total value created a paid loan subject to payment of a fixed rental, and part of the annuity had been acquired for public purposes, the commission in any case by arrangements divisible between the estate and the purchaser in certain proportion. *Held* that the Administrator-General was entitled to charge a bonded sum on the rents actually collected by him and on the amount applied to the estate, not as on the corpus of the annuity estate. *In the goods of Simpson, 1 Mch. 171*, followed. *In the Goods of CORCORAN* I. L. R., 25 Calc., 65

— s. 50—

*See Executors*. I. L. R., 23 Calc., 14

— s. 63—

*See RES JUDICATA—ADJUDICATIONS.*

[I. L. R., 3 Calc., 340]

*See REVIEW—ORDERS SUBJECT TO REVIEW.* . . I. L. R., 3 Calc., 340

## ADMIRALTY ACTS.

*See CASES UNDER JURISDICTION—ADMIRALTY.*

## ADMIRALTY COURT, PRACTICE OF—

*See PRACTICE—CIVIL CASES—ADMIRALTY COURT.* . . I. L. R., 23 Calc., 511

*See SHIP, ARREST OF* 15 B. L. R., Ap., 3

## ADMIRALTY OR VICE-ADMIRALTY JURISDICTION.

*See Costs—SPECIAL CASES—ADMIRALTY OR VICE-ADMIRALTY.*

[I. L. R., 17 Calc., 84]

*See LETTERS PATENT, HIGH COURT, CL. 15.* . . I. L. R., 17 Calc., 68

## ADMISSION.

Col.

1. ADMISSIONS IN STATEMENTS AND PLEADINGS . . . . . 177
2. ADMISSIONS BY, OR AGAINST, THIRD PERSONS . . . . . 185
3. MISCELLANEOUS CASES . . . . . 188

**ADMISSION—continued.**

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**1. ADMISSIONS IN STATEMENTS AND PLEADINGS.****1. ——— Statement of Party.—Evi-**

DAR . . . . . 12 W. R., 158

**2. ——— Evidence Act (I of 1872), s. 115—Estoppel—Admission on point of law.**—An admission on a point of law is not an admission of a "thing" so as to make the admission matter of estoppel within the meaning of s. 115 of the Evidence Act. *Totendra Mohun Tagore v. Ganendro Mohun Tagore*, 9 B. L. R., 377; L. R., I. A., Sup. Vol., 47, and *Gopee Lall v. Chundrales Bulojee*, 11 B. L. R., 391, referred to. *JAGWANT SINGH v. SILAN SINGH*

[I. L. R., 21 All., 285]

**3. ——— Proof of contents of document.**—The statement of a party to a suit is admissible evidence against him to prove the contents of a written instrument. *MUTTUKABUPPA KAUNDAN v. RAMA PILLAI* . . . 3 Mad., 158

riety whatever for construing a document, present to the Court, upon a defendant's admission. *MAHALAT-CHMI AMMAL v. PALANI CHETTI* . . 6 Mad., 245

**5. ——— Statement in former suit—Evidence Act, 1872, s. 18**—A statement made by the defendant in another suit may be used as an admission within the meaning of s. 18 of the Evidence Act. *HURISH CHUNDER MULLICK v. PROSUNNO COOMAR BANERJEE* . . . 22 W. R., 303

*LALLA JUGDEO SAHOY v. DIGAMBUR ROY*  
[22 W. R., 304 note]

*KASHEE KISHORE ROY CHOWDHRY v. BAMA SOON-DUREE DEBIA CHOWDHRAIN* . . . 23 W. R., 27

**6. ——— Statements filed in Court.**—In a suit by a daughter for property left by her father, in which the defendants relied upon certain admissions said to have been made by

to prove that the admissions, which plaintiff impugned, emanated from her, or from some one duly authorized by her to make them. The mere fact that

**ADMISSION—continued.****1. ADMISSIONS IN STATEMENTS AND PLEADINGS—continued.**

the admissions were contained in statements filed in a Court of Justice in her name does not necessarily prove that they were made by her. *ASMTUONISSA BEBEE v. ATTA HAFIZ* . . . 8 W. R., 488

**7. ———** In a former suit by A against his agent for an account of the col-

an admission made by B in the former suit is evidence against him *quantum valet* in the subsequent suit. *SHEO SUREN SINGH v. RAM KHELAWAN SINGH*  
[14 W. R., 165]

quent suit. *HURONATH SINGH v. PREONATH SINGH* . . . 7 W. R., 249

**9. ——— Admissions in former suit.**—Also admissions made in a former suit. *OBHOY GOBIND CHOWDHRY v. BEEJOY GOBIND CHOWDHRY*  
[9 W. R., 162]

**10. ——— Acceptance** . . .

admission, and stands upon a very different footing from the decree in the first suit. *GORDON STUART AND CO. v. BEEJOY GOBIND CHOWDHRY*  
[8 W. R., 291]

**11. ——— Deposition.**—A copy of a defendant's deposition in a former suit having been put in by plaintiff at a late stage of the

**12. ——— Suit of different nature.**—Admissions made by a defendant in other suits brought against him by third parties cannot be treated as estoppels in a suit to recover possession of a different property under different circumstances. *WISE v. RUBAA KHATOON* . . . 19 W. R., 299

**13. ——— Plaintiff sued in the Revenue Court for the recovery of rents fraudulently misappropriated by defendant, and upon de-**

**ADMISSION—continued.****1. ADMISSIONS IN STATEMENTS AND PLEADINGS—continued.**

admission or allegation of the defendant in the former suit, put in evidence by the plaintiff, was amply sufficient to support the plaintiff's allegation in this suit that he had been etmamdar. **BHUGWAN CHUNDER DUTT v. MECHOO LALL CHUCKERBUTTY**

[17 W. R., 372]

**14. ——— Suit for resumption of lands—Previous suit to assess the lands—Evidence.**—An admission by a jagirdar in a suit brought by Government to assess the lands, that the lands were comprised in a zamindari, is evidence of that fact in a suit by the zamindar to resume those lands. **FORBES v. MIR MAHOMED TAKI**

[5 B. L. R., 529]

14 W. R., P. C., 28

13 Moore's I. A., 438

**15. ——— Agreement to pay interest.**—In a former suit, plaintiff, mortgagor, under a usufructuary mortgage, claimed recovery of the mortgaged property, on the allegation that there had been a satisfaction of the principal sum by reason of the profits of the estate exceeding 12 per cent. interest, but having failed to prove that allegation, his suit was dismissed. He now sued for the recovery of the property under an ekrarnamah which did not stipulate for payment of interest. *Held* that the case put forward by plaintiff in the former suit did not amount to an admission that there was an agreement to pay 12 per cent., and that he was entitled to restoration of the property on payment of the principal alone. **PROSUNNO COOMAR MOOKERJEE v. BULDEO NARAIN SINGH**

18 W. R., 62

**16. ——— Landlord and tenant—Admission by a co-tenant.**—An admission by a co-tenant as to who is the landlord of a holding is not binding on the other co-tenants. **KALI KISHORE CHOWDHRY v. GOPIMOHAN ROY CHOWDHRY**

[2 C. W. N., 166]

**17. ——— Admission by one of several joint tenants—Suit for rent.**—A suit for rent having been brought against two persons as joint tenants, and a decree passed thereon in favour of the plaintiff, but for a less amount than that claimed by him, an appeal was preferred by the defendants; but subsequently, pending the hearing of the appeal, one of them filed a petition admitting the correctness of the amount claimed by the plaintiff, and stating his willingness to pay half of such amount. *Held* that the admission of the one defendant did not bind the other; and that, notwithstanding such admission, the suit having been brought against the defendants as joint tenants, a separate decree for half the amount admitted could not be made against the defendant who made the admission. **CHUNDERESHWUR NARAIN PERSHAD v. CHUNI ANIR**

9 C. L. R., 359

**18. ——— Admission made by one co-sharer—Admissibility of, against the others—Evidence Act (I of 1872), s. 18.**—In a suit between a zamindar and his ijaradars for rent, a person, who was one of several jotedars in the mahal, was called as a witness for the zamindar, and admitted the fact

**ADMISSION—continued.****1. ADMISSIONS IN STATEMENTS AND PLEADINGS—continued.**

that an arrangement existed whereby he and his co-jotedars had agreed to pay rent to the zamindar direct; that suit was decided in favour of the zamindar. The ijaradars then brought a suit against the jotedars, amongst whom was the witness above mentioned, to recover the sum which the jotedars ought to have paid to the zamindar direct, and which the ijaradars had been decreed to pay. The jotedars disclaimed all liability to pay rent to the ijaradars; in this suit the evidence given by the jotedar in the zamindar's suit was received as evidence on behalf of the plaintiffs against all the defendants. *Held* that the evidence was admissible. **KOWSULLAH SUNDARI DASI v. MUKTA SUNDARI DASI**

[I. L. R., 11 Calc., 588]

**19. ——— Indivisibility of, as evidence—Whole admission.**—Where a person uses the admission of another as evidence, the whole admission must be put in. He cannot put in half and exclude the other half. Those who have to decide upon the evidence are not bound to believe the whole of the statement. **NILMONEY SINGH DEO v. RAMANOOGRAH ROY**

7 W. R., 29

**GOLOKE CHUNDER CHOWDHRY v. MAGISTRATE OF CHITTAGONG**

25 W. R., Cr., 15

**20. ——— Plaintiff relying on admission of defendant.**—A plaintiff abandoning his own case and falling back on the admissions of the defendant is bound to take these admissions as they stand and in their entirety. **TARINEE PERSHAD SEIN v. DWARKANATH RUKHEET**

15 W. R., 451

**21. ——— Effect of, as to co-defendants.**—A defendant's admission, if taken at all, must be taken as a whole; but it cannot bind co-defendants. **NIAMUTOOLLAH KHADIM v. HIMMUT ALI KHADIM**

22 W. R., 519

**22. ——— Pleadings.**—The rule that when an admission is relied upon by a party to a suit as against his opponent it must be taken in its entirety, does not apply to pleadings. **BROJO RAJ KISHOREE v. BISHONATH DUTT**

[W. R., 1864, 305]

**23. ——— Pleadings.**—A statement under Act VIII of 1859 is not in the nature of confession and avoidance as in English pleading, where the confession is considered as an admission of the party, and the avoidance has to be proved. The statement of one party, if used as evidence against him by the other, must be taken altogether, and not in part. **PROBHOO DOSS v. SHEONATH ROY**

[W. R., 1864, Act X, 27]

**SOOLTAN ALI v. CHAND BIBEE**

9 W. R., 130

**24. ——— Qualified statement—Written statement.**—*Per* MACPHERSON, J.—The opinion of the Full Bench in *Pulin Beharee Sen v. Watson*, 9 W. R., 90, was that, if a party makes a qualified statement, that statement cannot be used against him apart from the qualification; not that, if a man makes a series of independent unqualified statements, those



## ADMISSION—continued.

## 1. ADMISSIONS IN STATEMENTS AND PLEADINGS—continued.

36. ——— Disclaimer of title—*Pleadings—Admission by one of several defendants—Relinquishment—Disclaimer of title.*—*B*, holding estates in Bengal jointly with his brothers as an undivided Hindu family, died leaving a widow, *S*, and three unmarried daughters, *B*, *M*, and *N*. On her husband's death, *S* continued to reside with his brothers, and was supported out of the income of the joint estate. All the daughters married in the lifetime of *S*, and *B* became a widow without having had a child. After the death of *S*, and in the lifetime of *M*, *N* also became a childless widow. *M* died after her mother, leaving a son, *R K*. *R K*, on attaining majority, sued to recover, with mesne profits, a 4-anna share of the ancestral estates to which he claimed to be entitled on his mother's death as heir of *R*, and from which he alleged he had been dispossessed by the representatives of *R*'s brothers, whom he made defendants in the suit, joining *B* and *N* with them as co-defendants. Some time after the institution of the suit, a petition was filed purporting to proceed from *B* and *N*, by which they admitted that the plaintiff was the heir of *R*, and that they had no defence to offer. *Held* that, *N* being the heir of *R*, *R K* had not, during her lifetime, any right to any part of the estate, and that his position was not altered by the petition purporting to proceed from *B* and *N*, such petition not amounting to a conveyance or disclaimer of title in his favour. In the English Common Law Courts, and, *a fortiori*, in the Courts of Law in India, where the pleadings are less technical, an admission of a fact on the pleadings by implication is not an admission for any other purpose than that of the particular issue, and is not tantamount to proof of the fact. An admission or even a confession of judgment by one of several defendants in a suit is no evidence against another defendant. *AMIRTOLALL BOSE v. ROJONEEKANT MITTER*, 15 B. L. R., 10

[23 W. R., 214; L. R., 2 I. A., 113]

37. ——— Inheritance—*Relinquishment—Admission on pleadings.*—A plaintiff, suing two defendants *M* and *L* for the possession of certain property by right of inheritance, admitted in his plaint the right by inheritance of the defendant *M* to a moiety of the property, and only made him a defendant because he would not join in bringing the suit. The claim, however, was for the entire property. The defendant *M* filed a written statement setting forth that he had long ago willingly resigned all his rights in favour of the plaintiff, and that the suit had been instituted with his consent. *Held* that this statement was only an admission by *M* of the plaintiff's title, which could not be used against the other defendant *L* so as to entitle the plaintiff to a decree for the entire estate; that since *L* did not set up *M*'s title to defeat the plaintiff, he could not be affected by *M*'s disclaimer; and that the plaintiff could not be allowed in this suit to obtain *M*'s share as his representative, for that would be to decree him the share on a title he never set up.

## ADMISSION—continued.

## 1. ADMISSIONS IN STATEMENTS AND PLEADINGS—continued.

*Amirtolall Bose v. Rojoneekant Mitter*, 15 B. L. R., 10, referred to. *LACHMAN SINGH v. TANSUKH* [I. L. R., 6 All., 395]

38. ——— Untraversed allegations—*Suit to set aside sale.*—In a suit to set aside a sale in execution of decree on the ground of fraud,—*Held*, applying the principle that pleadings should not be construed too strictly, that the defendant could not be held, by reason of their not having denied it, to have admitted the truth of the plaintiff's allegation as to the date upon which knowledge of the fraud was acquired. *NATHA SINGH v. JODHA SINGH* [I. L. R., 6 All., 406]

39. ——— Admission by co-defendant, Effect of—*Suit for possession of land.*—In a suit for possession of immovable property brought by three Mahomedan brothers, their three sisters were impleaded as defendants under s. 32 of the Civil Procedure Code, and two of the latter subsequently filed a written statement in which, after stating that they were on good terms with their brothers, the plaintiffs, and that the suit had been instituted with their knowledge and permission, they prayed that the suit might be decreed, subject to the condition that they would, on some future occasion, "settle with their own brothers as to their right and costs." The third sister did not appear to defend the suit. *Held* that the Lower Courts were wrong in treating this admission as sufficient to entitle the plaintiffs to a decree for possession, not only of their own share, but also of the shares of their three sisters, it being a fundamental proposition connected with the administration of justice that a plaintiff cannot sue for more than his own right, and that no defendant can, by an admission of consent of this kind, convey the right or delegate the authority to sue for more than his own share in property. *Lachman Singh v. Tansukh*, 6 A., 395, referred to. *AZIZULLAH KHAN v. AHMAD ALI KHAN* [I. L. R., 7 All., 353]

40. ——— Request to verify signature to petition—*Evidence of statements made in petition.*—Where a party asks others to verify his signature to a petition or to identify him as one of the petitioners, it amounts to an allegation on his part that he made the statements which appear in the petition, and is as effective evidence against the party making the request as if the petition were in fact filed. *MOHUN SAHOO v. CHUTOO MOWAR* [21 W. R., 34]

41. ——— Petition, Statement in—*Suit to set aside deeds.*—Defendant claimed to hold a mokurari tenure under deeds executed by plaintiff, zamindar. The plaintiff denied the authenticity of the deeds, and sued to set them aside. The Lower Courts dismissed his suit as barred by limitation, on the ground that plaintiff had, in a petition before the Collector, admitted that defendant was mokurari of the tenure, and that, this being so, limitation ran against him from the date of the deeds. *Held* that the case should have been tried on the merits, as the petition was not a conclusive admission of the

## ADMISSION—continued.

## 1. ADMISSIONS IN STATEMENTS AND PLEADINGS—concluded.

[12 W. R., 6  
11 Moore's I. A., 289

## 2. ADMISSIONS BY, OR AGAINST, THIRD PERSONS.

that behalf BUCHA v. LULEE 2 Agra, 20

43. ——— Persons without title.—*Suit for redemption*—In a suit for redemption the admission of a person having no title to the estate in question in the suit is not admissible against the mortgagor. MUTHRA DASS v. MAGH SINGH

[3 N. W., 207

44. ——— Guardian, Admission by.—*Previous transactions*—Although a guardian of two minors may have power to manage or to make a partition of the estate, he has no authority to bind the estate of either of his wards by admission of previous transactions. SURUJ MOOKHI KONWAR v. BHAGWATI KONWAR. 10 C. L. R., 377

45. ——— Admission by executors.—The admissions of the executors of a donor are treated as the admissions of the donor. DWARKANATH BOSE v. CHUNDER CHURN MOOKERJEE

[1 W. R., 339

46. ——— The admission of one executor to a will would not bind another, nor would the admissions of parties other than the executor bind the estate. CHUNDER KANT MITTAR v. RAMNARAIN DEY SIKKAR 8 W. R., 63

47. ——— Admission by agent.—An agent's admission that he purchased as an agent is evidence against his heirs that the purchase was not made by him on his own account. GOREBOOLAH SIKKAR v. BOYD 2 W. R., 190

48. ——— Admission by husband.—*Admission of joint character of property*.—An admission by the widow's husband that the lease was the joint property of himself and the plaintiff, though not an estoppel, was held to be good evidence to be rebutted by the widow. SREENATH NAG MOZOMBAR v. MONMOHINEE DOSSEE 6 W. R., 35

49. ——— Admissions of vakil.—*Criminal case*.—Admissions made by a vakil cannot bind his client in a criminal case. QUEEN v. KAZIM MUNDLA 17 W. R., Cr., 49

## ADMISSION—continued.

## 2. ADMISSIONS BY, OR AGAINST, THIRD PERSONS—continued.

50. ——— Admission by pleader on behalf of client.—Admission made in a statement in a case by a pleader on behalf of his client after full consideration and consultation is admissible as evidence against that client in another case in which he is a party. COMABUTTER v. PABESHNAUTH PANDAY 15 W. R., 135

that the record he made was wrong. HUB DIAL SINGH v. HEERA LALL 16 W. R., 107

52. ——— Admission by owner after sale of property.—An admission subsequently made by a debtor whose property has been sold is not evidence against the purchaser of the property. KHEMUNKUREZ CHOWDHRAIN v. GHOSHCHUNDER MOZOMBAR 5 W. R., 288

53. ——— Admission by judgment-debtor.—*Purchaser*.—A purchaser in execution of a decree of a Civil or Revenue Court is not bound by any admission made by his execution-debtor, nor ordinarily by a decree against such person. RUNGO MONER DEBIA v. RAJ COOMAR BEBER 8 W. R., 197

IMRIT KOONER v. LALLA DEBER PERSHAD SINGH [18 W. R., 200

54. ——— Admission by mortgagor.—*Suit by purchaser for cancellation of mukdari*

that, although that admission was conclusive as between the mortgagor and the mortgagee, the colluding parties, yet that in the present case, brought to avoid the defendant's title on the strength of an alleged collusive mortgage, it was quite competent to him to contest its bona fide nature. DOVUNJOY DEY v. DWARKANATH SINGH 6 W. R., 230

patwari's diary as lumberdar were not an admission of defendant's title as purchaser. NUND KISHORE v. NUTHOO RAM 1 Agra, 233

56. ——— Admission by heirs.—*Admission as to relinquishment of title*.—In a suit by the grandchildren of the deceased daughter of a member of a joint Hindu family, who, though not entitled to his property as his heirs, had been long in possession, the surviving daughter, in whom, according to Hindu law, her father's interest would now be legally vested, admitted by a petition filed in this suit that by her gift or relinquishment plaintiffs had a title to her father's share. The admission was held to be evidence that such title existed anterior to

**ADMISSION—continued.****2. ADMISSIONS BY, OR AGAINST, THIRD PERSONS—continued.**

the commencement of the suit. *GOUR LALL SINGH v. MOHESH NARAIN GHOSE* . . . 14 W. R., 484

57. ——— Admission by zamindar of mokurari right.—Where tenants sued for a declaration that their holding was mokurari at a given rent, and the surburakar of their zamindar admitted their right on behalf of the zamindar, who himself filed a petition corroborating his surburakar's statement, it was held that these admissions would bind any subsequent zamindar not being an auction-purchaser at a sale for arrears of Government revenue. *WATSON & Co. v. NOBIN MOHUN BABU*

[10 W. R., 72]

58. ——— Admission by auction-purchaser—*Admission of title indirectly.*—Where an auction-purchaser in a proceeding before the Collector for the purpose of charging an estate withstands a claim to a mokurari tenure advanced by a tenant, but does not otherwise subsequently legally question the tenant's title, the presumption arises that that title has been allowed by the auction-purchaser. *CHOONEE MAHTOON v. CHATTOO MAHTOON*

[25 W. R., 231]

59. ——— Admission of lessor—*Lessor and lessee.*—The admission of a lessor does not bind a lessee in certain cases in which a *bond fide* act might have bound. *SUTROOGHUN DUTT v. BROJOGOPAL GHOSE* . . . 3 W. R., 143

60. ——— Admission of tenancy—*Evidence of tenancy.*—A mere admission by the defendant of plaintiff having purchased a jote is insufficient to prove that he ever was defendant's tenant. *BAKUR ALI CHOWDHRY v. ASHKUR ALI*

[5 W. R., 156]

61. ——— Admission by raiyat.—*Evidence of rate of rent—Similar tenures.*—An admission by one raiyat as to the rate of rent at which he holds is not evidence to prove the rate at which another holds. *NURROHURRY MOHATO v. NARAINEE DOSSEE* [1 Ind. Jur., O. S., 9: W. R., F. B., 23]

62. ——— Admission of rate of rent.—In a suit for arrears of rent at enhanced rates, if plaintiff asks for rates admitted by defendant, he must abide by those intended to be admitted; and if he desire to take advantage of the finding of the Lower Court, he must submit to the whole finding taken altogether. *SOORENDRONATH ROY v. BHYRUB MUNDUL* . . . 14 W. R., 462

63. ——— Return of amount of rent made to Collector—*Rate of rent, Evidence of.*—A return made to a Collector by an occupant of land stating the amount of the rent is an admission as to the amount of rent binding upon the occupant and all who claim under him. *AJUDH BEHAREE SINGH v. RAM ROY TEWARI* . . . 18 W. R., 105

64. ——— Rate of rent, Evidence of—*Presumption from conduct of defendant in not raising objection.*—In a suit for a kabuliati at enhanced rates after notice under s. 13, Act X of 1859, where the defendants stood by and, though raising a good

**ADMISSION—continued.****2. ADMISSIONS BY, OR AGAINST, THIRD PERSONS—concluded.**

many objections on other points, raised no question as to rates, their conduct and pleadings were held to afford a fair presumption of the admission of the plaintiff's claim as to the rates sued for. *THAKOOR DUTT SINGH v. GOPAL SINGH* . . . 14 W. R., 4

65. ——— Consideration for sale—*Suit for presumption.*—The mere admission of the vendor that an old debt of Rs50 mentioned in the sale deed formed part of the consideration is not conclusive evidence of the allegation as against parties claiming a right of presumption. *PEERA v. SHIMBHU*

[2 Agra, 348]

**3. MISCELLANEOUS CASES.**

66. ——— Verbal admissions as to sum due by defendant.—It is a very dangerous thing for a Court to decree in favour of a plaintiff merely upon alleged verbal admissions by the defendant of a sum due without the most clear and cogent proof of such admissions, especially when the plaintiff shrinks from bringing his accounts into Court. *LALLA SHEOPARSHAD v. JUGGERNATH* . . . L. R., 10 I. A., 74

67. ——— Admission of receipt of purchase-money—*Registration Act, 1866, s. 66, cl. 3.*—An admission before a Registrar of the receipt of purchase-money attested by his endorsement, as required by cl. 3, s. 66, Act XX of 1866, though evidence of the strongest and most reliable description, ought not to be treated as conclusive. In the face of such admission, however, the party seeking to get out of its effects must make out his case by very clear evidence. *MAHOMED HANEEF MEAJEE v. MOZHUR ALI* . . . 15 W. R., 280

68. ——— Admission in a mortgage as to amount of land excepted from its operation.—Debutter land within the limits of a revenue-paying mouzah, which had been mortgaged by the defendants to a predecessor in title of the plaintiff, was exempted from the mortgage, the deed specifying the number of bighas making the area of the debutter. Against a plaintiff, who made title to the mortgaged mouzah and claimed possession of all of it that had passed by the mortgage, the mortgagors set up that there was more debutter in the mouzah than the deed had specified, the intention of the parties to the deed having been to exempt whatever debutter there actually was:—*Held* that the statement in the deed as to the quantity of the debutter was a deliberate admission, imposing upon the mortgagors who had made it the burden of proving that it was untrue, or that they were not bound by it; also that the Subordinate Judge's finding that the defendants had not given proof sufficient to discharge themselves of this, was correct. *JARAO KUMARI v. LALONMONI* . . . I. L. R., 18 Calc., 224 [L. R., 17 I. A., 145]

69. ——— False statement as to share being separate—*Joint family—Misrepresentation.*—In a suit by a member of a joint family to recover possession of certain property alleged to

**ADMISSION—continued.****3. MISCELLANEOUS CASES—continued.**

belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree passed against the estate of R, one of the members of the family, for his separate debt, the defendant alleged, as showing the property was the separate property of R, that, on one occasion, when R B, the kurta, and a third member of the family, entered into a security bond with the Collector,

having purchased on the faith of such misrepresentation. *ROODH SINGH DHODORIA v. GUNESH CHUNDER SEN*: 12 B. L. R., P. C., 317: 19 W. R., 356

he had been misled by such statement. *GRISH CHUNDER GHOSH v. ISSAR CHUNDER MOOKERJEE* [3 B. L. R., A. C., 337: 12 W. R., 226

sions. *LUTEERPOONISSA v. GOOR SURUN DASS PHOOL BISEE v. GOOR SURUN DASS* 13 W. R., 485

lent purpose and were not true, and to show the real nature of the transaction. *SREENATH ROY v. BINDOO BASHNER DEBIA* . . . 20 W. R., 112

73. ———— Effect of admissions not acted on—*Admissions by person who afterwards adopts another*.—A party is not concluded by his own representations unless they have been acted upon by the opposite party. If treated merely as admissions not acted upon, it may be shown by the party who made them that they were not true. *Quere*—

[20 W. R., 223

74. ———— Admission not acted on—*Decision opposed to admission*.—A mere admission is not conclusive. It is so only in certain cases,—*v. g.*

**ADMISSION—concluded.****3. MISCELLANEOUS CASES—concluded.**

where it has been acted upon by the party to whom it was made. Thus a statement made in a former suit, in which the Court, so far from acting upon it, passed a decree opposed to it, cannot be treated as conclusive. An admission made by defendants' ances-

[18 W. R., 347

**ADOPTION.**

*See CASES UNDER HINDU LAW—ADOPTION.*

*See CASES UNDER HINDU LAW—CUSTOM—ADOPTION.*

*See CASES UNDER HINDU LAW—WILL—CONSTRUCTION.*

*See MALABAR LAW—ADOPTION.*

[I. L. R., 15 Mad., 6

*See MALABAR LAW—CUSTOM.*

[I. L. R., 13 Mad., 209

**Suit to set aside—**

*See CASES UNDER DECLARATORY DECREE, SUIT FOR—ADOPTIONS.*

*See CASES UNDER LIMITATION ACT, 1877, ARTS. 118, 119 (1871, ART. 129: 1859, S. 1, CL. 16).*

*See VALUATION OF SUIT—SUITS.*

[I. L. R., 15 All., 378

**ADOPTIVE PARENTS.**

*See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP* . I. L. R., 3 Bom., 1

**ADULTERY.**

*See ABATEMENT OF PROSECUTION*

[4 Mad., Ap., 55

*See CASES UNDER DIVORCE ACT.*

*See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.* I. L. R., 17 Mad., 280

[I. L. R., 20 Mad., 470

**Intent to commit—**

*See CRIMINAL TRESPASS*

[I. L. R., 19 All., 74

of partner with wife of co-partner.

*See PARTNERSHIP—DISSOLUTION OF PARTNERSHIP.* . . . 5 B. L. R., 109

1. ———— Institution of proceeding by husband—*Criminal Procedure Code, 1872, s. 478.*—*Quere*—Is the formal assent of a husband to a charge of adultery, added at the end of his deposition, a proper compliance with s. 478, Act X of 1873? *QUEEN v. LUCKY NARAIN NAGROY*

[24 W. R., Cr., 19

**ADULTERY—continued.**

2. ————— *Appearing as witness for prosecution in case of rape.*—*K* was accused by *D* and *P*, alleged to be *D*'s wife, of raping *P*, and was committed for trial charged in the alternative with rape or adultery. *Held* that, as no complaint had ever been actually instituted by *D* against *K* for the offence of adultery, as contemplated by s. 474 of Act X of 1872 (Criminal Procedure Code), the circumstance of *D*'s appearing as a witness for the prosecution for the offence of rape not amounting to the institution of a complaint within the meaning of that section, *K*'s conviction for adultery must be quashed. *EMPRESS v. KALLEE*

[1 L. R., 5 All., 233]

3. ————— *Proof of marriage—Charge of adultery.*—Before a person charged with adultery can be convicted, strict proof of the marriage is necessary. *QUEEN v. SMITH*

[1 Ind. Jur., N. S., 8: 4 W. R., Cr., 31]

SOBRATI v. JUNGHI . . . 2 C. W. N., 245

4. ————— *Evidence Act, s. 50.*—The provisions of s. 50 of the Evidence Act show that where marriage is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage must be strictly proved. *Queen v. Wazira*, 8 B. L. R., Ap., 63, overruled. *EMPRESS v. PITAMBUR SINGH*

[1 L. R., 5 Cal., 566: 5 C. L. R., 597]

EMPRESS v. ARSHED ALI . . . 13 C. L. R., 125

5. ————— *Evidence Act, s. 50.*—*K* was accused by *D* and *P*, alleged to be *D*'s wife, of raping *P*, and was committed for trial charged in the alternative with rape or adultery. The evidence of marriage between *D* and *P* consisted of their statements that they were married to each other and of a statement by *K* that *P* was *D*'s wife. *K* was convicted on the charge of adultery. *Held* that such evidence, having regard not only to s. 50 of the Evidence Act, 1872, but to the principle that strict proof should be required in all criminal cases, was not sufficient to establish the vital incident to the charge of adultery, namely, the marital relation of *D* and *P*. *Empress v. Pitambur Singh*, 1 L. R., 5 Cal., 566, concurred in. *EMPRESS v. KALLEE*

[1 L. R., 5 All., 233]

6. ————— *Marriage illegal by Hindu law—Custom of caste—Penal Code, s. 49—Dissolution of marriage at will and marriage (natra) with another man—Custom.*—A custom of the Talapada Hali caste that a woman should be permitted to leave the husband to whom she has been first married and to contract a second marriage (natra) with another man in the lifetime of her first husband and without his consent, is invalid, as being entirely opposed to the spirit of the Hindu law; and the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery under s. 497 of the Penal Code. *REG. v. KURBAN GOJA*. *REG. v. BAI RUPA* 2 Bom., 124, 2nd Ed., 117

7. ————— *Marriage contrary to Hindu law—Custom of caste—Penal Code,*

**ADULTERY—continued.**

497.—Where a prisoner accused of adultery set up in defence a natra contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is whether or not the accused honestly believed at the time of contracting the natra that the woman was the wife of another man. *REG. v. MANOHAR RAIJI* . 5 Bom., Cr., 17

8. ————— *Sagai marriage—Custom of caste.*—Sagai wives, i.e., widows married in accordance with the custom of Sagai prevailing amongst the Koiries and other low castes of Pehar, are so far the legal wives of their husbands as to justify the punishment of persons committing adultery with them. *BISSURAM KOIRIE v. EMPRESS*

[3 C. L. R., 410]

9. ————— *Proof of adultery—Sexual intercourse—Presumption of knowledge that woman is married.*—In a case of adultery, sexual intercourse must be proved; the sexual intercourse required for adultery being the same identical thing as the sexual intercourse required for rape. The difference lies in the mode of proof: in rape, no presumption of sexual intercourse can be made; in adultery, it can be, evidence pointing strongly to an inference of guilt. It is not necessary, therefore, that there should be direct evidence of an act of adultery; nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman. *QUEEN v. MADHUB CHUNDER GIRI* . . . 21 W. R., Cr., 13

10. ————— *Condonation of adultery—Penal Code, s. 497.*—The Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence. *QUEEN v. SMITH*

[1 Ind. Jur., N. S., 8: 4 W. R., Cr., 31]

11. ————— *Enticing away woman—Penal Code, ss. 497, 498—Form of conviction.*—A prisoner need not be convicted both of adultery and enticing away the woman: the former (if there were any enticing away) would include it. *QUEEN v. POCHUN CHUNG* . . . 2 W. R., Cr., 35

12. ————— *Penal Code (Act XLV of 1860), ss. 497, 498—Condonation.*—The complainant alleged that his father-in-law had detained his wife, and that with his help the accused married his wife, and since then had kept her in his house. The accused was convicted under s. 498, Penal Code. The Sessions Judge made a reference under s. 438, Criminal Procedure Code, to the effect that the conviction under s. 498, Penal Code, was bad, inasmuch as there was no evidence whatever to show that the petitioner enticed away the complainant's wife from her husband's or her father's house with intent to have illicit intercourse with her, and that there could not be any conviction under s. 497, Penal Code, as the circumstances of the case warranted the conclusion that the offence, if any, had been condoned by the husband by his omission to take any steps since the last six or seven years against the accused. The High Court agreed with the view of the Sessions Judge. *JASIMADDIN SHEIKH v. ICHOHAK MISTRY*

[1 C. W. N., 498]

**ADVANCEMENT.**

See ENGLISH LAW . . . 2 W. R., 141

See PARSIS . . . I L. R., 2 Bom., 75

**ADVERSE POSSESSION.**

See CASES UNDER LIMITATION ACT, 1877, ART. 144 (1871, ART. 145: 1859, s. 1, CL 12)—ADVERSE POSSESSION.

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See WITNESS—PERSON COMPETENT TO BE WITNESS . . . 5 B. L. R., Ap., 28

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[I L. R., 18 All., 384

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See STAMP ACT, 1879, SCH. II, ART. 11.

[I L. R., 8 Mad., 14

[5 B. L. R., Ap., 70  
14 W. R., Cr., 23

[14 B. L. R., Ap., 12: 24 W. R., 15

3. ——— Filing appeal in Registrar's Office.—An advocate of the High Court is entitled to appear and plead on the Appellate Side, but not to file an appeal in the Registrar's Office. *RAM TARUK BARICK v. SIDESOREE DASSEE*

[13 W. R., 60

4. ——— Right to take instructions directly from client—Right to "act" for client—*Practice—Barrister—Letters Patent,*

poses of the Code, perform on behalf of a suitor all the duties that may be performed by a pleader, subject to his exemption in the matter of a vakalatnama and to any rules which the High Court may make regarding him. No such rule having been made to the contrary, such an advocate may take instructions directly from a suitor, and may "act"

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for the purposes of the Code on behalf of his clients. *BAKHITAWA SINGH v. SANT LAL*

[I L. R., 9 All., 617

5. ——— Privilege of speech—Question of the extent of the privilege of speech accorded to advocates and counsel considered. *REG. v. KASHI NATH DINKAR* . . . 8 Bom., Cr., 123

6. ——— An advocate in India cannot be proceeded against, civilly or criminally, for words uttered in his office as advocate. *SULLIVAN v. NORTON*

[I L. R., 10 Mad., 28

7. ——— Vakalatnama, necessity for—*Criminal Procedure Code, 1872, s. 186.*—An advocate appearing in defence of an accused person under s. 186 of the Criminal Procedure Code, 1872, should not be required to file a vakalatnama. *ANONYMOUS*

[7 Mad., Ap., 41

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9. ——— Right to sue on promissory note given for fees—*Recorder's Act XXI of 1863, s. 18.*—With reference to s. 18, Act XXI of

[7 W. R., 390

10. ——— Suspension of Advocate—*Burma Courts Act VII of 1872, s. 68.*—Entering into contract contrary to public policy.—In a case in which an advocate of the Recorder's Court at Rangoon was suspended by the Recorder under Act

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[I. L. R., 10 Mad., 375

1. Right to appeal—*Suit relating to charitable fund*—Statute 53 Geo. III, c. 155, s. 111.—By the 53 Geo. III, Cap. 155, s. 111, the Advocate General is entitled to appear and represent the Crown in informations for the administration of charitable funds. ATTORNEY GENERAL v. BRODIE [4 Moore's I. A., 190

2. Officiating Advocate General—*Right to pre-audience*.—The Officiating Advocate General having claimed pre-audience, the claim was questioned by a senior member of the Bar, but was allowed. Held that, down to the transfer of the Government of India to Her Majesty, the Advocate General of the East India Company was not entitled as such to pre-audience in the Courts without a patent of precedence: that the Attorney General and Solicitor General in England enjoy precedence as representing the Sovereign, and not by patent; and that the Advocate General and Officiating Advocate General for the time being are entitled to similar pre-audience as the Attorney General in England. ADVOCATE GENERAL (OFFICIATING), IN THE MATTER OF THE CLAIM OF . Bourke, O. C., 224: A. O. C., 110

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See EXECUTION OF DECREE—STAY OF EXECUTION . I. L. R., 15 Bom., 536

of Documents.

See INSPECTION OF DOCUMENTS.

[I. L. R., 22 Calc., 105, 891  
 I. L. R., 15 Bom., 7  
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See CASES UNDER PRACTICE—CIVIL CASES—AFFIDAVITS.

See PRACTICE—CIVIL CASES—COMMISSION FOR TAKING ACCOUNTS.

[I. L. R., 1 Bom., 158

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[I. L. R., 20 Calc., 587

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[3 B. L. R., Ap., 153

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———— Agency of Ganjam and Vizagapatam—Agent's Court at Vizagapatam, Jurisdiction of—Ganjam and Vizagapatam Agency Court's Act (XXIV of 1839).—The Agent to the Governor at Vizagapatam has jurisdiction over all suits of a civil nature arising in the Agency. The rule regarding the institution of suits of a lesser pecuniary value than Rs. 5,000 in the Divisional Assistant's Court is, like the analogous rule contained in s. 15 of the Code of Civil Procedure, one of procedure, and not of jurisdiction. Where, therefore, a suit which might have been instituted in the Court of the Divisional Assistant was brought in the Agent's Court,—*Held* that the Agent had jurisdiction to entertain it. *Nidhi Lal v. Maszar Hossain*, I. L. R., 7 All., 230, *Matra Mandal v. Hari Mohan Mullick*, I. L. R., 17 Calc., 155, *Krishnasami v. Kanakasabai*, I. L. R., 14 Mad., 183, and *Augustine v. Medlycott*, I. L. R., 15 Mad., 241, followed. *Telayudam v. Arunachalam*, I. L. R., 13 Mad., 273, considered. *GOURBACHANDRA PATNAIKUDU v. VIKRAMA DASO* . I. L. R., 33 Mad., 367

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—— s. 18 *et seq.*—*Reference by Commissioner of Ajmere—Powers of High Court—Jurisdiction.*—*Held* that, where a point of law or a question as to the construction of a document is referred to the High Court by an order purporting to be made under s. 18 of the Ajmere Courts Regulation, the High Court cannot consider whether the point referred arises in the case in which the reference before it has been made or not; but its functions are limited to pronouncing an opinion on any point which may be so referred to it. **KALIAN MAL v. RAM KISHEN** . . . I. L. R., 21 All., 163

—— ss. 17, 18, 21, 36, 37—*Reference to the High Court by the Chief Commissioner of Ajmere and Mairwara—Reference to Chief Commissioner by Commissioner of Ajmere—Appeal from Commissioner's decree made in accordance with Chief Commissioner's judgment.*—On an appeal from a decision in a civil suit of the Assistant Commissioner of Ajmere to the Commissioner of Ajmere, the latter, feeling doubtful on a question of the nature specified in s. 17 of the Ajmere Courts Regulation I of 1877, referred such question, under s. 36 of that Regulation, to the Chief Commissioner of Ajmere and Mairwara. The Chief Commissioner dealt with the case as prescribed in s. 37 of that Regulation, and returned it to the

**AJMERE COURTS REGULATION (I of 1877)—concluded.**

Commissioner, who dismissed the suit in accordance with the Chief Commissioner's judgment. The plaintiff preferred an appeal to the Chief Commissioner from the Commissioner's decision. The Chief Commissioner did not make any order on the memorandum of appeal admitting it, or directing that it should be registered, or that the respondent should be summoned, or that the appellant should appear on a certain day under s. 551 of Act X of 1877, but issued a notice to the appellant's counsel to appear on a certain day. The appellant's counsel appeared on that day, and the Chief Commissioner intimated that he was acting under s. 551 of Act X of 1877. The appellant's counsel then proceeded to address the Chief Commissioner, and was heard for some time, and then stopped in consequence of the Chief Commissioner resolving to refer to the High Court the question whether the appeal from the Commissioner's decision lay to him or to Her Majesty in Council. The Chief Commissioner subsequently referred such question to the High Court. *Held* by the Full Bench (SPANKIE, J. dissenting), on a reference by the Division Bench before which the Chief Commissioner's reference came, that such question arose “in the trial of an appeal” within the meaning of s. 21 of the Ajmere Courts Regulation I of 1877, and was properly referred to the High Court. *Held* by the Division Bench (SPANKIE, J., and STRAIGHT, J.) that the appeal from the Commissioner's decision lay, in this particular case, not to the Chief Commissioner, but to Her Majesty in Council. **THAKUR OF MASUDA v. THE WIDOWS OF THE THAKUR OF NANDWARA** . . . I. L. R., 2 All., 819

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22 **W. R.**, 183

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3. Local investigation.—There were no limits to the powers conferred by Act VIII of 1859 on a Civil Ameen for the purpose of making an investigation. **MOHUN LALL ROY v. URSPOORNA DASSEE** . 9 **W. R.**, 586

4. A Civil Court is not warranted in deputing its functions to an

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5. Power of Mufti Sudder Ameen to set aside attachment issued by himself.—A Mufti Sudder Ameen may set aside an attachment in a suit issued from his Court, and no longer properly in force in the suit, although no express statutory power to do so exists. But on a petition to set aside such an attachment, he cannot also make a declaration as to the right to the property attached and claimed to have been acquired subsequently, and direct that possession should be transferred to the petitioner. **EX-PARTE CHELLAPPERUMAL PILLAI** . 1 **Mad.**, 135

6. Evidence taken by Ameen, —Irregular order.—Where a Principal Sudder Ameen had deputed a Civil Ameen to enquire into the fact of

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be totally rejected. **BINDABUN CHUNDER SIRCAR CHOWDREY v. NOBIN CHUNDER BISWAS**

[17 **W. R.**, 282]

8. Evidence taken by Ameen.—It is not admissible. **CHAND RAM v. BROJO GOBIND DOSS** . 19 **W. R.**, 14

9. It was not the intention of the Legislature to allow witnesses to be examined out of Court by Ameens, except with reference to points for the determination of which local inspection is required. **SHADBOO SINGH v. RAM ANOOGRAHA LALL** . 9 **W. R.**, 83

11. Local investigation —Suits for enhancement of rent—Act VIII of 1859

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[1 B. L. R., S. N., 1: 10 W. R., 43

12. ——— An Ameen appointed to hold a local investigation has power to examine witnesses relative to the matter he has to enquire into; but the Munsif has no power to direct the Ameen to try the whole case: when this course was adopted, the High Court expressed their disapproval of such a practice, and remanded the case to the Munsif for re-trial. *RAGHUNATH SHAW v. RAJKRISHNA DUB*

[1 B. L. R., S. N., 2

13. ——— Direction to enquire into mesne profits.—An Ameen, when directed to make an enquiry as to mesne profits, ought not, in the execution stage of a suit, to enter into enquiries as to dates of dispossession, which must be taken to have been determined by the decree. *BIJOY GOBIND NAIK v. KALI PROSSONO NAIK*

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14. ——— Enquiry by Ameen as to existence and value of moveable property—*Time for making enquiry.*—In a suit in which the Court considers it necessary to order an enquiry by a Civil Ameen into the existence and value of moveable property, such enquiry cannot be left to be made after decree, but must be made before the final decree is drawn up. *ROHINI DEBIA v. DIGAMBER CHATTERJEE*

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15. ——— Deputation of second Ameen to make enquiry before first Ameen's proceedings are annulled.—When an enquiry has been made by a Commissioner under the Code of Civil Procedure, the Court to which it is reported ought not, unless it annuls the proceedings of the first enquiry, to order another on the same matter. *AZIM ALI KHAN BAHADOOR v. SURUSSUTTY DEBIA*

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16. ——— Objections to Ameen's report.—Where clear instructions as to a local enquiry ordered by the Court are given to an Ameen in the presence of both parties, and no objection is made to them by either party then and there, they have no ground of complaint, after the Ameen has carried out his instructions, if the Court acts upon his report. *BISSESSUR ROY v. KANCHUN ROY*

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17. ——— Objections to the Ameen's report should be enquired into if taken within a reasonable time from the return of the report, even where the case has been struck off the file. *ISSUR CHUNDER AMREE v. SYAM KHAN CHOWDHRY*

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18. ——— Notice of time fixed for.—Reasonable notice must be given of the time fixed for hearing objections to the report. *RAM NARAIN SING v. GOBERDHUN LALL CHOWDHRY*

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(I. L. R., 8 Cal., 948)

(I. L. R., 13 Cal., 221, 23.)

*See* CASES UNDER COSTS—SPECIAL CASES—APPEAL.**APPEAL—continued.***See* CASES UNDER DISTRICT JUDGE, JURISDICTION OF.*See* CASES UNDER DIVORCE ACT, s. 55.*See* CASES UNDER INSOLVENT ACT, ss. 72, 73.*See* LAND ACQUISITION ACT, s. 35.*See* CASES UNDER LETTERS PATENT, CL. 15.*See* LETTERS PATENT, NORTH-WESTERN PROVINCES, CL. 10.*See* CASES UNDER MADRAS BOUNDARY ACT.*See* CASES UNDER FAUTER SUIT—APPEALS.*See* CASES UNDER PRACTICE—CIVIL CASES—APPEAL.*See* RECORDERS ACT.*See* CASES UNDER REMAND—CASES OF APPEAL AFTER REMAND.*See* CASES UNDER SPECIAL OR SECOND APPEAL.*See* CASES UNDER VALUATION OF SUIT—APPEALS**Abatement of—***See* ABATEMENT OF SUIT—APPEALS.*See* APPEALS IN CRIMINAL CASES—PRACTICE AND PROCEDURE

(I. L. R., 2 Bom., 564)

(I. L. R., 10 All., 714)

*See* COSTS—ABATED SUIT OR APPEAL.

(I. L. R., 8 Cal., 440)

**Adding parties on—***See* PARTIES—ADDING PARTIES TO SUITS—APPELLANTS.*See* PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS.**by one defendant, Reversal of whole decree on—***See* CASES UNDER CIVIL PROCEDURE CODE, 1884, s. 544.**by one plaintiff against another.***See* PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS. I. L. R., 15 Bom., 145**Grounds of—***See* CASES UNDER SPECIAL OR SECOND APPEAL—GROUND OF APPEAL.**Memorandum of—***See* APPELLATE COURTS—EXERCISE OF POWERS IN VARIOUS CASES—APPEAL, MEMORANDUM OF.

(I. L. R., 15 Mad., 29)

(I. L. R., 23 Mad., 165)

*See* CIVIL PROCEDURE CODE, s. 543.

(I. L. R., 1 All., 230)

1 Ind. Jur., O. S., 121

W. R., 1864, 135

**APPEAL—continued.**

See LIMITATION ACT, 1877, s. 4.

[I. L. R., 1 All., 280  
I. L. R., 2 All., 875  
I. L. R., 16 Calc., 250  
I. L. R., 19 Calc., 747  
I. L. R., 15 Mad., 78  
I. L. R., 13 All., 129]

See PRACTICE—CIVIL CASES—APPEAL.

[I. L. R., 14 All., 221  
I. L. R., 12 All., 81  
I. L. R., 18 All., 77]

See CASES UNDER SPECIAL OR SECOND  
APPEAL—ADMISSION OR SUMMARY  
REJECTION OF APPEAL.

Peremption of—

See LETTERS PATENT, HIGH COURT, CL. 15.  
[I. L. R., 17 Calc., 66]

Presentation of—

See APPEAL IN CRIMINAL CASES—PRACTICE  
AND PROCEDURE I. L. R., 1 Mad., 304  
[I. L. R., 15 Mad., 137  
I. L. R., 19 Mad., 354  
I. L. R., 20 Mad., 87]

See LETTERS PATENT, N.-W. P., CL. 8.

[I. L. R., 23 All., 331]

See CASES UNDER LIMITATION ACT, 1877,  
s. 4.

See PLEADER—APPOINTMENT AND APPEAR-  
ANCE. I. L. R., 16 Mad., 285

Revivor of—

See PRIVY COUNCIL, PRACTICE OF—RE-  
VIVOR OF APPEAL.

[I. L. R., 31 Calc., 997  
I. L. R., 21 I. A., 183]

Right of—

See CASES UNDER RIGHT OF APPEAL.

Substitution of parties on—

See PARTIES—SUBSTITUTION OF PARTIES—  
APPELLANTS.

See PARTIES—SUBSTITUTION OF PARTIES—  
RESPONDENTS.

1. ———— Decree—Judgment.—An appeal lies from the decree, and not from the judgment of a Court of original jurisdiction. In a suit to recover possession of certain lands by setting aside a *zur-i-peshgee* lease of them, a decree was made dismissing the suit, but in the judgment of the Court there was a finding against the defendant as to some items of the consideration for the lease. *Held* he could not appeal against that finding. *PAN KOOR c. BHUGWANT KOOR*

[6 N. W., 19: Agra, F. B., 1874, 298]

NOWBAT RAI c. BAIKANG LAL 6 N. W., 412

SHAMA SOONDUREE DEBIA c. DEGAMBUREE DEBIA  
[13 W. R., 1]

CHOWDHRY MAHOMED MOMIN c. LUTAFUT  
HOSSEIN 13 W. R., 239

**APPEAL—continued.**

*Contra* SHROGHOLAM SINGH c. NURSINGH

[4 N. W., 120]

STEPHENSON c. USNODA DOSSEE

[6 W. R., Mis., 18]

**1. APPEAL NEWLY GIVEN BY LAW.**

3. ———— Proceedings instituted prior to change in procedure—*Appeal from order under s. 312, Civil Procedure Code (Act XIV of 1882)—Act VII of 1888, ss. 55, 56.*—It is a general principle of law that an appeal newly given by law is made applicable to proceedings instituted before that change in procedure is made. *Held*, accordingly, that an appeal from an order under the second paragraph of s. 312 of the Civil Procedure Code, although made before Act VII of 1888 came into force, would, upon the operation of that Act, lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made. *Hurra-santari Debi v. Bhejohari Das Manji*, I. L. R., 13 Calc., 56, explained and distinguished. IN THE MATTER OF ANUND CHUNDER ROY c. NITAI BHOOJUR [I. L. R., 16 Calc., 429]

**2. RIGHT OF APPEAL, EFFECT OF REPEAL ON.**

3. ———— Civil Procedure Code (X of 1877)—*Civil Procedure Code, 1859.*—In all suits instituted before Act X of 1877 came into force, in which an appeal lay to the High Court under Act VIII of 1859, an appeal still lies notwithstanding the repeal of that Act by Act X of 1877. *RUNJIT SINGH c. MEHERBAN KOER*

[I. L. R., 3 Calc., 682]

4. ———— Civil Procedure Code, 1859—*Repeal by Civil Procedure Code, 1877.*—A decree was obtained *ex-parte* before October 1st, 1877, and an application was made by the defendant for the first time in May 1878 to have the case reopened. This application was refused, and an appeal was thereupon preferred against the order of refusal. *Held* that no appeal would lie under Act X of 1877, and that, as there was at the time of that Act coming into operation, no proceeding on foot on the part of the appellant which could be saved by the operation of s. 6 of Act I of 1868, there was no remedy by way of appeal from the order under Act VIII of 1859. *Runjit Singh v. Meherban Koer*, I. L. R., 3 Calc., 662: 2 C. L. R., 391, distinguished. IN THE MATTER OF APACH OJHA c. RAM DULARI KOER . . . . . 4 C. L. R., 18

5. ———— General Clauses Consolidation Act, I of 1868, s. 6—*Order refusing attachment in execution of decree—Repeal by Civil Procedure Code, X of 1877.*—The holder of a decree for money applied for the attachment in the execution of the decree of certain moneys deposited in Court to the credit of the judgment-debtor. On the 4th June 1877, the Court of first instance refused the attachment on the ground that the decree directed the sale of certain immovable property for its satisfaction, and awarded no other relief. The order of the

**APPEAL—continued.****2. RIGHT OF APPEAL, EFFECT OF REPEAL ON—concluded.**

to the High Court for the admission of a second appeal from the order of the lower Appellate Court, on the ground that the decree had been misconstrued. *Held* that an appeal was admissible under the repealed Act VIII of 1859, under the provisions of s. 6 of Act I of 1868. *Held* also that the order of the lower Appellate Court was also appealable under Act X of 1877. **THAKUR PRASAD v. ANSARI ALI**  
[I. L. R., 1 All., 668]

6. *Change of procedure—Right of appeal—Order under Civil Procedure Code, 1877, setting aside sale under Act VIII of 1859.*—Where a decree for sale of certain property was obtained under Act VIII of 1859, and the property was sold, but an order was passed after the new Code of Procedure, Act X of 1877, had come into force, setting aside such sale.—*Held* that an appeal would lie from such an order under Act X of 1877. **HARBANS SAHAI v. BHAIRO PERSHAD SINGH**  
[I. L. R., 5 Calc., 259  
[4 C. L. R., 23]

aside the sale of immovable property in the execution of a decree from which an appeal was preferred, under Act X of 1877, to the District Court, on the 25th July 1879, before Act XII of 1879 came into force. *Held* that, as the appeal would

of s. 6 of Act I of 1868. **DURGA PRASAD v. RAM CHAMAN**  
[I. L. R., 2 All., 785]

8. *Registration Act, 1871—General Clauses Consolidation Act, I of 1868—Repeal by Registration Act, III of 1877.*—An order refusing registration of a deed was passed on 23rd August 1872; and when Act VIII of 1871 was in force, an application for review was presented, and finally rejected on 20th December 1877, after the repeal of Act VIII of 1871 by Act III of 1877. *Held* that, under the provisions of s. 6 of Act I of 1868 (the General Clauses Act), the proceedings the time  
VIII of  
"LAOMET

[I. L. R., 3 Calc., 727]

**3. ACTS.**

9. *Act XXXV of 1858—Order on application for permission to alienate property of*

**APPEAL—continued.****3. ACTS—continued.**

*lunatic.*—An appeal lies under s. 23 of Act XXXV of 1858 against an order passed on an application for permission to alienate the property of a lunatic **DINESH CHUNDER BANERJI v. SOUDAMINI DEBI**  
[4 C. W. N., 526]

10. *Act XL of 1858, ss. 21 and*

[7 B. L. R., Ap., 9]

**MOHENDRO NATH MOOKERJEE v. BAMA SOONDUREE DABEA**  
[I. L. R., 15 W. R., 493]

11. *Cancelling of order appointing Collector manager.*—Whether a Judge cancels his own order under Act XL of 1858 appointing the Collector to take charge of a minor's estate, a friend of the minor on behalf of the minor as the party interested is at liberty to appeal under the provisions of s. 23. **SHEO PERSHUN CHOWRY v. THE COLLECTOR OF SARUN**  
[I. L. R., 13 W. R., 256]

12. *Party to proceedings—Right of appeal.*—Any person who, being a party to proceedings taken under Act XL of 1858, is injuriously affected by an order passed thereon, is, under s. 23 of that Act, entitled to an appeal. **IN THE MATTER OF THE PETITION OF NAZIRUN. MUHAMMAD v. NAZIRUN**  
[I. L. R., 6 Calc., 19  
[4 C. L. R., 210]

13. *Order refusing to recall certificate under Act XL of 1858.*—Where a Civil Court, in the exercise of its discretionary power, refuses to recall a certificate granted under Act XL of 1858, there is no appeal from such refusal. **CHUMUTKAR MOHINER DASSER v. RAJ RAKHAL MITTER**  
[I. L. R., 23 W. R., 479]

14. *Burma Courts Act (XVII of 1875), s. 95—Certificate of administration.*—The appeal given by s. 23 of Act XL of 1858 is subject to the ordinary law of appeal

[I. L. R., 14 Calc., 351]

15. *Act IX of 1861, Order passed under.*—An appeal lies, under Act VI of 1871, to the Judge from an order of the Subordinate Judge passed under Act IX of 1861. **SOMANONER DASSER v. JOY DOORGA DASSER**  
[I. L. R., 17 W. R., 551]

16. *Act XXIII of 1891, s. 6—Talabana, Failure to deposit—Application for review of judgment.*—A filed a memorandum of appeal, but failed to deposit the sum required to defray the cost of issuing the usual notice on the respondent. When the case came on for hearing, it was found that, in consequence of A's failure to

## APPEAL—continued.

## 3. ACTS—continued.

deposit, no notice had been served on the respondent; and the Judge dismissed the appeal under s. 6 of Act XXIII of 1861. Within 30 days after this, A presented a petition, explaining the reasons of his default, and praying that, on payment of the talabana, the appeal might be restored to its place; but the Judge, without considering the reasons which A had given in his petition, disallowed his prayer. Held that no appeal lay from the order of the Judge rejecting A's petition, which was of the nature of an application for a review of judgment. **KALI-KRISHNA CHANDRA v. HARIHAR CHUCKERBUTTY**

[1 B. L. R., A. C., 155  
10 W. R., 160]

17. ————— *Order dismissing appeal for want of prosecution.*—There was no provision in s. 6, Act XXIII of 1861, for the re-admission of appeals once dismissed under the provisions of that section. No appeal lay from the order dismissing them. **RAMESH DUTT v. LOOT-FUNNISSA** . . . . . 6 W. R., Mis., 130

18. ————— *Act XIV of 1863—Proceedings of Settlement Officer under Act XI V of 1863.*—The proceedings of a Settlement Officer under s. 8, Act XIV of 1863, were not judgments or orders appealable to the Judge, or especially to the High Court under Act X of 1859. **AHMED ALI KHAN v. NUBEEA** . . . . . 2 Agra, 239

19. ————— *Act XIX of 1863—Suit for partition under Act XIX of 1863, s. 8.*—An appeal lay to the Judge, in cases of partition under Act XIX of 1863, where the objection raised by the party opposing partition is severalty of holding by virtue of a former partition. **KUNCHUN SINGH v. CHOONNA** . . . . . 1 Agra, Rev., 44

20. ————— *Act XX of 1863, Order passed under.*—An appeal does not lie from an order passed under the Religious Endowments Act (XX of 1863), but the party dissatisfied with the order may seek to set it aside by a regular suit. **KHUDIRAM SINGH v. SHAM SINGH POOJOORY**

[W. R., 1864, Mis., 25]

**KALUB HOSSEIN v. ALI HOSSEIN** . . . . . 4 N. W., 3

21. ————— *s. 5—Civil Procedure Code, 1877, s. 647.*—An appeal lies under s. 647 of the Code of Civil Procedure against an order of a District Court under s. 5, Act XX of 1863. **SULTAN AOKENI SAHIB v. BAVA MALIMIYAR** . . . . . I. L. R., 4 Mad., 295

22. ————— *Order appointing trustee of religious endowment—Civil Procedure Code, s. 622—Superintendence of High Court.*—No appeal lies to the High Court from the order of a District Judge under s. 5 of Act XX of 1863 appointing a trustee of a religious endowment. **Minakshi v. Subramanya, I. L. R., 11 Mad., 26**, followed. **Sultan Akeni Sahib v. Bava Malimiyyar, I. L. R., 4 Mad., 295**, dissented from. The High Court, therefore, can revise such an order under

## APPEAL—continued.

## 3. ACTS—continued.

s. 622 of the Civil Procedure Code. **SOMASUNDARA MUDALIAR v. VYTHILINGA MUDALIAR**  
[I. L. R., 19 Mad., 235]

23. ————— *s. 10—Order of District Judge filling vacancy on committee.*—It is not to be assumed that there is a right of appeal in every matter which comes under the consideration of a Judge; such right must be given by the enacted law or equivalent authority. The High Court has no jurisdiction to hear an appeal from the order of a District Judge made by him on petition pursuant to s. 10 of Act XX of 1863 (Religious Endowments), appointing a member to fill a vacancy in a committee. Neither that Act nor the general law gives any right of appeal, which therefore does not exist, from such an order. **MINAKSHI NAIDU v. SUBRAMANYA SASTRI**

[I. L. R., 11 Mad., 28  
L. R., 14 I. A., 160]

24. ————— *s. 18.*—No appeal lies from an order passed under Act XX of 1863, s. 18. **DELRUS BANOO BEGAM v. ABDUOR RAHMAN**  
[21 W. R., 368]

25. ————— *Civil Procedure Code, s. 622—Order refusing permission to sue.*—An order passed under s. 18 of Act XX of 1863, refusing leave to sue, is not appealable, nor, if the Judge has exercised his discretion, liable to revision under s. 622 of the Code of Civil Procedure. **IN RE VENKATESWAR** . . . . . I. L. R., 10 Mad., 98

See ANONYMOUS CASE

[I. L. R., 10 Mad., 98 note]

**KAZEM ALI v. AZEM ALI KHAN**

[I. L. R., 18 Calc., 382]

Nor is an order under s. 18 granting leave to institute a suit appealable. **PROTAP CHANDRA MISSEER v. BROJONATH MISSEER**

[I. L. R., 19 Calc., 275]

26. ————— *Order made without jurisdiction.*—Where a Civil Judge, upon a petition applying under s. 18 of Act XX of 1863 for leave to institute a suit, made an order disposing at once of the matter in dispute, and his successor, reversing the former order, decided by an order upon the rights of the parties,—Held that, though both orders were made without jurisdiction, that fact did not give the High Court an appellate jurisdiction in the matter. **KAVIRAJA SUNDARA MURTEYA PILLAI v. NALLA NAIKAN PILLAI**

[3 Mad., 93]

27. ————— *Act XXI of 1863, s. 27—Interlocutory order of Recorder of Rangoon—Civil Procedure Code, 1859, s. 83.*—No appeal lay to the High Court, under s. 27, Act XXI of 1863, from an interlocutory order of the Recorder of Rangoon passed before judgment in the suit, e.g., one passed under s. 83, Act VIII of 1859, directing a defendant to furnish security. *Quære*—Whether, under Act VIII of 1859, there was any appeal from an order to furnish security under s. 83. **AHMED ALLY MAHOMED v. GLADSTONE, WYLLIE** . . . . . 7 W. R., 508

## APPEAL—continued.

## 3. ACTS—continued.

28. ——— Bengal Tenancy Act (VIII of 1885), s. 84—Order of Civil Court under.—There is no appeal from an order passed by a Civil Court under s. 84 of the Bengal Tenancy Act. *GOGHUN MOLLAH v. RAMESHUR NABAIN MAHTA*

[I. L. R., 18 Calc., 271]

29. ——— Civil Procedure

R., 18 Calc., 271, referred to and followed. *PRABI MOHUN MUKERJI v. BAQODA CHURN CHUCKERBUTTI*

[I. L. R., 18 Calc., 485]

30. ——— ss. 90, 91—Order

in the Civil Procedure Code, and hence an order made under s. 91 on an application under s. 90 is not appealable, although a declaration was therein made that the petitioner was entitled to make the measurement with a pole of a certain measure. *DYA GAZI v. RAM LAL SUKUL*

[2 C. W. N., 351]

31. ——— s. 104, cl. 2—Special Judge—Dispute as to settlement of rent.—No appeal lies to the High Court from the decision of a Special Judge under s. 104, cl. 2, of the Bengal Tenancy Act. *LALA KIBUT NABAIN v. PALUKDEHAI PANDEY*

[I. L. R., 17 Calc., 328]

32. ——— s. 153—Appeal—Amount—Co-sharer—Right of suit.—Held, for the purpose of determining whether or not an appeal lies under s. 153 of the Bengal Tenancy Act, the term "amount" in that section does not mean merely the amount of rent claimed, but the whole amount claimed in the suit, including rent, interest, etc. *BEHARY CHURN SEN v. BHUT NATH PRAMANIK*

[3 C. W. N., 214]

33. ——— Suit for rent—Question as to amount of rent.—Where there was a question as to the amount of rent annually payable, the plaintiffs claiming R15, and the defendants alleging the rent to be only R7-8.—Held, an appeal lay under s. 153 of the Bengal Tenancy Act. *AUBHOY CHURN MAJI v. SHOSHINI BHUSAN BOSE*

[I. L. R., 18 Calc., 155]

35. ——— Appeal from decrees in rent-suit under R100.—The words "amount of rent annually payable by a tenant" in

## APPEAL—continued.

## 3. ACTS—continued.

[I. L. R., 17 Calc., 480]

36. ——— Cesses, Suit for—Road Cess Act (Bengal Act IX of 1880).

in suits below R100 in value, which law is made applicable to suits for cesses by s. 47 of Bengal Act IX of 1880. *RAJANI KANT NAG v. JAGESHWAR SINGH*

[I. L. R., 20 Calc., 254]

37. ——— Suit for arrears of rent—Dak cess when considered as rent—Appeal where subject-matter under value of R100.—Where dak cess is claimed under the contract by which the rent is payable, it must be regarded as rent, i.e., as part of what is lawfully payable in money for

the Bengal Tenancy Act. *WATSON & Co. v. SREKXBISTO BRUMICK*

[I. L. R., 21 Calc., 132]

38. ——— Order of Remand.—The term "order" in s. 153 of the Bengal Tenancy Act does not mean merely a final order, but includes an interlocutory order such as an order of remand. S. 153 of the Bengal Tenancy Act precludes an appeal from an order of remand made in an action for rent for less than R100, unless such order has determined any of the questions specified in s. 153. *GAGAN CHAND SARDAR v. CASTREZZ*

[4 C. W. N., 44]

39. ——— s. 173—Appeal by auction-purchaser whether maintainable.—No appeal lies at the instance of an auction-purchaser against an order setting aside a sale under s. 173 of the Bengal Tenancy Act. *Raghu Singh v. Mieri Singh, I. L. R., 21 Calc., 625, referred to. HARABANDHU ADHIKARI v. HARISH CHANDRA DEY PAL*

[3 C. W. N., 184]

*ROGHU SINGH v. MISRI SINGH*

[I. L. R., 21 Calc., 825]

40. ——— s. 174, Order under Civil Procedure Code, 1882, s. 244.—An order

is

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[3 C. W. N., 344]

## APPEAL—continued.

## 3. ACTS—continued.

41. ——— Companies Act, XIX of 1857—*Order placing name on list of contributories of company.*—No appeal lay from an order of a District Court placing the name of an alleged allottee on the list of contributories of a company wound up under Act XIX of 1857. *JAMNATHRAM HIMATHRAM v. THE GUJARAT TRADING COMPANY* [6 Bom., A. C., 185]

42. ——— Order under Companies Act (VI of 1882), s. 58—*Appeal in a case where no issue as to title is raised.*—An appeal lies from an order passed under s. 58 of the Indian Companies Act (VI of 1882), although no issue has been directed upon a question of title. *AMRITA LALL GHOSE v. SHRISH CHUNDER CHOWDHURY* [I. L. R., 26 Calc., 944 4 C. W. N., 101]

43. ——— s. 162, Order under—*Notice of appeal—Companies Act, s. 214—Limitation Act (XV of 1877), s. 12.*—Held that no appeal lay from an order made under s. 162 of Act VI of 1882 by a Court under the supervision of which proceedings in liquidation were being conducted, declining to continue an investigation commenced by it under that section. Held also that, whether or not the service of notice of appeal within three weeks provided for by s. 214 of Act VI of 1882 implies that all the formalities prescribed for the presentation and admission of an appeal by the Code of Civil Procedure must first be gone through before notice of appeal can be served, a person appealing under the said section cannot avail himself of the provisions of s. 12 of the Limitation Act. *WALL v. HOWARD* [I. L. R., 18 All., 215]

44. ——— Court Fees Act (VII of 1870), s. 12, para. 1—*Order fixing amount of court-fee chargeable on a plaint—Suit by mortgagor to set aside mortgage—Valuation of suit.*—There is no appeal against the order of a District Judge fixing the amount of the Court-fee chargeable on a plaint. The right of appeal to which the plaintiff might have been entitled under ss. 31 to 36 of Act VIII of 1859 has been taken away by s. 12, cl. 1, of the Court Fees Act (VII of 1870). *NARAYAN MADHAVRAO NAIK v. THE COLLECTOR OF THANA* [I. L. R., 2 Bom., 145]

45. ——— Order rejecting *plaint for insufficiency of valuation.*—Held, following *Narayan Madhavrao v. The Collector of Thana*, I. L. R., 2 Bom., 145, that the decision of the Court of the first instance, rejecting a plaint for insufficiency of the valuation and stamp for the purposes of the Court Fees Act (VII of 1870) not being to the detriment of the revenue, is final, and no appeal lies from it. *MONOHAR GANESH v. BAWA RAMCHABANDAR* . . . I. L. R., 2 Bom., 219

46. ——— Order rejecting *plaint—Plaint insufficiently stamped—Civil Procedure Code (Act X of 1877), s. 1, tit. "Decree."*—An appeal lies against an order rejecting a plaint on

## APPEAL—continued.

## 3. ACTS—continued.

the ground of its being insufficiently stamped. *AROO-DHYA PERSHAD v. GUNGA PERSHAD* [I. L. R., 6 Calc., 249 6 C. L. R., 567]

*RAJKRISTO BANERJI v. BAMA SOONDUREE DASSEE* [23 W. R., 296]

47. ——— Civil Procedure Code, 1859, s. 36.—S. 12 of the Court Fees Act does not prevent a party from appealing to the High Court under s. 36 of the Civil Procedure Code, and urging that the Court of first instance was wrong as to the particular article of the schedule of fees by which the case was governed. *GUNGAMONEE CHOWDRAI v. GOPAL CHUNDER ROY* . 19 W. R., 214

48. ——— Appeal against an order for payment of additional Court-fees.—In a suit in a Subordinate Court by members of a Malabar tarwad to set aside an instrument affecting the whole of the tarwad property, the Subordinate Judge held that Court-fees were leviable, assessed on the value of the property, and accordingly ordered an additional payment to be made by the plaintiffs, and, on their failure to make the payment, dismissed the suit. Held that an appeal lay from the order for payment of the additional Court-fees, and the High Court was not precluded by the Court Fees Act, s. 12, from revising it, and reversing the decree. *KANARAN v. KOMAPPAN* [I. L. R., 14 Mad., 169]

49. ——— Order as to valuation and class to which a suit belongs—*Decision as to such class—S. 7, cl. 10 (a), cl. 4 (c).*—An appeal lies against a decision as to the class to which a suit belongs, although it does not lie against a decision as to the valuation of the suit in that class. A decision of the lower Court, holding that a suit is one for specific performance of a contract of sale and to be valued according to the amount of the consideration-money, is appealable. *DADA BHA KITHU v. NAGESH RAMCHANDRA I. L. R., 23 Bom., 436* See *SARDAESINGJI v. GANPAT SINGJI*

[I. L. R., 17 Bom., 56]

50. ——— Guardian and Wards Act (VIII of 1890), ss. 22, 45—*Order refusing remuneration to guardian.*—A Nazir of the District Court was appointed guardian of the property of certain minors, but no provision as to his remuneration was made at the time of his appointment. Subsequently he applied for remuneration on his transfer to another appointment. The Judge passed an order refusing to allow any remuneration, on the grounds that his accounts had been badly kept and the estates had been mismanaged. The Nazir appealed against the order. Held that the order was not appealable. *GANGADHAR MULL v. SHIVLINGRAO JAYDEVRAO* [I. L. R., 24 Bom., 95]

51. ——— s. 39—*Appeal against order for removal of guardian.*—An appeal does not lie from an order refusing an application for

## APPEAL—continued.

## 3. ACTS—continued.

52. — s. 43—Civil Procedure Code (1882), ss 492, 503—Order purporting to be passed under appealable section—Appeal entertained though Judge had no power to pass orders under the section as he purported to do.—By s. 43 (4) of the Guardian and Wards Act, 1890,

the Guardian and Wards Act, might be removed, the Judge passed an order in which he purported to issue an injunction under s. 492 of the Code of Civil Procedure for the attachment of the estate of the minors and to appoint a receiver to manage the estate. On an appeal being preferred against the said orders, it was contended that the Judge must be taken to have acted under the Guardian and Wards Act, 1890, and that, inasmuch as no appeal was provided by that Act in respect of such an order, no appeal lay.—Held that, though both orders were passed without jurisdiction, the Judge purporting to have acted under s. 492 of the Code of Civil Procedure as regards the issue of an injunction, and under s. 503 as regards the appointment of a receiver, inasmuch as orders under either of these sections were appealable, the fact that the Judge had no power in this case to pass orders under them did not bar the High Court from treating the orders as having been passed thereunder for the purpose of entertaining an appeal against

53. — s. 47—Removal of guardian—Order refusing to remove a guardian.—No appeal lies under the Guardian and Wards Act (VIII of 1890), from an order of a District Judge refusing to remove a guardian. *MOHIMA CHUNDER BISWAS v. TARINI SUNKER GHOSH*

[I. L. R., 19 Calc., 487]

54. — Removal of guardian—Order refusing to remove a guardian.—Upon an application for cancelling a certificate of guardianship of the person and property of a minor, the District Judge ordered the certificate to be amended only as regards the guardianship of the person by appointing the applicant as such guardian, and ordering a monthly allowance to be paid to her for the education and maintenance of the minor. The applicant appealed to the High

## APPEAL—continued.

## 3. ACTS—continued.

Court.—Held that the order appealed from was one refusing to remove a guardian, and as such was not appealable under cls. (f) and (g) of s. 47 of the Guardian and Wards Act (VIII of 1890). *Mohima Chunder Biswas v. Tarini Sunker Ghosh*, I. L. R., 19 Calc., 487, followed. *PAKHWANTI DAI v. INDRA NARAIN SINGH*. I. L. R., 23 Calc., 201

was dismissed, it was held that no appeal would lie from the order of dismissal, such order being an

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to. *IMTIAZ-UN-NISSA v. ANWAR-UL-LAH*

[I. L. R., 20 All., 433]

56. — and 48—Order refusing to remove a guardian.—The effect of ss 47 (g) and 48 of the Guardian and Wards Act (VIII of 1890) is to allow no appeal from an order refusing to remove a guardian. *IN RE BAI HARKHA*

[I. L. R., 20 Bom., 667]

57. — Land Acquisition Act (X of 1870), s. 15—District Judge's order on reference by the Collector—Questions of conflicting claims to title—Persons claiming interest in the compensation—"Apportionment," construction of the term.—A Collector having acquired land under the provisions of the Land Acquisition Act (X of 1870), and a question having arisen as to the right to the compensation,—each of two rival claimants claiming exclusive title to the whole of the compensation awarded,—the Collector referred the question to the decision of the District Judge under s. 15 of the Act. The District Judge having decided the question in favour of one of the claimants, the other appealed to the High Court. In appeal, it was contended that, as the provisions of the Land Acquisition Act apply to cases in which there was a dispute as to the apportionment of compensation no question of the claims

the compensation, the order passed by the District Judge was not appealable under the provisions of the Act, as there was no question of apportionment to be determined.—Held that, looking to the lan-

in Part IV should be given a liberal construction, as including the case where the Court has to decide between rival claimants to the entire compensation.

## APPEAL—continued.

## 3. ACTS—continued.

The order of the District Judge was therefore appealable. *KASHIM v. AMINBI*

[I. L. R., 16 Bom., 525]

58. — s. 39—*Additional Judge—District Judge—Civil Procedure Code (Act XIV of 1882), s. 647.*—An Additional Judge appointed to hear cases under the Land Acquisition Act, 1870, is a District Judge within the meaning of s. 39 of the Act. Under s. 647 of the Civil Procedure Code, an appeal from the decision of an Additional Judge so appointed lies to the High Court. IN THE MATTER OF THE APPLICATION OF PORESH NATH CHATTERJEE v. SECRETARY OF STATE FOR INDIA. I. L. R., 16 Calc., 31

59. — Land Acquisition Act (I of 1894), ss. 18, 19, 32, and 54—*Reference by Collector to Judge as to disposal of compensation awarded for land—Appeal from Judge's order.*—Held that an appeal will lie to the High Court from an order of the District Judge made upon a reference by the Collector under ss. 18 and 19 of the Land Acquisition Act, 1894, as to the disposal of compensation awarded for land taken up by Government under the Act. *Balaram Bhramaratar Roy v. Sham Sunder Narendra*, I. L. R., 23 Calc., 526, followed. Held, also, that in an appeal from the order of the District Judge above referred to the memorandum of appeal must be stamped as an appeal from an original decree. *SHEO RATTAN RAI v. MOHRI*. I. L. R., 21 All., 354

60. — Military Courts of Request Act, XI of 1841.—An appeal lay under Act XI of 1841. *GUNTAM DOSS v. MOOLTAN MULL*

[2 N. W., 229]

61. — An appeal lay to the High Court of Judicature for the North-Western Provinces from the decree of a Military Court of Request held at Morar, Gwalior. *MOOLTAN MULL v. GUNSAM DOSS* 3 N. W., 75

62. — Registration Act (XX of 1866).—No appeal lies to the High Court from an order passed under the Registration Act. *RAMESSUR MAHATAH v. KULLYANESSUREE DEBIA* 9 W. R., 283

63. — ss. 32, 33, and 34.—No appeal lay from an order by a Registrar refusing to exercise his discretion under s. 32, Act XX of 1866. Such an order came neither within s. 33 nor s. 34 of the Act. *SABKIES v. SANGRAM SINGH*

[6 B. L. R., 578 note: 14 W. R., 194]

64. — s. 52—*Order refusing to allow amount of decree to be levied by instalments.*—There is no appeal from an order refusing to allow the amount due under a decree passed upon an obligation specially registered under s. 52, Act XX of 1866, to be levied by instalments, and directing immediate enforcement of the decree. IN THE MATTER OF THE PETITION OF RASH BEHARY BABU [7 W. R., 130]

65. — ss. 52, 53—*Order in execution of decree—Bond specially registered—Registration Act, XX of 1866, ss. 52, 53.*—Held

## APPEAL—continued.

## 3. ACTS—continued.

(STUART, C. J., dissenting) that an appeal lay from an order passed in the execution of a decree obtained under the provisions of s. 53 of Act XX of 1866, upon a bond specially registered under the provisions of s. 52 of that Act. *Ramanand v. The Bank of Bengal*, I. L. R., 1 All., 377, overruled. *Petition of Rash Behary*, 7 W. R., 130, and *Har Nath Chatterjee v. Futtick Chunder*, 18 W. R., 572, dissented from. *WILAYAT-UN-NISSA v. NAJIB-UN-NISSA*. I. L. R., 1 All., 593

66. — s. 53.—An appeal lay from an order in execution of a decree made under s. 53 of Act XX of 1866. *BHIKAMBHAT v. FERNANDEZ*

[I. L. R., 5 Bom., 673]

67. — There was no appeal from a decree, nor from orders passed in execution of a decree made under s. 53 of Act XX of 1866. *BHYRUB CHUNDER v. GOLAP COOMARY*

[I. L. R., 3 Calc., 517]

*PURUS RAM v. DEO KOER* 4 N. W., 29

68. — No appeal lying against a decree made under s. 53, Act XX of 1866, the petition was directed to be returned, with a view to its being presented to the Court, if desired, by way of motion. *RASH BEHARY BABU v. GURUDASS BABU*

[7 W. R., 115]

69. — *Specially registered bond.*—No second appeal lay to the High Court against an order passed on an application for execution of a decree made in a suit on a bond specially registered under s. 53, Act XX of 1866. *Quere*—Whether an appeal lies at all against such an order passed in proceedings taken in execution of such a decree. *SRI-BULLAV BHATTACHARJI v. BABURAM CHATTOPADHYA*

[I. L. R., 11 Calc., 169]

70. — ss. 54, 55—*Repeal, Effect of.*—No appeal lies against orders passed in execution of decrees under Act XX of 1866, the procedure under that Act having been expressly saved by Act VIII of 1871, which repealed Act XX of 1866. *RAMANAND v. THE BANK OF BENGAL*

[I. L. R., 1 All., 377]

71. — s. 55.—An appeal from an order or decree passed in proceedings had in execution of a decree made under s. 53 of Act XX of 1866 is not barred by anything in s. 55 of that Act. *SRI-BULLAV BHATTACHARJI v. BABURAM CHATTOPADHYA* I. L. R., 12 Calc., 511

72. — In cases in which s. 55 of Act XX of 1866 bars an appeal, it does so equally in matters of execution as in respect of the decree passed. *HURNATH CHATTERJI v. FUTTICK CHUNDER SAMADDAR* 18 W. R., 512

*RADHA KRISTO DUTT v. GUNGA NARAIN CHATTERJEE* 23 W. R., 328

*HURO SUNDURI DEBIA v. PUNCHURAM MONDUL* [24 W. R., 225]

73. — s. 84—*Order refusing to register document.*—Held that there was no appeal to the High Court from the decision of a District Court on a petition under s. 84 of Act XX of

## APPEAL—continued.

## 3. ACTS—continued.

74. ———— *Order of Deputy Commissioner—District of Chota Nagpore.*—An appeal under s. 84, Act XX of 1866, from the order of a Deputy Commissioner in Chota Nagpore, must be made to the Judicial Commissioner, who exercises the powers of a Zillah Judge in all the districts of that division. *IN THE MATTER OF THE PETITION OF BUDHU MAHATOON* . 8 W. R., 268

[9 W. R., 122]

PRABHAKAR BHAT . . . I. L. R., 8 Bom., 269

cl. 1, of Act X of 1862, on the ground that there had been an intention to evade the payment of stamp duty. The point upon which the decision of the Court is to be final, under s. 17 of the Stamp Act, is as to what is the proper amount of stamp duty which the document ought to bear, and not as to whether the Court ought or ought not to receive the document in evidence. *ROYAL BANK OF INDIA v. HOEMASJI KHOZEDJI* . . . 3 Bom., O. C., 153

78. ———— *Act XXVI of 1867—Order as to valuation of suit.*—Under Act XXVI of 1867, the decision of a Court of first instance as to the valuation of the subject-matter of a suit is final. *ISHAN CHANDRA MOOKERJEE v. LORENATH ROY*  
[8 B. L. R., Ap., 12  
14 W. R., 451]

*MAFIZUDDIN v. KARIMUNNISSA BIBER*  
[8 B. L. R., Ap., 11  
14 W. R., 381]

79. ———— sch. B, art.

and objection which was to prevent appeals only where the question merely related to the amount of stamp

## APPEAL—continued.

## 3. ACTS—concluded.

to be impressed upon the plaintiff. *COLLECTOR OF SYLHET v. KALI KUMAR DUTT* . . . 7 B. L. R., 883  
[18 W. R., F. B., 10]

*Contra MUDHUSUDAN CHUCKERBUTTY v. RYMANI DASI* . . . 7 B. L. R., 664 note  
[13 W. R., 415]

## 4. ARBITRATION.

80. ———— *Arbitration by Court—Case referred to Court under Chapter XXVIII (ss. 323–330) of the Civil Procedure Code—*

in the nature of an arbitrator's award. *SAYAD ZAIN v. KALABHAI* . . . I. L. R., 23 Bom., 752

81. ———— *Judgment on award—Civil Procedure Code, 1859, ss. 325, 327—Finality of decree.*—On the application of one party to a reference to arbitration, without the intervention of a Court, to have the award filed and for judgment thereon, an objection of the other party, that the award had been come to after the arbitrators' authority had been repudiated, was overruled, and judgment was passed by the Munsif in accordance with the award. *Held (PAUL, J., dissenting) an appeal lay from the decision of the Munsif. In*

*CHARAN CHATTERJEE v. TARAK CHANDRA CHATTERJEE and LALA ISWARI PRASAD v. BIR BHANJAY TEWARI* . . . 8 B. L. R., 315  
[15 W. R., F. B., 9]  
*BABUR MEAH v. JUMUN MEAH* . . . 2 C. L. R., 362

82. ———— *Finality of decree—Civil Procedure Code, 1859, ss. 324 and 325.*—A suit in the Munsif's Court was, after issue had been settled and evidence on such issues adduced by both parties, referred by consent of parties to arbitration. The arbitrator made his award, and on

that it should be laid before the Court with the

**APPEAL—continued.****4. ARBITRATION—continued.**

papers of the arbitrator. The Munsif then gave his judgment, in which he went into the evidence, and, overruling the objection of the plaintiffs, gave a decision on the merits, which decision was in accordance with the award. *Held* that such judgment, though in accordance with the award, was not final under s. 325 of Act VIII of 1859, but was open to appeal. In order to make it final, it should appear that all the proceedings have been regular, and the directions of Act VIII of 1859 complied with.

GUNGA NARAIN GHOSH v. RAM CHAND BOSE  
[12 B. L. R., 48 : 20 W. R., 311]

**83.** ————— *Civil Procedure Code, 1859, s. 325.*—Judgment under s. 325, Act VIII of 1859, if given according to the award, is final; but such judgment, to be final, must be one in accordance with the provisions of s. 325, and where the Judge gave judgment without allowing sufficient time for objections to be made to the award or for the award to be set aside, the judgment was held to be not one within s. 325, and, therefore, subject to appeal. JAYMANGAL SINGH v. MOHANRAM MARWARI

[8 B. L. R., 319 note : 12 W. R., 397]

Affirmed by Privy Council. JOYMANGAL SINGH v. MOHUNRAM MARWARI . . . 23 W. R., 429

**84.** ————— In a suit in the Munsif's Court seven issues were fixed for determination, and the suit was then referred by agreement to three arbitrators. In coming to an award the arbitrators took up specifically some of the issues framed in the Munsif's Court, and declined to enter into others. They determined the matter in issue between the parties, and the award was signed by the three arbitrators. Two of the arbitrators subjoined to the award a suggestion which, if acted on, would prevent the necessity of carrying out the award. The Munsif dealt with this suggestion as surplusage, and gave the plaintiff a decree in accordance with the award signed by the three arbitrators. In appeal it was contended that the award was not a legal one, and it was sought to set the decree of the Munsif aside; but the Judge found that the decree was in accordance with the award, and that he was precluded by s. 325 from disturbing the decision of the Munsif. On special appeal it was contended that the award was incomplete, as all the issues were not decided, and that the decree was not in accordance with the award, as it did not embody the suggestion of the two of the three arbitrators. *Held* that the decree was in accordance with the award, and was, therefore, final under s. 325. SARBOREE KANTO BHUTTACHARJEE v. ANADYA KANTO BHUTTACHARJEE

[12 B. L. R., Ap., 10 : 20 W. R., 226]

MADHUSUDAN DAS v. ADOITO CHARAN DAS  
[8 B. L. R., 316 note : 12 W. R., 85]

**85.** ————— *Civil Procedure Code, 1859, s. 325.*—A suit was referred by the Munsif to arbitration under s. 315, Act VIII of 1859. The arbitrators were of opinion that the case of the plaintiff was fictitious, but nevertheless

**APPEAL—continued.****4. ARBITRATION—continued.**

gave an award in his favour. The Munsif refused to uphold the award, on the ground that the arbitrators had been guilty of misconduct in giving an award contrary to the evidence. The Judge revised their decision, on the ground that the Munsif had no jurisdiction to refer to the evidence taken before the arbitrators in order to determine whether they were guilty of misconduct or not: he gave judgment in accordance with the award. *Held* that his decision was not final under s. 325, Act VIII of 1859: the provisions of that section refer only to the Court by which the case is referred to arbitration. The Munsif was entitled to refer to the evidence before the arbitrators in order to determine whether they had misconducted themselves or not. PARESHNATH DEY v. NABIN CHANDRA DUTT  
[5 B. L. R., Ap., 77 note : 12 W. R., 93]

See BYKUNT NATH MOOKERJEE v. PRIONATH GHOSH . . . . . 22 W. R., 447

**86.** ————— *Civil Procedure Code, 1859, s. 325.*—Where a suit is referred to arbitration by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final by virtue of Act VIII of 1859, s. 325, and no appeal lies therefrom. BROJOLALL BAJ PEE v. UMBITOLALL BAJ PEE . . . . . Marsh., 163

GOUB CHUNDER BHUTTACHARJEE v. SODOY CHUNDER NUNDEE . . . . . 17 W. R., 30

SARBOREE KANT BHUTTACHARJEE v. ANADYA KANT BHUTTACHARJEE  
[12 B. L. R., Ap., 10 : 20 W. R., 226]

**87.** ————— *Irregular procedure in arbitration—Consent to award—Civil Procedure Code, 1859, s. 325.*—A judgment in accordance with an arbitration award is, under the express terms of s. 325, Act VIII of 1859, final, if the reference to arbitration has been conducted pursuant to the provisions of the Code. And where the matter in dispute in a suit was referred to arbitration, and the provisions of Act VIII were not strictly complied with,—*Held* nevertheless that, as the appellants had consented to the arbitration and to the appointment of arbitrators, and took part in the proceedings, and after having made objections to the award (which objections were considered by the arbitrators), they assented to the award, the Principal Sudder Ameen was justified in passing a judgment in accordance with the award, and that the High Court would not interfere with that judgment. MISSER DEO KISHUN v. MISSER BHUGWAN DOSS

[3 Agra, 199]

**88.** ————— *Decree in accordance with award.*—No appeal lies against a decree made in accordance with an award upon a submission to arbitration in the suit. RAMREDDY NARSAREDDY v. MUMAREDDY PAPIREDDY

[5 Mad., 404]

**89.** ————— *Civil Procedure Code, 1859, s. 327.*—In an arbitration case between a mahajun and his gomasta, an award was made to

**APPEAL—continued.****4. ARBITRATION—continued.**

the effect that R725 were outstanding and due to the kuli, of which R483 were due to the mahajan and R241 to the gemasta, and that the gemasta should print out the parties owing the R483, or in default make good the amount. The mahajan applied to the Subordinate Judge of Bhanguip re, under Act VIII of 1859, s. 327, to file the award. The Subordinate Judge held that it was not proved that the gemasta had done as required by the award, and ordered him to pay the deficit. The gemasta appealed to the Judge, who held that no appeal lay from the judgment of the Subordinate Judge enforcing the award. *Held*, on special appeal, that the Subordinate Judge's judgment decided a question of fact not determined by the award, and that an appeal would lie. **RAMSHANJAN BHUKUT v. BHAKSHAN BHUKAT**

[2 B. L. R., A. C., 260; 11 W. R., 140

**80.** *Civil Procedure Code, 1877, ss. 520, 521.*—Where, in a suit for the filing of an award made on a private reference to arbitration, the Court of first instance, holding that there was no reason to remit such award to the reconsideration of the arbitrator under the provisions of s. 520 of Act X of 1877 or to set it aside under s. 521 of that Act, did not proceed to give judgment according to such award followed by a decree, but merely directed that such award should be filed, *Held* that its order was not appealable as a decree or as an order. **RAMADHIN v. MANESH**

I. L. R., 2 All., 471

**81.** *Decree confirming award.*—Where an award, i.e., a legal award, has been made, and judgment is passed in accordance therewith, the judgment is final; but where a question arises whether the award is a legal award or not, an appeal lies from a judgment of a Court passed in accordance with such award. **DEBENDRA NATH SHAW v. AUBHOY CHURN BAGCHI**

[I. L. R., 9 Cal., 905; 12 C. L. R., 525

**82.** *Civil Procedure Code, 1877, s. 522.*—S. 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie from a decree upon an award, except in so far as the decree is in excess of, or not in accordance with, the award, assumes that the award has been regularly and properly passed by arbitrators duly appointed. **PUGARDIN RAYUTAN v. MODINSA RAYUTAN**

I. L. R., 6 Mad., 414

**83.** *Civil Procedure Code (1852), s. 522—Order determining validity of an award—Decree in accordance with an award.*

—Objection was unsuccessfully taken before a District Munsif to the validity of an award on the ground of the arbitrator being interested, and a decree was passed in accordance with the award. The plaintiff appealed to the High Court. *Held* that no appeal lay to the Subordinate Court as to the validity of the award. **KRISHNAN CHETTI v. MUTHU PALANDE VACHA MAKALI TEVAR**

I. L. R., 23 Mad., 172

**84.** *Civil Procedure Code (1852), s. 522—Decree in accordance with*

**APPEAL—continued.****4. ARBITRATION—continued.**

an award.—A suit having been referred to an arbitrator, he made an award and a decree was passed, in accordance with it, in favour of defendant. On an appeal by the plaintiff, it appeared that the award was *prima facie* legal and proper. *Held* that no appeal lay against the decree. **KOMBI ACHEN v. PANGI ACHEN**

I. L. R., 31 Mad., 405

**85.** *Civil Procedure Code, s. 522—Award, Appeal against decree in terms of—Extension of time for presenting award—Evidence.*—Where a decree purports to have been made in terms of an award under s. 522 of the Code of Civil Procedure, an appeal lies against it if there was no award in fact or in law. **S. P. v. GOVINDA CHARTAN**

I. L. R., 11 Mad., 85

**86.** *Award, Decree in accordance with—Civil Procedure Code, s. 522.*—After issues had been framed in a suit to wind up a partnership, the matter was referred to an arbitrator, who made his award, and with regard to certain

**87.** *Award, Decree in accordance with—Civil Procedure Code, s. 522, 525.*—When an award has been filed in Court, as provided by s. 525 of the Code of Civil Procedure, the judgment and decree based thereon must be drawn up specifically in terms of the award. If the decree merely decrees in general terms the claim of one party or of the other, it cannot be said that such decree is in accordance with the award, and being "not in accordance with the award," an appeal will lie therefrom. **UMMI FAZL v. RAHIM-UN-NISSA**

[I. L. R., 13 All., 308

[I. L. R., 17 Bom., 357

and made a decree in accordance with the award. *Held* that s. 522 of the Civil Procedure Code did not take away the right of second appeal against the latter decree. **BRAGHOOTIA DYAL v. MAINA KOER**

12 C. L. R., 564

**100.** *N. W. P. Rent Act, Reference to arbitration under.*—Where the Court trying a suit under the North-Western Provinces Rent Act, the matters in dispute in which

**APPEAL—continued.****4. ARBITRATION—continued.**

have been referred to arbitration, has refused an application to set aside the award, and has decided the case in accordance with the award of the majority of the arbitrators, no appeal lies from its decision. **FAHIM-UN-NISSA v. AJUDHIA PRASAD**

[I. L. R., 6 All., 170

101.

*Misconduct of arbitrators.*—A judgment of a Court given in accordance with an award of arbitration is final, even if there has been corruption and misconduct on the part of the arbitrators. **RAMANOOGRA CHOBEX v. PUTMOORTA CHOBAYAN**

7 W. R., 205

**SREENATH GHOSE v. RAJ CHUNDER PAUL**

[8 W. R., 171

**ELAHEE BUKSH v. HAJOO**

14 W. R., 33

**S. C. IN RE ELAHEE BUKSH** 5 B. L. R., Ap., 75

102.

*Civil Procedure Code (1882), s. 522—Grounds of appeal from a decree passed upon a judgment in accordance with an award.*—Held that an appeal would not lie from a decree passed upon a judgment given according to an award merely because there might have been some irregularities in the procedure of the arbitrator, such alleged irregularities having been considered by the Court which passed the decree, and having been found by that Court not to be of such a nature as to render the award no award in law. **Jagan Nath v. Mannu Lal**, I. L. R., 16 All., 231, **Bindessuri Pershad Singh v. Jankee Pershad Singh**, I. L. R., 16 Calc., 482, and **Lachman Das v. Brijpal**, I. L. R., 6 All., 174, referred to. **RAM DHAN SINGH v. KARAN SINGH**

I. L. R., 18 All., 414

103.

*Civil Procedure Code (1882), ss. 525 and 526—Arbitration without intervention of Court—Application for decree in terms of award—Denial of submission to arbitration and genuineness of award.*—An appeal lies against a decree passed upon an award under Civil Procedure Code, ss. 525 and 526, when the cause shown against the filing of the award has denied the submission to arbitration and the genuineness of the award. **HUSANANNA v. LINGANNA**

[I. L. R., 18 Mad., 423

104.

*Civil Procedure Code (1882), ss. 521 and 522—Award—Decree on judgment in accordance with an award.*—Where a decree has been made upon a judgment given upon an award and is not in excess of, and is in accordance with, the award, an appeal from such decree will lie on the ground that the so-called award upon which the judgment and decree are based is from one cause or another no award in law. Where an application to set aside an award on the ground of the misconduct of an arbitrator has been made under s. 521 of the Code of Civil Procedure, and such application has been refused after judicial determination, and a decree made under s. 522 of the Code, which is in accordance with and not in excess of the award, no appeal based upon any similar ground will lie from the decree so made. But an appeal will lie in the case last mentioned where an application

**APPEAL—continued.****4. ARBITRATION—continued.**

to set aside the award on the ground of misconduct of the arbitrator having been made, the Court has passed its decree without considering such application, or where the Court has not allowed sufficient time to the parties to file objections to the award. **Bhagirath v. Ramgholam**, I. L. R., 4 All., 283, approved. **Joymungul Singh Bahadoor v. Mohun Ram Marwaree**, 23 W. R., 429, **Nandram Daluram v. Nemchand Jadavchand**, I. L. R., 17 Bom., 357, and **Lachman Das v. Brijpal**, I. L. R., 6 All., 174, referred to. **IBRAHIM ALI v. MOHSIN ALI**

[I. L. R., 18 All., 422

105.

*Decree in accordance with award with slight modification—Illegal award—Civil Procedure Code (1882), s. 522.*—In a suit which was defended by an agent (am-mokhtar) on behalf of the defendant, the agent applied for a reference to arbitration, although he had no power to do so under the am-mokhtarnamali. After the submission of the award, objection was made on behalf of the defendant that the agent had no authority to apply for or consent to the reference. The objection was overruled by the Court, and a decree made in accordance with the award with one slight modification in the defendant's favour:—Held, in answer to an objection that no appeal lay under s. 522 of the Civil Procedure Code, except in so far as the decree was in excess of or not in accordance with the award, that an appeal would lie if the award was shown to be illegal and void *ab initio*. **Nandram Daluram v. Nemchand Jadavchand**, I. L. R., 17 Bom., 357, followed. **SATURJIT PERTAP BAHADOOR SAHI v. DULHIN GULAB KOER**

[I. L. R., 24 Calc., 489

106.

*Judgment in accordance with an award—Code of Civil Procedure (Act XIV of 1882), ss. 521 and 522.*—An appeal will lie against a decree given in accordance with an award under s. 522 of the Code of Civil Procedure, when the award upon which the decree is based is not a valid and legal award. **Debendra Nath Shah v. Aubhoy Churn Bagchi**, I. L. R., 9 Calc., 905, **Joy Prokash Lall v. Sheo Golam Singh**, I. L. R., 11 Cal., 37, **Bindessuri Pershad Singh v. Jankee Pershad Singh**, I. L. R., 16 Calc., 482, **Lachman Das v. Brij Pal**, I. L. R., 6 All., 147, and **Venkayya v. Venkatappayya**, I. L. R., 15 Mad., 348, referred to. **KALI PRASANNO GHOSE v. RAJANI KANT CHATTERJEE**

[I. L. R., 25 Calc., 141

107.

*Civil Procedure Code (Act XIV of 1882), ss. 525 and 526—Arbitration Award—Denial of reference to arbitration—Jurisdiction of Court to determine the factum of reference.*—Held by the Full Bench that an order under s. 525 determining that there has been no valid reference to arbitration and rejecting the application is a "decree" within the meaning of s. 2, and an appeal lies from such order. **Kali Prasanno Ghose v. Rajani Kant Chatterjee**, I. L. R., 25 Calc., 141, followed. **MAHOMED WAHIDUDDIN v. HAKIMAN**

[I. L. R., 25 Calc., 757  
2 C. W. N., 529

## APPEAL—continued.

## 4. ARBITRATION—continued.

108. ————— *Judgment not in accordance with award.*—An appeal lies from a judgment given on an arbitration award, on the ground that the judgment is contrary to the award  
*DES NARAIN SINGH v. RAJMONES KOOHWAR*  
 [3 W. R., 168]

109. ————— *Addition to award.*—The addition in a judgment according to an award of a trifling direction upon a matter not referred to the arbitrators, which was quite separable from the other parts of the award, and did not affect

[7 N. W., 387]

tion. IN THE MATTER OF THE PETITION OF JUNGHI RAM. *JUNGHI RAM v. RAM HEEY SANY*

[19 W. R., 47]

112. ————— *Judgment in accordance with award.*—*Civil Procedure Code, s. 523*—Held that an appeal lies from a decree passed in accordance with an award, when such decree is impugned on the ground that there is no award in law or in fact upon which judgment and decree  
*Code, 423, 1, 253,*

[I. L. R., 6 All., 174]

113. ————— *Civil Procedure Code, 1859, s. 325.*—*Finality of decree.*—Matters in dispute were referred to the arbitration of five

[I. L. R., 3 Cal., 375; 1 C. L. R., 455]

114. ————— *Finality of decree.*—*Civil Procedure Code (Act VIII of 1859), s. 325.*—A case was referred by consent to arbitra-

## APPEAL—continued.

## 4. ARBITRATION—continued.

tration, and, after having been recalled into Court,

First Court. *WAZIR MANTON v. LULIT SINGH*  
 [I. L. R., 7 Cal., 136; 8 C. L. R., 505]

115. ————— *Judgment in accordance with award.*—*Appeal.*—*Defendants not all joining in reference to arbitration.*—The once-

116. ————— *Order setting*

ance with the terms thereof. Subsequently, on the application of the plaintiff in the suit the Court

had been filed, without notice to the plaintiff, and that, although the award was alleged to have been made with the consent of the parties, the plaintiff had not consented to it. Held that no appeal lay

[I. L. R., 11 Cal., 173]

## APPEAL—continued.

## 4. ARBITRATION—continued.

117. *Civil Procedure Code (1882), s. 521—Legality of order remitting award for reconsideration.*—An award, submitted by arbitrators, to whom all matters in dispute had been referred, stated that “defendant has not produced any witness in support of his contention—raised in issues Nos. 1, 2, 5, and 6, hence we have only to deal with issues Nos. 3, 4, and “7”, and dealing with those issues, the arbitrators gave their finding. The award was remitted, on the ground that the arbitrators had not determined the issues Nos. 1 and 2, 5 and 6:—*Held* (1) the legality of an order remitting an award for the reconsideration of the arbitrators may be challenged on appeal against the decree ultimately passed; and (2) that the award ought not to have been remitted: there was no illegality on the face of it, and there was a decision on the whole matter in issue between the parties. *Mathooranath Tewaree v. Brindaban Tewaree*, 14 W. R., 327, *Ambica Dasi v. Nadyar Chand Pal*, I. L. R., 11 Cal., 172, *Nanok Chand v. Ram Narayan*, I. L. R., 2 All., 181, and *Bikramjit Singh v. Husaini Begam*, I. L. R., 3 All., 643, referred to. *GEORGE v. VASTIAN SOURY* . . . I. L. R., 22 Mad., 202

118. *Civil Procedure Code, ss 521 and 522—Revocation of submission—Appellate decree in accordance with award.*—By reason of s. 582 of the Civil Procedure Code, where a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof and a Court of first appeal, holding that the award was not open to objection upon the grounds mentioned in s. 521, passes a decree strictly in accordance with the award, such appellate decree is entitled to the same finality as the first Court's decree would have been under the last paragraph of s. 522, and cannot be made the subject of second appeal. *Pureshnath Dey v. Nobin Chunder Dutt*, 12 W. R., 93, and *Roghubeer Dyal v. Maina Koer*, 12 C. L. R., 564, dissented from. *NAUBANG SINGH v. SADAPAL SINGH* [I. L. R., 11 All., 8

119. *Award—Application to file award, Objection to—Decree on award, Finality of—Private arbitration—Civil Procedure Code (Act XIV of 1882), ss. 520, 521, 525, 526.*—Certain disputes between parties were referred under a written agreement to an arbitrator, who in due course made his award. The plaintiffs then applied to the Subordinate Judge to have the award filed in Court under the provisions of s. 525 of the Code of Civil Procedure. The defendants came in and objected to the award on the following amongst other grounds:—(1) That the value of the property in suit was Rs500 only, and therefore that the application should have been made in the Munsif's Court and not in that of the Subordinate Judge; (2) that the agreement of submission was vague and indefinite, and did not clearly set out the matters in dispute. The Subordinate Judge overruled the objection without taking any evidence, and directed the award to be filed and a decree to be passed thereon. The plaintiff appealed. The defendants contended that no appeal lay, and that, if it did, it lay to the District Judge, and not to the High Court:—*Held* that,

## APPEAL—continued.

## 4. ARBITRATION—continued.

assuming that in a proceeding under ss. 525 and 526 the Court has power to consider such objections as are mentioned in ss. 520 and 521, the above objections did not fall under either section, and therefore no appeal lay. *BINDESSURI PERSHAD SINGH v. JANKEE PERSHAD SINGH* . . . I. L. R., 16 Cal., 482

120. *Civil Procedure Code, 1859, ss. 327 and 325—Finality of judgment on award.*—S. 327, Civil Procedure Code, incorporates the provision in s. 325 as to the finality of the judgment given according to the award, and puts the award filed under s. 327 in the same position as the award filed under s. 325. Where a Court files an arbitration award and passes a decree, that decree is final. *Semble*—The word “date” in s. 327 does not mean the day written in the award as when it was made, but the time when it is handed over to the parties, so that they may be able to give effect to it. *SREENATH CHATTERJEE v. KYLASH CHUNDER CHATTERJEE* . 21 W. R., 248

121. *Agreement to refer not providing for disagreement of arbitrators—Award by umpire and one arbitrator—Appointment of umpire by Court—Decree in accordance with award—Civil Procedure Code, ss. 509, 523.*—In an agreement to refer certain matters to arbitration, which was filed in Court under s. 523 of the Civil Procedure Code, and on which an order of reference was made by the Court, no provision was made for difference of opinion between the arbitrators, by appointing an umpire or otherwise. The arbitrators being unable to agree upon the matters referred, the Court, on the application of one of them, appointed an umpire, and directed that the award should be submitted on a particular date. An award was made by the umpire and one arbitrator, without the concurrence of the other arbitrator, and submitted to the Court, which passed a decree in accordance with its terms. On appeal by the defendants in the case, the District Judge reversed the decree. *Held* that an appeal would lie to the Judge from the decree of the first Court, where there had been no legal award such as the law contemplated. *Lachman Das v. Brijpal*, I. L. R., 6 All., 174, referred to. *Held* that in the present case there had been no legal award such as the law contemplated, inasmuch as the agreement to refer gave the Court no power to appoint an umpire, and required that the award should be made by the arbitrators named by the parties. *MUHAMMAD ABID v. MUHAMMAD ASGHAR*

[I. L. R., 8 All., 64

122. *Powers of arbitrators—Payment by instalments—Civil Procedure Code, ss. 518, 522.*—The arbitrators, to whom the matters in difference in two suits for money were referred to arbitration, made an award for payment to the plaintiff of certain sums by the defendant, and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award in so far as it directed payment by instalments, and the Court, holding that the arbitrators had no power to make such a direction, modified

## APPEAL—continued.

## 4. ARBITRATION—continued.

the award to that extent, under s. 518 of the

to s. 522 of the Code Per MAHMOOD, J.—The

were intended to enable the Court of appeal to check the improper use of the power conferred by s. 518. JAWAHAR SINGH v. MUL RAI

[L. L. R., 8 All., 449]

123. Evidence given by party on oath proposed by opposite party—Award in accordance with such evidence—Judgment of re Code), is Act).—referred to be bound

evidence so given. The plaintiff objected to the award, not on any of the grounds mentioned in ss. 520 and 521 of the Civil Procedure Code, but on the ground that the procedure of the arbitrator had been illegal. The Court disallowed this objection, and gave a judgment and decree in accordance with the award. Held by STRAIGHT, J., that such decree, being in accordance with the award, was not appealable. Held by STUART, C.J., that the award not being open to objection on any of the grounds mentioned in ss. 520 and 521 of the Civil

in accordance with the award, was not appealable. The decree adopted was warranted by the Oaths Act, and there being in reality no

he did. BHAGIRATH v. RAM GHULAM [L. L. R., 4 All., 283]

in s. 520 or 521, the proper course for the Court to pursue is to dismiss the application, and to leave the applicant to bring a regular suit to enforce the award in which all the objections to its validity may be properly tried and determined. Where no such

## APPEAL—continued.

## 4. ARBITRATION—continued.

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[L. L. R., 10 Calc., 74]

125. Order rejecting appeal—Civil Procedure Code, s. 525—Matters to be decided upon application to file an award—Court-fee on such application.—No appeal lies from an order upon an application to file an award

[13 C. L. R., 171]

126. Refusal to file award in Court—Civil Procedure Code, s. 2 and s. 525—Arbitration—"Decree."—Held (OLDFIELD, J., dissenting) that an appeal does not lie from an order disallowing an application to file an award under s. 525 of Tawars v. distinguishe followed by DAYAL

127. Act VIII of 1859, ss. 325 and 327.—An application was made under s. 327 of Act VIII of 1859 to file an arbitration award,

an award," was final. RAJKUMAR SING v. KALI CHARAN SING. 1 B. L. R., Ap., 20; 11 W. R., 57

CHOWDHRY 2 B. L. R., A. C., 249  
PERSONATH CHOWDHRY v. RAMDHUN

[11 W. R., 104]

CHINTAMAN SING v. UMA KUNWAR  
[B. L. R., Sup. Vol., 505;  
2 Ind. Jur., N. S., 1; 6 W. R., Mis., 83]

129. Order granting or refusing.—Held by the majority of the Court (PEARSON, J., dissenting) that no appeal lies from an order passed under s. 327, Act VIII of 1859, whether granting or refusing the application. JOKHAN RAI v. BUCHO RAI. 3 Agra, 353 [Agra, F. B., Ed. 1874, 158]

## APPEAL—continued.

## 4. ARBITRATION—continued.

130. ————— *Want of consent of parties—Private award.*—An appeal on the allegation of want of consent of parties lies from the order of a lower Court under s. 327, Code of Civil Procedure, directing a private award of arbitration to be filed and enforced. *HULODHUR SANTAL v. GONESH SANTAL* . . . . . 6 W. R., 80

131. ————— *Order refusing application—Civil Procedure Code, 1859, s. 327.*—No appeal lies against an order disallowing an application under s. 327 of Act VIII of 1859 to file an award. *VYANKATESH RAMCHANDRA JOGEKAR v. BALAJERAV BIN ANANDRAV* . . . . . 1 Bom., 184

132. ————— *Order refusing application—Civil Procedure Code, 1859, s. 327.*—Application to file an award under s. 327 of Act VIII of 1859 should be made to the Court of the lowest grade competent to receive it, and no appeal lies to High Court from an order by a District Court confirming on appeal an order of a subordinate Court declining to file such an award. *EX-PARTE BALKRISHNA BHASAKAR GUPTA* . . . . . [2 Bom., 96 : 2nd Ed., 91

133. ————— *Order refusing application—Civil Procedure Code, 1859, s. 327.*—*Quære*—Does an appeal lie from the refusal of a Civil Court under Act VIII of 1859, s. 327, to order an award to be filed? *RAJ CHUNDER ROY CHOWDHRY v. BROJENDRO COOMAR ROY CHOWDHRY* . . . . . [21 W. R., 182

134. ————— *Civil Procedure Code, s. 327.*—The plaintiff sought to file and to enforce a private award, under the provisions of s. 327, Act VIII of 1859. The defendant objected that he was no party to the award. The Court to which the plaintiff's application was made, after enquiry into the matter, overruled the objection, and directed that the award should be filed, but made no decree enforcing the award under the provisions of Chapter VI, Act VIII of 1859. *Held* that the order was not open to appeal, as it did not operate as a decree. *HUSSAINI BIBI v. MOHSIN KHAN* . . . . . [I. L. R., 1 All., 156

135. ————— *Order refusing to file award—Civil Procedure Code (Act X of 1877), ss. 525, 588.*—Matters in dispute were referred to arbitration without the intervention of the Court. An award was made, and upon an application under s. 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed, and the Subordinate Judge held the objection to be good. *Held* that no appeal lay. *SREE RAM CHOWDHRY v. DENOBUNDHOO CHOWDHRY* . . . . . [I. L. R., 7 Calc., 490 : 9 C. L. R., 147

136. ————— *Order to enforce award—Civil Procedure Code, 1859, s. 327.*—An appeal lies from an order made in execution of an arbitration award filed under the provisions of s. 327 of the

## APPEAL—continued.

## 4. ARBITRATION—continued.

Civil Procedure Code. *VASUDEB VISHNU v. NARAYAN JUGANNATH DIKSHIT* . . . . . [5 Bom., A. C., 129

*HUMUTOOLLAH CHOWDHRY v. HERRUN* . . . . . [13 W. R., 62

137. ————— *Order refusing to enforce illegal award—Civil Procedure Code, 1859, s. 327.*—An order refusing to enforce an obviously illegal award of arbitrators under s. 327, Act VIII of 1859, is not a decree, and therefore not appealable. *DIGAMBUREE DOSSEE v. POORNANAND DEY* . . . . . 7 W. R., 401

138. ————— *Order enforcing award—Private award.*—An appeal lies from the order of a Court directing the enforcement of an award of arbitrators, when the matter was referred to arbitration without the intervention of a Court. *ANUND CHUNDER SINGH v. GOPAL CHUNDER DASS* . . . . . [3 W. R., 154

*LAKSHMAN SHIVAJI v. RAMA ESHU* . . . . . [8 Bom., A. C., 17

139. ————— *Private award—Civil Procedure Code, 1859, ss. 325, 327.*—A decree passed by a Civil Court in accordance with an award of arbitrators made without the intervention of a Court of Justice under s. 327 of the Civil Procedure Code (Act VIII of 1859) is not subject to appeal. *VISHNU BHAI JOSHI v. RAVJI BHAI JOSHI* . . . . . I. L. R., 3 Bom., 18

140. ————— *Civil Procedure Code, s. 525—Filing private award in Court—Amendment of plaint, Ch. XXXVII of Civil Procedure Code, 1877.*—By the amendment of the plaint, a case under s. 525 of Act X of 1877 was taken out of the scope of Chapter XXXVII of that Act. *Held* that, this being so, the decree of the Court of first instance was appealable. *JUALA SINGH v. NARAIN DAS* . . . . . I. L. R., 3 All., 54

141. ————— *Order refusing to enforce award—Civil Procedure Code, 1877, ss. 2, 540.*—*Filing private award in Court—Order rejecting application.*—*Per SPANKIE, J.*—An order refusing an application to file a private award in Court is appealable as a decree. *Jokhan Rai v. Bucha Rai*, 3 *Agra*, 353, and *Hussaini Bibi v. Moshin Khan*, I. L. R., 1 *All.*, 156, impugned and distinguished. *Vishnu Bhai Joshi v. Ravi Bhai Joshi*, I. L. R., 3 *Bom.*, 18, distinguished. *Per STUART, C.J.*—An order refusing an application to file a private award in Court, on grounds not mentioned in ss. 520 and 521, is a decree and appealable as such. *JANKI TEWARI v. GAYAN TEWARI*. I. L. R., 3 *All.*, 427

142. ————— *Order enforcing award—Civil Procedure Code, 1859, s. 327.*—Plaintiff sued for confirmation of an award delivered by arbitrators appointed by agreement of parties to decide upon his claim to a share of ancestral property. Defendant objected that the award was illegal, principally upon the ground that he had cancelled his submission

## APPEAL—continued.

## 4. ARBITRATION—continued.

some time before the award was passed. The District Judge ordered the award to be filed, on the authority of *Pestonjee v Maneckjee*, 3 Mad, 183, affirmed in 12 Moore's L. A., 112. The defendant appealed. Held that no appeal lay. *SANTANJA v RAMANAYA* . . . 7 Mad., 257

143. ——— Arbitration award—*Act VIII of 1859, s. 325*—An appeal lies from an order enforcing execution of an arbitration award or from a decree under s. 325 of Act VIII of 1859. *WALI ALAM v. BIRI NASRAN*  
[3 B. L. R., Ap., 104; 12 W. R., 50]

144. ——— Order refusing to enforce

[L. R., 3 Mad., 68]

is final under ss 526 and 523 of the Code of Civil Procedure. *MICHANAYA GURUVU v. SADASIYA PARAMA GURUVU* . . . L. R., 4 Mad., 319

by the Court of first instance. *MORJI PREMJI SET v. MALIYAKEL KOYASSAN KOTA HAJI*

[L. R., 3 Mad., 59]

147. ——— Order setting aside award—*Misconduct of arbitrators*.—An order of a Civil Court setting aside an arbitration award, being an interlocutory order, is not open to an appeal immediately; but when the Court sets aside the award on the ground of misconduct on the part of the arbitrator, and, after hearing the case on its merits, makes its decree in favour of the plaintiff, it is competent to the defendant to appeal against that decree. *MATHOORANATH TEWARER v. BRINDABUN TEWARER* . . . 14 W. R., 327

[W. R., 1864, Mis., 33]

149. ——— Order directing submission to be filed—*Civil Procedure Code, 1859, s. 326*.—No appeal lies from an order directing that an agreement to submit matters in dispute to arbitration should be filed under the provisions of s. 326

## APPEAL—continued.

## 4. ARBITRATION—concluded.

of the Civil Procedure Code. *PESTONJEE NUSSEER-WANJEE v. MANECKJEE & Co.* . . . 3 Mad., 183  
Affirmed on appeal by Privy Council

[12 Moore's L. A., 112]

150. ——— Order refusing to file submission—*Civil Procedure Code, 1859, s. 326*.—An order disallowing an application under s. 326 of the Code of Civil Procedure, 1859, is unappealable. *BRUGWAN v. PERMESHEER* . . . 5 N. W., 179

151. ——— Application to file compromise—*Agreement of parties—Decree on compromise—Withdrawal from compromise—Code of Civil Procedure, Act XIV of 1859, s. 373*.—After suit filed by the plaintiff against several defendants, one of whom was an infant, a petition of compromise entered into between the adult parties was filed in Court. The petition stated the terms of arrangement, and also that an application would be made by the guardian of the minor praying the Court to allow the compromise to be carried out on his behalf. Ten days after the petition of compromise was filed, the first defendant and the plaintiff presented petitions to the Court withdrawing from the compromise, and praying that the suit should proceed. The second defendant presented a petition praying that the compromise should be recorded, and a decree passed according to its terms. The Court made a decree in accordance with the prayer of the second defendant's petition. The first defendant appealed

cut, and judgment entered up. *Ruttonsey Lalji v. Pooribai*, L. R., 7 Bom., 340, questioned. *HARA SUNDARI DEBI v. KUMAR DUKHINESSUR MALIA*

[L. R., 11 Calc., 250]

## 5. BENGAL ACTS

Collector in a suit for rent, where the aggregate amount of rent claimed under a 39, Bengal Act I of 1879, is above Rs100. *PRIAG NATR LAH DEO v. MORA MUNDA* . . . L. R., 24 Calc., 249  
[C. W. N., 181]

153. ——— ss. 37, 137—*Arrears of rent and ejectment, suit for*.—In suits instituted under Beng. Act I of 1879 for arrears of rent and eject-

t, a  
of  
Act.

[L. R., 10 Calc., 89]

Dissented from by the Full Bench in *KEDDO MAHTO v. BUDDEN MAHTO*

[L. R., 37 Calc., 508]

## APPEAL—continued.

## 5. BENGAL ACTS—concluded.

154. — *Intervenor under s. 57—Civil Procedure Code (Act XIV of 1852), ss. 52, 53.*—The decision of a Deputy Collector as to whether intervenor under s. 57, Act I of 1874 (B. C.), had been actually and in good faith receiving and enjoying rent before and up to the time of the commencement of the suit, is a decision upon the question whether the intervenor is entitled to collect rent; therefore it is a decision upon a question relating to a mere interest in land as between parties having conflicting claims thereto, and under s. 144, the appeal from the judgment of the Deputy Collector to the Judicial Commissioner. *Held, further*, that an appeal lay to the High Court from the judgment of the Judicial Commissioner, and therefore s. 622, Civil Procedure Code, did not apply. **LALL BHISH SINGH v. GUMAN GHOSH**

[I. C. W. N., 341]

## 6. BOMBAY ACTS.

155. — *Bombay Civil Courts Act (XIV of 1869), ss. 8 and 23—Suit for account and for balance that may be found due.*—The plaintiffs sued for an account of all the business done by the defendants as their commission agents from 1854 to 1867, and prayed that whatever was found due might be awarded with interest. The plaintiffs valued the relief sought approximately at Rs 510, and this was the only valuation stated in the plaint. The suit was filed in the Court of a first class Subordinate Judge, who rejected the plaintiff's claim. Against this decision the plaintiffs preferred an appeal to the High Court:—*Held* that, as the approximate amount of the claim was stated in the plaint to be Rs 510, that must be taken to be the value of the subject-matter of the suit for purposes of jurisdiction. The appeal, therefore, lay under ss. 8 and 26 of Act XIV of 1869, not to the High Court, but to the District Court. **KRISHALCHAND MUTHCHAND v. NAGINDAS MUTHCHAND**

[I. L. R., 12 Bom., 675]

156. — *s. 38—Valuation of suit—Jurisdiction.*—Where a suit, wherein the subject-matter exceeded Rs 5,000, was instituted in the Court of a Principal Sadr Amin, but decided by a Subordinate Judge, first class, appointed under the Bombay Civil Courts Act XIV of 1869,—It was held that an appeal lay direct to the High Court under s. 26 of the Act. **RAYASANJI SHIVSANGJI v. GULAM HASUL**

9 Bom., 288

157. — *Application by creditor for less than Rs 5,000 in suit for above that amount.*—Although the applicant, to have a sale set aside, was creditor for a sum less than Rs 5,000, still as the sale took place in a suit for a sum above Rs 5,000, an appeal lay to the High Court. **KRISHNARAY VENKATESH v. VASUDEVA ANANT**

[11 Bom., 15]

158. — *Suit for declaration of right to property under attachment.*—In a suit for a declaration that the plaintiff had a right of property and possession in a certain house under

## APPEAL—continued.

## 6. BOMBAY ACTS—concluded.

attachment, being in effect a suit for the removal of the attachment.—*Held* that, the judgment-debt in respect of which the house was attached being less than Rs 5,000, no appeal lay to the High Court. **MORICHAND JAICHAND v. DADABHAI PESTONJI**

[11 Bom., 183]

159. — *Administration suit—Suit filed in second class Subordinate Judge's Court—Decree in such a suit—Appeal from such decree to District Court.*—The plaintiff filed an administration suit in the Court of a Subordinate Judge of the second class, valuing the relief claimed at Rs 150. The Subordinate Judge found that the property in suit was worth over a lakh of rupees, that the liabilities came to Rs 729, and that the defendant was indebted to the estate in the sum of Rs 15,199. He drew up a preliminary decree, directing (*inter alia*) that the defendant should pay this amount into Court within two weeks. Against this order the defendant appealed to the District Court. The District Judge returned the appeal for presentation to the High Court on the ground that the subject-matter exceeded Rs 5,000. *Held*, reversing the order of the District Judge, that the appeal lay to the District Court. **SHRI KAVAJI MANCHERJI v. DINGHAJI MANCHERJI**

I. L. R., 22 Bom., 983

160. — *Bombay Municipal Act (Bombay Act III of 1888), ss. 298, 299, and 301—Order of Chief Judge of Small Cause Court granting compensation for land—Act XII of 1888, s. 3.*—An appeal lies to the High Court from a decision of the Chief Judge of the Small Cause Court of Bombay, granting compensation to the owner of land taken by the Municipality in case of a set-back under the Municipal Act, III of 1888, ss. 298, 299, and 301. **MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v. ABDUL HUSSAIN**

18 Bom., 184

## 7. CERTIFICATE OF ADMINISTRATION (ACTS XXVII OF 1860 AND VII OF 1889).

161. — *Act XXVII of 1860 and Act XIX of 1841—Order granting certificate of possession.*—The order granting a certificate under Act XXVII of 1860 and directing possession to be given to the certificate-holder under Act XIX of 1841, held not to be open to appeal or review. **JESODA KOONWAR v. GOURER BYJANATH PERSHAD**

[I Ind. Jur., N. S., 365]

162. — *Act XXVII of 1860—Order refusing to grant certificate.*—No appeal lies from an order of a District Judge refusing to grant a certificate under Act XXVII of 1860. **IN THE MATTER OF THE PETITION OF VISHVANATH HARI**

[7 Bom., A. C., 71]

163. — *Order refusing to recall certificate.*—No appeal lies from an order of a District Judge refusing an application to recall a certificate granted by him under Act XXVII of 1860. **IN THE MATTER OF THE PETITION OF NANUK PERSHAD. NANUK PERSHAD v. LALLA NITYA LALL**

I. L. R., 6 Calc., 40

[8 C. L. R., 388]

## APPEAL—continued.

7. CERTIFICATE OF ADMINISTRATION  
(ACTS XXVII OF 1860 AND VII OF  
1889)—continued.

164. ————— Order as to

High Court. HANEEMADHUR MOOKPREE v. NIL-  
AMBUR BANERJEE . . . 8 W. R., 378

165. ————— Case trans-

of 1868, from the file of a Judge to that of a Subordinate Judge, the order of the latter is appealable to the Court if the Zillah Judge, and only specially appealable to the High Court. FUZI HOSSEIN v. TUSSEDUCK ALI KHAN . . . 13 W. R., 395

166. ————— Enquiry or omission to make enquiry.—An appeal lies from the result of an enquiry or omission to make an enquiry under Act XXVII of 1860. TARINEE CHUEN BROHMO v. ROMA SOONDAREE DOSSEE

[20 W. R., 312]

[I. L. R., 1 Calc., 127  
24 W. R., 382]

IN THE MATTER OF RUEMIN

[I. L. R., 1 All., 287]

I. L. R., 1 All., 287, followed. IN THE MATTER  
OF THE PETITION OF PADDU SUNDARI DASI

[I. L. R., 3 All., 304]

RAJ MOHINEE CHOWDHURI v. DINO BUNDHOO  
CHOWDHURY . . . 17 W. R., 588

169. ————— s. 6.—Order  
for security.—An appeal will lie under s. 6 of Act  
XXVII of 1860, merely for the purpose of varying the

to security. SOONEA v. RAM SUHA 2 N. W., 148

170. ————— "Fresh  
certificate"—Appeal to High Court.—The fresh cer-  
tificate contemplated by s. 6 of Act XXVII of 1860  
means a certificate granted to a person other than the  
person to whom the first certificate was granted.  
Where, therefore, a person to whom the District Court

## APPEAL—continued.

7. CERTIFICATE OF ADMINISTRATION  
(ACTS XXVII OF 1860 AND VII OF  
1889)—continued.

had granted a certificate under Act XXVII of 1860  
appealed to the High Court and prayed for a  
fresh certificate, on the ground that the District  
Court should not have made the grant of certificate  
conditional upon her giving security to another  
person:—Held that no appeal lay to the High Court  
in the case. NAURANGI KUNWAR v. RAGHUBANAI  
KUNWAR . . . I. L. R., 9 All., 231

171. ————— Order of Dis-

security is insufficient. *Mon Mohinee Dassee v.  
Khetter Gopal Nay*, I. L. R., 1 Calc., 127, referred  
to. LUCAS v. LUCAS . . . I. L. R., 20 Calc., 245

of Act VII of 1889. ALTA SOONDARI DASI v.  
SRINATH SANA . . . I. L. R., 20 Calc., 641

173. ————— ss. 6 and 19

[I. L. R., 19 Mad., 199]

174. ————— ss. 9 and 10

—Order for issue of certificate subject to  
security being given.—On a contested application  
for a succession certificate under Act VII of 1889, an  
order was made for the issue of the certificate on  
security being furnished by the applicant. The op-  
posite party preferred an appeal against the order.—  
Held that the appeal was maintainable. ARIYA  
PILLAI v. THANGAMMAL I. L. R., 20 Mad., 442

"granting, refusing, or revoking a certificate" within  
the meaning of s. 19 of the Act, and that, therefore,  
no appeal would lie therefrom. BHAGWAN v. MANN  
LAL . . . I. L. R., 13 All., 214

## APPEAL—continued.

7. CERTIFICATE OF ADMINISTRATION  
(ACTS XXVII OF 1869 AND VII OF  
1889)—continued.

170. — *Order granting certificate on the applicant's existing receipt.*—The widow of a deceased person having applied for a certificate under the Succession Certificate Act (VII of 1889), the Judge entered the certificate to issue on the applicant's furnishing security under s. 9 of the Act. *Held* that such an order was not an order "granting, refusing, or revoking a certificate" within the meaning of s. 19 of the Act, and was, therefore, not appealable. *Bhagwan v. Manji Lal, I. L. R., 11 All. 211, followed. But Dargach v. Lachand Jivansay, I. L. R., 10 Bom. 700*

177. — *Order granting certificate, conditional, upon giving security.*—Where, on an application for a certificate of succession under the Succession Certificate Act (VII of 1889), an order was made granting the certificate conditionally upon the applicant's giving security.—*Held* that this was an order "granting, refusing, or revoking a certificate" within the meaning of s. 19 of the Act, and that therefore an appeal would lie therefrom. *Bhagwan v. Manji Lal, I. L. R., 11 All. 211, disented from. RADHA RAM DASAI v. BRISHDAR CHANDRA BASAK*

[I. L. R., 25 Cal., 320]

178. — *ss. 19 and 23*—*Order refusing certificate of heirship.*—*Barley Regulation VIII of 1827.*—*Practice.*—An appeal lies from the order of a District Judge refusing to grant a certificate of heirship under Regulation VIII of 1827 by virtue of the provisions of s. 23 of the Succession Certificate Act (VII of 1889). *JAYENMAL v. NAZIR OF THE DISTRICT COURT OF POONA*

[I. L. R., 18 Bom., 748]

179. — *Order refusing certificate of heirship.*—*Barley Regulation VIII of 1827.*—An appeal lies from an order refusing to grant a certificate of heirship under Regulation VIII of 1827, by virtue of s. 19 of the Succession Certificate Act (VII of 1889). *RANGUBAI v. ABASI*

[I. L. R., 19 Bom., 330]

## S. COSTS.

180. — *Discretion, Exercise of.*—*Act VIII of 1859, ss. 187, 189, 193, 196.*—*Held* (MACPHERSON, J., dissenting) an appeal will lie on a mere question of costs. *GHIDHARI LAL ROY v. SUNDAR BIBI*

[B. L. R., Sup. Vol., 490: 6 W. R., 187]

See DOWCETT v. WISE . . . 1 W. R., 522

181. — *Decree enforcing award.*—*Held* (by LOCH, J.), with reference to the Full Bench ruling *Grithari Lal Roy v. Sundar Bibi, B. L. R., Sup. Vol., 496: 6 W. R., 187*, that an appeal lies, on the point of costs, from a decree enforcing an arbitration award. *KHODA BUKSH v. MOWLA BUKSH*

. . . 14 W. R., 255

*Contra* COLLECTOR OF DACCA v. KAMALA KANT MOOKERJEE . . . 2 W. R., 33

CHOONI LAL MISSEY v. PATROO DEO 6 W. R., 18

## APPEAL—continued.

## S. COSTS—continued.

KERELA HARE v. LECHMUN DOSA NARAIN DOSA  
[5 W. R., P. C., 59  
1 Moore's L. A., 470]

ACHENDET SINGH v. KUNHYA LAL MOHAMMAD  
[7 W. R., 208]

182. — *See also.*—A regular appeal in respect of costs will not lie where *condo* file case and discretion have been exercised on the part of the Court below. *DESAI LAKSHMIJI v. BHAVANSHI NAROTAMPAS*

[8 Bom., A. C., 100]

LECHMUN RAM UNOBI v. WATSON  
[W. R., 1804, 148]

183. — As a general rule, an appeal in respect of costs will only be entertained in cases in which no discretion has been fairly exercised upon the question, and the decision of the Court below has proceeded upon a mistake or misapprehension. Where *condo* file case and discretion have been exercised, no appeal in respect of costs should be allowed, and the question whether such discretion has been well or ill exercised should not be entertained. *KESHAVRAM KRISHNA JOSHI v. BHAVANJI BIN BHAJI*

. . . 8 Bom., A. C., 142

184. — Where no appeal is made against the judgment passed on the subject-matter of the suit, the discretionary power of assessing costs given by s. 187 of Act VIII of 1859 should not, unless in a very exceptional case, be interfered with by the Appellate Court. *KUTREAVAMAYAN v. NANDEVAYAN*

. . . 1 Mad., 74

185. — *Order involving matter of principle.*—Though the distribution of costs is, under the Civil Procedure Code, a matter within the discretion of the Court, yet there may be circumstances which will justify an appeal upon a mere question of costs. *CHITHRAIL alias KUNATH AHMED KOYA v. IRUMANOM VITTE KANHAMATH HAJI*

. . . 3 Mad. Rep., 279

DANTULURI NARTANA GAJAPATI RAZU GARU v. SHREFFA RAZU . . . 3 Mad., 113

186. — An appeal will lie on a question of costs where a matter of principle is involved. *SECRETARY OF STATE FOR INDIA IN COUNCIL v. MAJUM HOSAIN KHAN*

[I. L. R., 11 Cal., 359]

187. — *Order in discretion of Court—Special appeal.*—When a question of costs is purely in the discretion of the lower Court, no appeal will lie; but when a matter of principle is involved, an appeal will lie. Where *A* was sued upon the allegation that he had instigated his co-defendant *B* to refuse to deliver up a document, for the recovery of which the suit was brought, and where no relief was prayed as against *A*, but the lower Courts awarded a decree in favour of the plaintiff directing *A* to pay half the costs of suit.—*Held* that the question was one of principle, and that a second appeal lay to the High Court against

**APPEAL—continued.****8. COSTS—continued.**

the decree directing A to pay such costs. **RUNWARI LALL v. CHOWDHRY DRUP NATH SINGH**

[I. L. R., 12 Calc., 179

183. ————— *Exercise of discretion of Court as to apportionment of costs*—An appeal as to costs will lie from an appellate decree when the Court has exercised its discretion as to costs arbitrarily, and not according to general principles. *Khorda Buxh v. Elakee Buxh*, 1 S. D. A., N. W. (1861), p. 235, and *Assa Ram v. Kashmeere Dass*, Agra, F. B., 90, followed. **DAULAT RAM v. DURGA PRASAD** I. L. R., 15 All., 333

the Appellate Court. *Gridhari Lal Roy v. Sundar Bibi*, B. L. R., Sup. Vol., 496, *Ranchordas Vithaldas v. Bai Kasi*, I. L. R., 16 Bom., 676, and *Daulat Ram v. Durga Prasad*, I. L. R., 15 All., 333, referred to. **TARA PRASUNNO MUKHARJEE & SATSUK CHANDRA SINGH** 4 C. W. N., 90

190. ————— *Appeal as to costs*—Alteration of lower Court's costs on ap-

[I. L. R., 17 Calc., 620

of jurisdiction, and ordered the plaintiff to pay a separate set of costs to each of the defendants. The plaintiff appealed to the District Judge on the grounds, first, that the Subordinate Judge had jurisdiction to entertain the plaint; and, secondly, that the

[I. L. R., 16 Bom., 241

192. ————— *Appeal as to costs—Civil Procedure Code (XIV of 1852), ss. 220, 540, and 568—Error of lower Court under misapprehension of fact and law*—Where the original Court has made an erroneous order for costs under a misapprehension of fact and law, an appeal

[I. L. R., 16 Bom., 676

**APPEAL—continued.****8. COSTS—concluded.**

**KRUSHAL SADASHIV v. PUNAM CHAND JUSRUJJI** [I. L. R., 23 Bom., 164

193. ————— *Party improperly brought on the record as representative of deceased judgment-debtor—Civil Procedure Code, ss. 2,*

on the question of costs alone. **BISHEN DAYAL v. BANK OF UPPER INDIA** I. L. R., 13 All., 290

*Appeal on behalf of the institution*.—A suit having been instituted under Religious Endowments Act, 1863, s. 14, *bona fide* in the interests of a Hindu temple, the plaintiffs desired to withdraw the suit with liberty to sue again and an order was made permitting them to do so and directing that the costs be paid from the funds of the institution.—*Held* that no appeal lay against the order as to costs. **RAMAKRISHNOR DOSSETI v. SRIKRANGA CHARLU**

[I. L. R., 21 Mad., 431

is ancillary to the order. **BALKRISHN DASS v. LUCIMIR SINGH** I. L. R., 8 Calc., 91

193. ————— *Return of plaint—Jurisdiction—Code of Civil Procedure, ss. 15 and 57.*—On the hearing of a suit in the Court of first

plaint ought to have been returned to the plaintiff for presentation in the proper Court. The defendant

[I. L. R., 13 Calc., 271

## APPEAL—continued.

## 9. DECREES.

197. ——— Order returning plaintiff—*Civil Procedure Code, 1877, s. 510—Decree, Form of.*—The plaintiffs, the widow, and son, respectively, of *N*, deceased, claimed immoveable property inherited from his father by *N*, and also immoveable property which had devolved upon *N* from his brother, who had predeceased him, and mesne profits of such properties. The Court of first instance, finding that the claim to the former property was admitted and that to the latter was not denied, but resisted as barred by s. 13 of Act X of 1877, and holding it not to be so barred, made a decree returning the plaint to the plaintiffs that they might, after correcting it, file it either in the Revenue Court in regard to the profits of the former property or in the Civil Court for possession of the latter property. *Held* that, although the claim of the plaintiffs was not either decreed or dismissed, yet as the right and title asserted by them to such properties was implicitly recognised by such decree, the defendants were entitled to appeal from it. *BEHARI BHAGAT v. BEGAM BIBI* . I. L. R., 3 All., 75

198. ——— Order dismissing a suit—*Civil Procedure Code (1882), ss. 2 and 136—"Decree."*—An order dismissing a suit under s. 136 of the Civil Procedure Code (1882) is a decree under the definition contained in s. 2 of the Code, and as such is appealable. *MANSINGJI v. MENTA HARIHARRAM NABHARRAM*

[I. L. R., 19 Bom., 307]

199. ——— Order dismissing suit as not properly brought—*Right of appeal.*—The plaintiffs in this suit claimed, as the heirs of *G*, possession from the defendants of certain lands which *G* had mortgaged to the defendants, alleging that the mortgage-debt had been satisfied from the usufruct. The defendants denied the title of the plaintiffs to redeem, asserting also that the mortgage-debt had not been satisfied. The Court of first instance held that the plaintiffs were entitled to redeem, but dismissed the suit on the ground that the mortgage-debt had not been satisfied. *Held* that the defendants were entitled to appeal, the case of *Pau Kooer v. Bhugwant Kooer*, 6 N. W., 19, not being applicable to this case. *RAM GHOLAM v. SHEO TAHAL* [I. L. R., 1 All., 268]

200. ——— *Right of appeal.*—*M* sued *K* and *J* to enforce a right of pre-emption in respect of property which he alleged *K* had sold to *J*. *K* denied that she had sold such property to *J*. *J* set up as a defence that *M* had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. *J* then appealed to the High Court, making *K* the respondent. *Held* that neither the appeal from the original decree in the suit nor the appeal from the appellate decree therein was admissible. *JUMNA SINGH v. KAMARUNNISSA* . I. L. R., 3 All., 152

201. ——— Order on death of party—*Death of sole defendant—Survival of cause of action—Legal representative—Civil Procedure*

## APPEAL—continued.

## 9. DECREES—continued.

*Code, Act X of 1877, ss. 363, 372—Limitation Act (XV of 1-77), sch. ii, art. 171b.*—In a suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant, the plaintiff applied to the Court to enter in the record the legal representative of the deceased defendant. On the 22nd of November 1880, the Court rejected the application under the provisions of Act XV of 1877, sch. ii, art. 171b, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but this application was also rejected on the 20th of September 1881. On appeal to the High Court,—*Held* that no appeal lay against the order of the 20th of September 1881. *BENODE MOHINI CHOWDHURI v. SHARAT CHUNDER DEY CHOWDHURY*

[I. L. R., 8 Calc., 837  
10 C. L. R., 449]

202. ——— Order treating as a nullity order made without jurisdiction—*Civil Procedure Code, 1859, ss. 102, 703.*—There is no appeal from the order of a Principal Sadr Ameen setting aside as a nullity the order of a Judge who, acting for him in his absence, had admitted an appellant as legal representative of the original plaintiff, who had died *pendente lite*, the Judge having no jurisdiction to make such substitution. *BIPRO CHUNDER JOOBRAJ v. RAMLOCHUN DEB* [W. R., 1864, 121]

203. ——— Order refusing decree-holder to execute decree against legal representatives—*Civil Procedure Code, 1859, ss. 210, 364.*—S. 364 of Act VIII of 1859 prohibits an appeal from an order made on proceedings taken under s. 210 of the same Act; the rule applicable in such cases being analogous to that laid down by the Privy Council in *Abidunnissa Khatoon v. Amirunnissa Khatoon*, I. L. R., 2 Calc., 327. *RAYGO v. POGOSE* . I. L. R., 3 Calc., 709 note

*POGOSE v. CATCHICK* . I. L. R., 3 Calc., 708  
[2 C. L. R., 278]

204. ——— Order under s. 210, *Civil Procedure Code, 1859.*—No appeal lies from an order passed under s. 210, Act VIII of 1859, refusing application of decree-holder to execute decree against legal representatives of the person against whom the decree was passed. *LOOTPUR ALI KHAN v. SADDA BRUT PERSHAD* . W. R., 1864, Mis., 35

205. ——— Order refusing to issue notice to representatives—*Civil Procedure Code, 1859, s. 217.*—No appeal lies from an order passed under s. 217, Act VIII of 1859, declining to issue notice as against certain alleged legal representatives of an original party. *SOHODRA v. ROY KALIHA SAHAY* . W. R., 1864, Mis., 23

206. ——— Order directing suit to abate—*Civil Procedure Code, ss. 2, 366, 588 (18).*—*Death of plaintiff-appellant.*—An Appellate Court rejected the application of the legal representatives of a deceased sole plaintiff-appellant to enter

**APPEAL—continued.****9. DECREES—continued.**

his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph, nor being a high a second

**MATA BADAL LAL** . . . **I. L. R., 3 All., 844**

**207.** ——— **Abatement, Order of**  
—*Civil Procedure Code, s. 366—Legal representative of a deceased. Omission to apply by,*

**[I. L. R., 10 Bom., 220**

**208.** ——— *Order for abatement of suit—Civil Procedure Code (1852), s. 366.*  
—No appeal will lie from an order under the first paragraph of s. 366 of the Code of Civil Procedure, such order neither amounting to a decree nor being specifically appealable under s. 288. *Bhikaji Ramchandra v. Pushtam, I. L. R., 10 Bom., 220, disconnected from.* **HAMIDA BEBI v. ALI HUSEN KHAN**

**[I. L. R., 17 All., 172**

*See SUBBATYA v. SAMINADATYAR*

**[I. L. R., 18 Mad., 498**

**209.** ——— *Order dismissing application to be brought on the record as representative of deceased party—Civil Procedure Code (1852), ss. 2 and 372.*—An appeal will lie from an order dismissing an application under s. 372 of the Code of Civil Procedure to be brought upon a record as representative of a deceased party, such order being a decree within the meaning of s. 2 of the Code. **INDO MATI v. GAYA PRASAD**

**[I. L. R., 19 All., 142**

person under s. 372, Civil Procedure Code, to be

**[I. L. R., 19 All., 142**

**211.** ——— *Order rejecting application by assignees of interest in suit to be allowed*

suit was decided *ex-parte* to the detriment of the assignees. The assignees filed a memorandum of appeal, claiming that they were entitled to file an appeal under the circumstances set forth in their

**APPEAL—continued.****9. DECREES—continued.**

memorandum. The Court, apparently treating this memorandum as an application under s. 372 of the Code of Civil Procedure, dismissed it. *Held* that an appeal would lie from this order of dismissal as from a decree. **INDO MATI v. GAYA PRASAD, I. L. R., 19 All., 142, followed.** **MOTI RAM v. KUNDAN LAL**

**[I. L. R., 22 All., 380**

**212.** ——— *Order refusing execution of decree simultaneously against person*

being a "decree" under s. 2 of the Act, an appeal lies against such order, and the Appellate Court is bound to consider whether the lower Court has properly exercised the discretion vested in it by s. 230 of that Act. **CHENA PEMASI v. GHILABHAI NARANDAS**

**[I. L. R., 7 Bom., 301**

was granted. — *Held* that an appeal lay against the order granting the application. **ABDUL RAHMAN v. MAHOMED KASSIM**

**[I. L. R., 21 Mad., 29**

**214.** ——— *Security for costs, order*

a "decree" within the meaning of s. 2, from which an appeal will lie. **SIRAJ-UL-HUQ v. KHADIM HUSAIN**

**[I. L. R., 5 All., 380**

**215.** ——— *Order disallowing objection to execution—Civil Procedure Code, 1877, ss. 2, 216—Order in execution of decree.*—An order made in the execution of a decree disallowing the objections taken by the judgment-debtor to execution of the decree being taken out by a transferee by assignment of the decree, being the final order in a judicial proceeding, and therefore a "decree" within the meaning of s. 2 of Act X of 1877, is appealable under that Act. **THAKUR PRASAD v. AHSON DATI, I. L. R., 1 All., 668, followed.** **MURLI DHAR v. PURSOTAM DAS**

**[I. L. R., 2 All., 81**

from N. The defendants claimed such land as owners, on the ground that it was included in a certain garden which they had previously purchased at a sale in the execution of a decree against N, and they also claimed it on the ground that they were lessees thereof under a lease from N, the term whereof had not expired. They also set up as a defence to the suit that it had been finally determined in a former suit

## APPEAL—continued.

## 2. DECREES—continued.

between themselves and X, whom the plaintiff represented, that such land was included in such garden, and that consequently their title to such land as owners could not be questioned in the present suit. The Court of first instance held that such land was not included in the defendants' garden, and they were not the owners of it, but that they could not be ejected from it, as they were in possession under the lease, which had not expired, and that the question whether such land was included in the defendants' garden, and they were the owners of it, was not *res judicata*. It made a decree dismissing the suit in these terms: "Ordered that the plaintiff's claim as it stands at present be dismissed." *Held* (SINGH, J., dissenting) that the defendants were entitled, under s. 520 of Act X of 1877, to appeal from such decree. **LACHMAN SINGH v. MOHAN**. I. L. R., 2 All., 497

217. — Order in execution of decree—*Civil Procedure Code, 1877, ss. 2, 3, 214, 51, 558 (j)*—*Execution of decree—Appeal from order*—*Act VIII of 1859—Repeal—Pending proceedings—Act I of 1868, s. 6*—The Court executing a decree for the removal of certain buildings made an order in the execution of such decree directing that a portion of a certain building should be removed as being included in the decree. On appeal by the judgment-debtor, the Lower Appellate Court, on the 22nd September 1877, reversed such order. *Held, per PRINCE, J.*, on appeal by the decree-holder from the order of the Lower Appellate Court, that the Lower Appellate Court's order, being within the scope of the definition of "decree" in s. 2 of Act X of 1877, was appealable under s. 181 of that Act, as well as under Act VIII of 1859, notwithstanding its repeal, in reference to s. 6 of Act I of 1868. The Full Bench ruling in **Thakur Prasad v. Asim Ali**, I. L. R., 1 All., 668, followed. *Held, per STUART, C.J.*, dissenting from the Full Bench ruling in **Thakur Prasad v. Asim Ali**, that a second appeal in the case would not lie. **UDA BEGUM v. IMAM-UD-DIN**

[I. L. R., 2 All., 74]

218. — Order refusing to file in Court agreement to refer to arbitration—*Civil Procedure Code, 1877, ss. 28, 623—"Decree"*—*Held* by the Full Bench (OLDFIELD, J., dissenting) that an order refusing to file in Court an agreement to refer to arbitration is not appealable. *Per* OLDFIELD, J., that such an order is appealable. **Jonaki Tewari v. Gayan Tewari**, I. L. R., 3 All., 427, distinguished by STUART, C.J., and followed by OLDFIELD, J. **DAYA NAND v. BAKHTAWAR SINGH**

[I. L. R., 5 All., 333]

219. — Agreement to refer—*Civil Procedure Code, 1882, ss. 523, 540—Decision thereon is a decree—Right of appeal*—In a suit to file an agreement to refer a matter to arbitration, a decision was passed refusing a reference on the ground that the agreement to refer was not proved. On the plaintiff appealing against such refusal—*Held* that a decision passed under s. 523 of the Code of Civil Procedure is a decree, and an appeal lies therefrom under s. 540 of the Code. Decision of OLDFIELD, J., in **Daya Nand v. Bakhtawar Singh**,

## APPEAL—continued.

## 2. DECREES—continued.

I. L. R., 5 All., 333, approved. **GOWDH MAGATA v. GOWDH BHAGAVAN**. I. L. R., 22 Mad., 239

220. — Order rejecting memorandum of appeal—*Civil Procedure Code, ss. 2, 51(c), 582, 622—"Decree"*—An order rejecting a memorandum of appeal as barred by limitation is a "decree" within the meaning of s. 2 of the Civil Procedure Code. **Gajraj Singh v. Bhagwant Singh, Weekly Notes, All., 1893, p. 235**, and **Dhanulal Beg v. Rajul Ali Shah**, I. L. R., 6 All., 439, distinguished. **GELAH RAI v. MANOH LAL**

[I. L. R., 7 All., 42]

221. — Order directing accounts to be taken—*Civil Procedure Code, 1882, s. 2—Interlocutory order*—In a suit for a share of the cost of a party wall built by the plaintiff, who, and also the defendant, were jointly owning of part of land under the Government for building, portion of the agreement being that all disputes as to the cost and maintenance of party walls were to be settled by the Government Surveyor, and no decision was to be final—*the Judge, SCOTT, J.*, on 11th December 1882, decreed that the defendant was liable to pay half whatever sum the Government Surveyor might certify to be due for the cost, and that the defendant was entitled to set off, in the calculation of what was due from him, the cost of any work or materials which the Government Surveyor might find had been contributed by him; and the case was thereupon adjourned for the certificate of the Government Surveyor. The Government Surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall, but stated that on the evidence before him he was unable to decide as to the ownership of the foundation, etc., of the wall. The case came on again before SCOTT, J., who decided to take evidence on the points left undetermined by the Government Surveyor. Witnesses were accordingly examined, and on 11th December 1883 the Court disallowed the defendant's claim of set-off, and gave judgment for the plaintiff for half the sum certified by the Government Surveyor as the cost of the disputed part of the wall. The defendants appealed. *Held* that the decree of the 11th December 1882 was not a decree or an "order directing accounts to be taken" within the meaning of s. 2 of the Civil Procedure Code (XIV of 1882), and that the defendants, although they had not filed an appeal against it within the period allowed by the Limitation Act, were entitled to appeal against it when appealing against the decree of 11th December 1883. **COVERJI LUDHIA v. MOHARJI PUNJA**. I. L. R., 9 Bom., 193

222. — Order rejecting appeal as barred—*Civil Procedure Code, ss. 2 and 540—Presentation of appeal beyond time*—The plaintiff's claim to redeem certain lands was rejected by a Subordinate Judge on 21st December 1882. On the 1st February 1883, the plaintiff, who was an agriculturist, presented an application for review to the Special Judge appointed under the Dekkhan Agriculturists' Relief Act. His application was rejected by that Judge, who was of opinion that the plaintiff's remedy

## APPEAL—continued.

## 9. DECREES—continued.

was appealable under s. 540 of the Code. **RAGHU-NATH GOPAL v. NILE NATHAJI**

[I. L. R., 9 Bom., 452]

323. ——— Order allowing purchaser of decree to execute it—*Civil Procedure Code, 1882, ss. 2, 232, 244.*—On an application under s. 232 of the Civil Procedure Code by the purchaser of a de-

a decree under ss 2 and 244 of the Code and therefore appealable, and a second appeal lay therefrom to the High Court. **AFZAL v. RAM KUMAR BHUDRA**

[I. L. R., 12 Calc., 610]

had not passed a decree within the meaning of the Civil Procedure Code, s. 2, and that plaintiff's remedy was not by way of a second appeal, but he should have proceeded under Civil Procedure Code, s. 553. **CHINNASAMI PILLAI v. KARUPPA UDAYAN**

[I. L. R., 31 Mad., 234]

*Contra* **BINDESHRI CHAUDHRY v. NANDA**

[I. L. R., 3 All., 456]

325. ——— Order under s. 18 of Act XX of 1863 granting leave to institute a suit—*Bengal, N.-W. P. and Assam Civil Courts Act XII of 1847, s. 20.*—An order passed under s. 18 of Act XX of 1863 granting leave to institute a suit is not a "decree" under the Civil Procedure Code, and is not an appealable order. In a suit to have

## APPEAL—continued.

## 9. DECREES—continued.

the defendants removed from the office of shebaitis of an endowment, in which, should leave to institute it

an appeal lies from a decree or order of a District

323. ——— Order refusing leave to sue—*Act XX of 1863, s. 18—Decree—Civil Procedure Code, 1882, s. 2.*—An order refusing leave to institute a suit under s. 18 of Act XX of 1863 is not a "decree" within the meaning of s. 2 of the Civil Procedure Code, and is not appealable. **KAZEM ALI v. AZEM ALI KHAN**

[I. L. R., 18 Calc., 383]

*IN RE VENKATESWARA* . I. L. R., 10 Mad., 98

*See ANONYMOUS CASE* I. L. R., 10 Mad., 93 note

**DELRUS BANOO BEGAM v. ABDUOOR RAHMAN**

[21 W. R., 338]

327. ——— Order rejecting plaint—*Civil Procedure Code, ss. 2, 53, 54, 442—Decree what it includes*—S. 442 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. Where in a suit the plaintiffs described themselves as adults, and on the objection of the de-

minors, and was appealable as a decree within the meaning of s. 2 of the Code. The words "rejecting the plaint" in s. 2 are not limited to the cases provided for in ss 53, 54. **BENI RAM BHUTTI v. RAM LAL DHUKRI**

[I. L. R., 13 Calc., 169]

328. ——— Order allowing withdrawal

fresh one.—*Held* that the order of the Appellate Court was a "decree" within the meaning of the Civil Procedure Code, and afforded a proper ground of second appeal to the High Court. **GANGA RAM v. DATA RAM**

I. L. R., 8 All., 82

**APPEAL—continued.****9. DECREES—continued.**

**229.** ———— **Order permitting withdrawal of suit—Civil Procedure Code (Act XIV of 1882), ss. 2, 373, and 588.**—An order made by an Appellate Court under s. 373 of the Civil Procedure Code, giving permission to withdraw a suit with liberty to bring a fresh one, is not a decree within the meaning of s. 2, and is not appealable. *Ganga Ram v. Data Ram, I. L. R., 8 All., 82*, dissented from. *Kalian Singh v. Lekhraj Singh, I. L. R., 6 All., 211*, approved of. *JOGODINDRO NATH v. SARUT SUNDURI DEBI*

[I. L. R., 18 Calc., 322]

DICK v. DICK . . . I. L. R., 15 All., 169

RAMA KISSOOR DOSSJI v. SHRIANGA CHARLU

[I. L. R., 21 Mad., 421]

**230.** ———— **Civil Procedure Code (1882), s. 373.**—An order under s. 373 of the Code of Civil Procedure allowing a plaintiff to withdraw his suit with leave to bring another suit on the same cause of action is not appealable, being neither one of the orders specified in s. 588 nor a decree within the meaning of s. 2 of the said Code. *Kalian Singh v. Lekhraj Singh, I. L. R., 6 All., 211*, and *Jogodindro Nath v. Sarut Sunduri Debi, I. L. R., 18 Calc., 322*, followed. *Ganga Ram v. Data Ram, I. L. R., 8 All., 82*, dissented from. *JAGDESH CHAUDHRI v. TULSHI CHAUDHRI*

[I. L. R., 16 All., 19]

GENDA MAL v. PIRDHU LAL

[I. L. R., 17 All., 97]

**231.** ———— **Appeal from order setting aside the order of withdrawal and dismissing the suit—Civil Procedure Code (Act XIV of 1882), ss. 2, 373, and 588.**—An order under s. 373 of the Civil Procedure Code giving permission to withdraw a suit with liberty to bring a fresh one, is not a "decree" within the meaning of s. 2 of the Code, and is not appealable. If, however, such an order is appealed from, and the Lower Appellate Court sets aside the order and dismisses the suit, then the order of the lower Appellate Court is a "decree" within the meaning of s. 2 of the Code, and is appealable. *Jogodendro Nath v. Sarut Sunduri Debi, I. L. R., 18 Calc., 322*, followed. *ABDUL HOSSEIN v. KASI SARU*

[I. L. R., 27 Calc., 362]

4 C. W. N., 41

**232.** ———— **Order rejecting application under Civil Procedure Code, s. 44, rule (a), and returning plaintiff—Civil Procedure Code, s. 44, rule (a), and s. 2—"Decree."**—No appeal lies under any of the provisions of s. 588 of the Civil Procedure Code from an order under s. 44, rule (a), rejecting an application for leave to join another cause of action with a suit for the recovery of immovable property. In a plaint filed in the Court of a Subordinate Judge the plaintiff claimed to recover possession of a house, together with some grain which was stored in it. The plaintiff applied to the Subordinate Judge for leave, under s. 44, rule (a), of the Civil Procedure Code, to join the claim for grain with the claim for possession of the house.

**APPEAL—continued.****9. DECREES—continued.**

The Subordinate Judge refused leave, and returned the plaint, with directions that the plaintiff should institute two suits for recovery of the house and the grain, respectively, in the Court of the Munsif. *Held* that the Subordinate Judge's order was substantially an order rejecting the plaint on the ground that the plaintiff had joined a cause of action with a suit for recovery of immovable property; that although this might have been a misapplication of s. 44, rule (a), of the Code, its effect was to reject the plaint; that such an order was a decree with reference to the definition in s. 2, and was appealable as such to the District Judge; and that therefore a second appeal lay in the case to the High Court, and that Court was not competent to interfere in revision under s. 622. *BANDHAN SINGH v. SOLHU*

[I. L. R., 8 All., 191]

**233.** ———— **Order directing commission of partition—Civil Procedure Code, 1882, ss. 2, 396—Decree for partition—Appealable order.**—Where an Appeal Court made a decree or order directing a commission to issue directed to an Amin to make a partition of certain property into certain specified shares and to allot the shares to the parties to the suit, *Held* that such order amounted to a decree within the meaning of s. 2 of the Code of Civil Procedure, and that, though called a decree, it was in fact an order in the terms of s. 396 of the Code, and was a proper order to make. *BEFIN BEHARI MODUCK v. LAL MOHUN CHATTOPADHYAYA*

[I. L. R., 12 Calc., 209]

**234.** ———— **Order in partition suit leaving proceedings to be taken in execution of decree—Civil Procedure Code (Act XIV of 1882), ss. 2 and 396—Order for partition in execution of decree.**—An order under s. 396 of the Code of Civil Procedure declaring the rights of the parties in a partition suit, but leaving their shares to be determined in execution of the decree, is a "decree" within the meaning of s. 2 of the Code, and an appeal therefore lies from such order. *IN THE MATTER OF THE PETITION OF BHOLA NATH DASS. BHOLA NATH DASS v. SONAMONI DAS*

[I. L. R., 12 Calc., 273]

**235.** ———— **Civil Procedure Code (Act XIV of 1882), ss. 2 and 396.**—The proceedings contemplated by s. 396 of Act XIV of 1882 are proceedings in a suit before decree, and in order to enable the Court in that suit to determine exactly the terms of that decree. Where those proceedings, however, were left to be taken in execution of the decree, the High Court, treating it as an error in point of form, and without deciding whether or not an objection, if it had been taken, would have been fatal to the proceedings, dealt with the case in the same way as was done in *Gyan Chunder Sen v. Doorga Churn Sen, I. L. R., 7 Calc., 318*, regarding the further proceedings taken after decree declaring the rights of the several parties as proceedings to obtain a decree on further consideration. Where in a partition suit an order was made in the course of such proceedings by which the position of some of the

## APPEAL—continued.

## 9. DECREES—continued.

parties to the suit was determined, but no declaration was made of the exact rights of each of the parties.—*Held* it was a mere interlocutory order, and no appeal would lie from it. *Semble*—Such an order is not a decree within the terms of s. 2, Act XIV of

of the parties and the property to be partitioned, decides that the suit must be decreed, as after such an order the suit could not be dismissed by the Court by which it was made, and is therefore an order which adjudicates upon the rights claimed and the defence set up in the suit, and which, as far as the Court expressing it is concerned, decides the suit within the definition of a decree in s. 2 of the Civil Procedure Code, and is therefore appealable as a decree. *DULHIN GOLAB KOER v. RADHA DULAH KOER* I. L. R., 19 Calc., 463

but reserving all other questions involved in the suit.—*Held* that the decree was a provisional decree and was subject to appeal, but that it was irregular in form in that it should have contained declarations as to all the rights and liabilities which had been adjudicated on, and directions as to the accounts and inquiries remaining to be taken and made. *KRISHNA-SAMI ATTANGAR v. RAJAGOPALA ATTANGAR*

(I. L. R., 18 Mad., 73)

238. — Order declaring the rights of parties to a partition suit in certain

February 1893, declaring the rights of parties to a partition in certain specific shares, was a decree within the meaning of s. 2 of the Code of Civil Procedure, and therefore appealable. *Dulhin Golab Koer v.*

## APPEAL—continued.

## 9. DECREES—continued.

an appeal from it being then barred by limitation. *BOLORAM DEY v. RAM CHUNDRA DEY*

(I. L. R., 23 Calc., 379)

239. — Order appointing commission to effect partition after preliminary decree—*Interlocutory order*—*Effect of not appealing from order*—*Civil Procedure Code (1882), ss 2, 241, and 591.*—*Held* by the majority of the Full Bench (O'KINEALY, MACPHERSON, TREVELYAN, and BANERJEE, JJ.) that an order passed in a suit for partition, subsequently to the preliminary decree appointing a commission to make the partition, is not an order in execution, and, therefore, is not appeal-

*MACLEAN, C.J.*, thought it unnecessary under the circumstances to decide the point. *JOGODISHWARY DEBEA v. KAILASH CHUNDBA LAHRY*

(I. L. R., 24 Calc., 725  
1 C. W. N., 374)

240. — Order directing accounts to be taken—*Civil Procedure Code (1882), ss 2 and 591*—*Suit for dissolution of partnership and*

Commissioner. On the 14th July 1893, defendant

of defendant No. 1 and finding that he was not a partner, was right, though no appeal against the preliminary order had been filed within the period of limitation. *BISWA NATH CHAKI v. BASI KANTA DUTTA* I. L. R., 23 Calc., 406

241. — Order by Appellate Court remitting case to Original Court to pass decree upon award—*Civil Procedure Code (Act XIV of 1882), s. 2.*—An appeal was preferred against

APPEAL—*continued.*2. DECREES—*continued.*

a decree of an Original Court dismissing a suit, and the Appellate Court sent the case back for the purpose of certain evidence being taken, and certified to it. Pending that being done, the parties applied to the Appellate Court to refer the case to arbitration, and that Court referred that application to the Original Court for disposal, although the case was still pending in its own file for disposal. Subsequently another application was made to the Original Court to refer the case to arbitration, and on the 19th May the case was sent to the arbitrator with directions to submit his award within seven days. On the 12th September, as the award had not been sent in, the Original Court passed an order recalling the record, and subsequently the award of the arbitrator, dated the 12th September, was filed. The Original Court thereupon forwarded the record to the Appellate Court for its decision. Objections were taken to the award, but overruled, and the Appellate Court passed an order directing the case to be sent back to the Original Court, with orders to pass a formal decree in accordance with the award of the arbitrator. *Held* that a second appeal lay against the last-mentioned order, inasmuch as it amounted to a decree under the provisions of s. 2 of the Civil Procedure Code. *BITOWAN DAS MAHAJI v. NERIN LALL SEIN*. I. L. R., 12 Cal., 173

242. ——— Order disallowing objections by defendant—*Civil Procedure Code, 1882, ss. 556, 584.*—Where a portion of the plaintiff's claim was disallowed by the first Court, and the plaintiff appealed to the Subordinate Judge from the portion of the decree which refused part of his claim, and the defendant filed a memorandum of objections under s. 561 of the Civil Procedure Code, the Judge decreed the plaintiff's appeal and disallowed the defendant's objections:—*Held* in an appeal by the defendant on a preliminary objection taken by the respondent that a second appeal lay from so much of the decree of the Subordinate Judge as disallowed the objections filed by the appellant under s. 561 of the Code of Civil Procedure. *GANAPATI v. SETHABAMA*

[I. L. R., 10 Mad., 292]

243. ——— Civil Procedure Code, 1882, ss. 232, 244—*Assignment of decree—Validity of transfer—Registration of transfer.*—The holders of a decree for the sale of mortgaged property transferred the same to M by instruments which were registered at a place where a small portion only of the property was situate. Subsequently M transferred the decree to other persons, and the co-transferees applied, under s. 232 of the Civil Procedure Code, to have their names substituted for those of the original decree-holders. The judgment-debtor opposed the application on the grounds that M's name had not been substituted for the names of the original decree-holders who had transferred to him, and that the transfers to M were inoperative, as the instruments of transfer had not been registered at the place where the substantial portion of the mortgaged property was situate in accordance with s. 28 of the Registration Act (III of 1877). It appeared that no notice had been issued to M under s. 232 of the Civil Procedure Code; that he was dead; and that his

APPEAL—*continued.*2. DECREES—*continued.*

legal representatives had not been cited as required by law. The application was allowed by the Courts below:—*Held* that the matter involved questions arising between the parties to the decree or their representatives within the meaning of s. 244 (c) of the Code, and that the order allowing the application was, therefore, a decree within the definition of s. 2, and was appealable as such. *GULAHAT LAL v. DAYA RAM*. I. L. R., 9 All., 46

244. ——— Civil Procedure Code, ss. 244, 411—*Application by Collector in pauper suit—Certificate, Recovery of, by Government—Question between parties to suit.*—*Held* that a Collector applying on behalf of Government, under s. 411 of the Civil Procedure Code, for recovery of Court-fees by attachment of a sum of money payable under a decree to a plaintiff suing for *several properties*, might be deemed to have been a party to the suit in which the decree was passed, within the meaning of s. 244 (c) of the Code, and that an appeal would, therefore, lie from an order granting such application. *JANKI v. COLLECTOR OF ALLAHABAD*. I. L. R., 9 All., 64

245. ——— Application for permission to sue as a pauper—*Rejection of application on the ground that it had been withdrawn—Civil Procedure Code, s. 2.*—*Held* that an order rejecting an application for permission to sue as a pauper, and striking the case off the Court's file on the ground that the applicant had previously withdrawn the application and entered into a new contract with the defendants, was a "decree" within the meaning of s. 2 of the Civil Procedure Code, and appealable as such. *BALDEO v. GULA KIAN*

[I. L. R., 9 All., 129]

246. ——— Order rejecting stay of execution—*Civil Procedure Code, 1882, s. 2, 515.*—An order by a District Judge under s. 515 of the Civil Procedure Code (Act XIV of 1882) refusing to stay execution is a decree as defined in s. 2, and is therefore appealable. *MUSAJI ABDULLA v. DANODAR DAS*

[I. L. R., 12 Bom., 379]

247. ——— Civil Procedure Code, ss. 2, 54—*Dismissal of suit for insufficient Court-fee on plaint—Court Fees Act (VII of 1870), s. 12.*—The Court of first instance, being of opinion that the plaint bore an insufficient Court-fee, and the plaintiff not making good the deficiency, dismissed the suit after recording evidence, but without entering into the merits. On appeal the lower Appellate Court held that the Court-fee was sufficient, and remanded the case for trial on the merits:—*Held* that the first Court's disposal of the suit must be treated as being under s. 54 of the Civil Procedure Code, and was therefore a decree within the meaning of s. 2, and appealable as such, and that such appeal was not prohibited by s. 12 of the Court Fees Act. *Ajoodhya Pershad v. Gunga Pershad*, I. L. R., 6 Calc., 249, and *Annamalai Chetti v. Cloete*, I. L. R., 4 Mad., 204, referred to. *MUHAMMAD SADIK v. MUHAMMAD JAN*. I. L. R., 11 All., 91

248. ——— Order deciding point of law arising incidentally—*Civil Procedure Code*

## APPEAL—continued.

## 9. DECREES—continued.

tion on the ground of the compromise having been obtained from him by fraud, and the Court below, being of opinion that the remedy of the judgment-creditor was by a proceeding in execution, and not by a regular suit, ordered the case to be tried on its merits.—*Held* that no appeal lay from such an order. **BEHARY LAL PUNDIT v. KEDAR NATH MULLICK**

[I. L. R., 18 Calc., 469]

249. — Civil Procedure Code, 1882.

[I. L. R., 13 Mad., 248]

order being a decree within the meaning of s. 2 of the Code. **LINGAYYA v. NARASIMHA**

[I. L. R., 14 Mad., 99]

an order is one determining a question in execution of a decree within s. 214, and is therefore a decree within the meaning of s. 2 of the Code. **Lingayya v. Narasimha, I. L. R., 14 Mad., 99, and Rangya v. Bhaya Harjivan, I. L. R., 11 Bom., 57, cited. JAMESA PRASAD v. MATHURA PRASAD**

[I. L. R., 16 All., 129]

lies, since the question is *res judicata* between the parties. **GURUYAYTA v. VUDAYATTA**

[I. L. R., 18 Mad., 39]

253. — Order absolute for foreclosure—*Transfer of Property Act (IV of 1882), s. 87—Execution of decrees—Practice—Civil Procedure Code, ss. 2, 214.*—The order mentioned in s. 87 of the Transfer of Property Act (IV of 1882) is an order in execution of the substantive foreclosure decree, and is appealable as a decree under s. 214 read with s. 2 of the Civil Procedure Code upon the stamp payable in respect of such orders. *So held*

## APPEAL—continued.

## 9. DECREES—continued.

by the Full Bench, **EDGE, C.J.**, doubting. Where

[I. L. R., 13 All., 61]

As to latter portion, see **SANT LAL v. SHIKISHEN**

[I. L. R., 14 All., 231]

254. — Civil Procedure Code, s. 2—*Decree, Definition of.*—An order of a District Judge returning a memorandum of appeal to be presented in the proper Court on the ground that the value of the suit is beyond the pecuniary limits of his jurisdiction, is not a decree within the meaning of s. 2 of the Civil Procedure Code. **MAHADEB SINGH v. BEHARI LAL**

I. L. R., 13 All., 320

regarded as a decree under s. 214 read with s. 2 of the said Code. **KASHI RAM v. MANI RAM**

[I. L. R., 14 All., 210]

256. — Transfer of Property Act, s. 87, order under—*Civil Procedure Code, ss. 2, 214 and 623—Superintendence of High Court.*—An order under s. 87 of Act IV of 1882 extending the time for payment of the mortgage-money by a mortgagor is a decree within the meaning of ss. 2 and 214 of the Code of Civil Procedure, 1882, and an appeal will lie from it. An application will therefore not lie under s. 622 of that Code for revision of such order. **RAHIMA v. NEPAL RAI**

[I. L. R., 14 All., 520]

257. — Order rejecting an appeal—*Civil Procedure Code, ss. 2, 582.*—An intending appellant executed in favour of two vakils a vakalat-nama; it was accepted only by one of the vakils, and he presented the appeal. The appeal was placed on the file by the District Judge, but on its coming on for disposal before the Subordinate Judge, he held

[I. L. R., 18 Mad., 235]

258. — Order under Civil Procedure Code (1882), s. 543, rejecting memorandum of appeal on account of scandalous matter therein.—A memorandum of appeal presented to a District Court alleged, *inter alia*, actual partiality against the Judge whose decree was in question. The memorandum was returned for amendment on the ground that it contained language disrespectful to the Court of first instance. The appellant's

## APPEAL—continued.

## 9. DECREES—continued.

pleader presented the appeal memorandum unamended, stating he wished to rely in the appeal on the passages objected to, and asking that the Court would, if necessary, strike them out. The District Judge thereupon rejected the memorandum of appeal under Civil Procedure Code, s. 543. It appeared that the objectionable portions of the memorandum were separable from the rest:—*Held* that an appeal lay to the High Court against the order rejecting the appeal to the District Court. **ZAMINDAR OF JUNI v. BENNAYYA**

[I. L. R., 22 Mad., 155]

259. ——— Order dismissing an appeal for default—“Decree.” Definition of—*Civil Procedure Code (1882), ss. 2 and 556.*—An order dismissing an appeal for default under s. 556 of the Civil Procedure Code does not fall within the definition of “decree” in s. 2, and there is no appeal from such order. **Ram Chandra Pandurang Naik v. Madhav Purushottam Naik, I. L. R., 16 Bom., 23**, dissented from. **JAGARNATH SINGH v. BUDHAN**  
[I. L. R., 23 Cal., 115]

260. ——— “Decree,” definition of—*Civil Procedure Code (1882), ss. 2 and 556.*—An order dismissing an appeal for default is not a “decree” within the definition in s. 2 of the Civil Procedure Code (1882), and no appeal lies therefrom. **Jagarnath Singh v. Budhan, I. L. R., 23 Cal., 115**, followed. **Mansab Ali v. Nihal Chand, I. L. R., 15 All., 359**, referred to. **ANWAR ALI v. JAFFER ALI**  
[I. L. R., 23 Cal., 827]

261. ——— Order rejecting appeal on default in furnishing security for costs—*Civil Procedure Code (1882), ss. 2 and 549.*—An order rejecting an appeal under s. 549 of the Code of Civil Procedure is not appealable either as an order or as a decree. **Siraj-ul-Huq v. Khadim Hussain, I. L. R., 5 All., 380**, overruled. **LEKHA v. BHARNA**  
[I. L. R., 18 All., 101]

262. ——— Appeal against order rejecting an insufficiently stamped appeal—*Civil Procedure Code (Act XIV of 1882), s. 2.*—An appeal petition, having been presented bearing an insufficient Court-fee stamp, was returned to the appellant. After the period of limitation had expired, it was presented again bearing a sufficient stamp, together with a petition that it be received. The Appellate Court made an order refusing to admit the appeal:—*Held* that the order was not a decree, and therefore that no appeal lay to the High Court. **VENKATARAYADU v. RANGAYYA APPA RAU**  
[I. L. R., 21 Mad., 152]

263. ——— Application for leave to sue in forma pauperis—*Decree—Civil Procedure Code (1882), s. 409.*—*Held* that no appeal will lie from an order rejecting an application for leave to appeal in forma pauperis. **Baldeo v. Gula Kuar, I. L. R., 9 All., 129**, and **Lekha v. Bharna, I. L. R., 18 All., 101**, referred to. **THE SECRETARY OF STATE FOR INDIA v. JILLO**  
[I. L. R., 21 All., 133]

## APPEAL—continued.

## 9. DECREES—concluded.

264. ——— Decree on compromise extending beyond scope of suit—*Civil Procedure Code (1882), s. 375.*—In a suit for the partition of a zamindari the parties effected a compromise in writing, which provided, *inter alia*, for certain reliefs which could only have been given by the Court in a suit based upon a different cause of action. The compromise was presented in Court, and a decree was passed embodying the whole of its terms:—*Held* that an appeal lay against the decree. A decree under s. 375 of the Civil Procedure Code is only final so far as it relates to so much of the subject-matter of the suit as is dealt with in the compromise. **VENKATAPPA NAYANIM v. THIMMA NAYANIM**  
[I. L. R., 18 Mad., 410]

265. ——— Order dismissing application for removal of a trustee—*Civil Procedure Code (1882), s. 2—Trusts Act (II of 1882), ss. 55, 60, 61, and 74.*—No appeal will lie from an order dismissing an application for the removal of a trustee, such order not being a “decree” within the meaning of s. 2 of the Code of Civil Procedure and not being otherwise appealable. **WILSON v. MACAFEE**  
[I. L. R., 19 All., 131]

266. ——— Final order in the execution department—*Appealable order—Civil Procedure Code, ss. 2, 510, 558.*—An order of the District Court in execution proceedings limiting the recovery of mesne profits to three years from 12th November 1887 is in the nature of a final decree, as defined by s. 2 of the Civil Procedure Code, and is appealable under s. 540. **BHOJ INDAR BAHADUR SINGH v. BIRAJ BAHADUR SINGH**  
[L. R., 27 I. A., 209]

## 10. DEFAULT IN APPEARANCE.

267. ——— Order refusing to issue fresh summons after dismissal—*Civil Procedure Code, 1859, s. 110—Order refusing to issue fresh summons on plaint.*—Where a suit is dismissed under s. 110, Act VIII of 1859, upon default in appearing made by both parties, no appeal lies from a refusal by the Court to issue a fresh summons upon the plaint already filed. **LOKE NATH SAHOO v. TUKER SINGH**  
[Marsh., 630]

268. ——— Order rejecting application to sue as a pauper—*Civil Procedure Code, 1859, s. 310.*—There is no appeal open to a pauper when his application to sue as pauper is rejected for default. Where there has been no refusal under s. 310, Act VIII of 1859, the applicant may revive his application for leave to sue as a pauper. **BHOJ SINGH v. MAHA KOONWEB**  
[3 Agra, Mis., 1]

269. ——— Order dismissing suit for non-appearance after adjournment—*Civil Procedure Code, 1877, s. 540, and ss. 102 and 103.*—Nothing remained to be done in a suit except to hear arguments, for which a time had been appointed. Neither the plaintiff nor his pleader appeared at the appointed time. The Court consequently dismissed the suit. *Held* that its decree was appealable under

## APPEAL—continued.

## 10. DEFAULT IN APPEARANCE—continued.

s. 540 of Act X of 1877, and the Lower Appellate Court should have entertained the appeal, and disposed of it with reference to the provisions of s. 565, and ss. 102 and 103 were not applicable to the circumstances. *RAI CHAND v. MATHURA PRASAD*

[I. L. R., 3 All., 292]

## 270.

*Civil Procedure*

*Code, ss. 98, 99, 157, 158*—A District Munsif struck a case off the file of his Court on neither party appearing. Subsequently, on an application by the plaintiffs, the case was restored. The order of restoration was reversed by the District Judge. *Held* (1) that the order to strike off the case was illegal; (2)

*I. L. R., 8 All., 354, and Partab Rao v. Ram Kishen, Weekly Notes, All., 1883, p. 171, referred to. ABLAKH v. BHAGIPATHI. I. L. R., 9 All., 427*

and his plea is an order under s. 157 and its consequential section (102), and not under s. 158 of the Civil Procedure Code (1882), and is appealable. *SHRIMANT SAGAJIRAO KHANDERAO v. SMITH*

[I. L. R., 20 Bom., 738]

273. — Order dismissing appeal for default.—An appeal does not lie from the order of a Judge dismissing an appeal before him for default of prosecution.—*MAHOMED JAN v. AMERUN*

17 W. R., 180

[I. B. L. R., F. B., 101: 10 W. R., F. B., 39]

*COOMAR CHOWDHRY. 3 W. R., 254*

*RAM YAD v. BISSERSUR BRUTTACHARJEE*

[2 W. R., Mis., 23]

*GHOLAM MAHOMED AKBUR v. KOONJ BEHAREE LALL. 5 W. R., Mis., 27*

## APPEAL—continued.

## 10. DEFAULT IN APPEARANCE—continued.

*KISHEN CRUNDER PUTRONOVIS v. TARA MONES CHOWDHRAIN. 3 W. R., 4*

*DINOBUNDHOO CHUTTERAJ v. BEHAREE LALL MOOKERJEE. 3 W. R., Mis., 23*

*MITTOO KHAN v. RAHMAN KHAN. 8 W. R., 38*

1850, which only applies to cases of involuntary failure to comply with a Court's order. *SOODHAMONIE DOSSEE v. GOOROOPEASUD DUTT*

[W. R., 1864, 176]

[I. L. R., 2 All., 618]

278. — *Civil Proce-*

so acted, and its decision could only be treated as a

279. — *Civil Procedure Code, 1877, ss. 2, 540, 556*—An order under s. 556 of Act X of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable. *MITANI v. FAKIR. I. L. R., 3 All., 382*

280. — Dismissal of appeal for default—"Order"—"Decree"—*Civil Procedure Code, s. 2, and ss. 556, 559*—No appeal will lie under s. 10 of the Letters Patent from the order of a

*Muhammad Naim-ullah Khan v. Ishaan-ullah Khan, I. L. R., 14 All., 226, cited. Ram Chandra Pandurang Naik v. Madhav Purneshtham Naik, I. L. R.,*

**APPEAL—continued.****10. DEFAULT IN APPEARANCE—continued.**

16 Bom., 23, not followed. *MANSAB ALI v. NIHAL CHAND* . . . I. L. R., 15 All., 359

**281.** ———— *Order dismissing suit for default of appearance—Civil Procedure Code (1882), s. 102.*—The decision of a Court passed under s. 102 of the Civil Procedure Code, dismissing a suit in default of appearance by a plaintiff, is an order and not a decree, and there is no first or second appeal therefrom. *GILKINSON v. SUBRAMANIA AYYAR* . . . I. L. R., 22 Mad., 221

**282.** ———— *Order dismissing suit for non-appearance of plaintiffs specially ordered to appear—Civil Procedure Code, ss. 66, 103, 107, 540, 588 (8).*—*Rejection of application to set aside dismissal.*—A plaintiff who had been ordered under s. 66 of the Civil Procedure Code to appear in person in Court upon a day specified, failed to appear, and under s. 107, read with s. 102, his suit was dismissed. He then applied to the Court, under s. 103, for an order to set the dismissal aside, but his application was rejected. He thereupon preferred an appeal from the decree dismissing the suit under the provisions of s. 540. *Held* that the plaintiff was not entitled to appeal from the decree dismissing the suit, and that his only remedy was by way of an appeal under s. 588 (8) of the Code from the order rejecting the application to set the dismissal aside. *Lal Singh v. Kunjan*, I. L. R., 4 All., 387, referred to. *KRISHNA RAM v. GOBIND PRASAD* . . . I. L. R., 8 All., 20

**283.** ———— *Order dismissing appeal for default—Pleader present, but unprepared to go on with case—Civil Procedure Code, 1882, ss. 556, 558.*—Where, when an appeal is called on, the pleader is not absent, but is unprepared to go on with the case, the dismissal is a dismissal for default within s. 556 of Act XIV of 1882, and the appeal can therefore be re-admitted under s. 558. *Buldeo Misser v. Ahmed Hossen*, 15 W. R., 143, followed. *SHIBENDRA NARAIN CHOWDHURI v. KINOO RAM DASS* . . . I. L. R., 12 Calc., 605

**284.** ———— *Dismissal of an appeal for default—Pleader unprepared to proceed with a case—Civil Procedure Code (Act XIV of 1882), ss. 2 and 556—"Decree."*—On the day fixed for the hearing of an appeal in the lower Appellate Court the appellant appeared by a duly appointed pleader. The pleader applied to the Court for an adjournment on the ground that he had not time to fully prepare himself in the case. The Court refused to grant any adjournment, and dismissed the appeal for default:—*Held* that the order of dismissal was bad. The mere fact that the appellant's pleader was not prepared to proceed with the case would not enable the Court to deal with the case as if there was no appearance at all for the appellant, and to dismiss the appeal for default. *Per* BIRDWOOD, J.—An order dismissing an appeal for default is one falling within the definition of a "decree" contained in s. 2 of the Code of Civil Procedure (Act XIV of 1882), and is, therefore,

**APPEAL—continued.****10. DEFAULT IN APPEARANCE—concluded.**

appealable. *RAMCHANDRA PANDURANG NAIK v. MADHAV PURUSHOTTAM NAIK*

[I. L. R., 16 Bom., 23

But see *JAGARNATH SINGH v. BUDHAN*

[I. L. R., 23 Calc., 115

*ANWAR ALI v. JAFFER ALI*

[I. L. R., 23 Calc., 827

*LEKHA v. BHAUNA*

I. L. R., 18 All., 101

*WATSON & Co. v. AMBICA DASI*

[I. L. R., 27 Calc., 529  
4 C. W. N., 237

**285.** ———— *Order rejecting application for re-trial—Civil Procedure Code, 1859, ss. 119, 347—Appeal heard ex-parte.*—A special and not a regular appeal will lie from an order rejecting a respondent's application for the re-trial of an appeal heard in his absence. *SREEDHURCHURN NUNDEE v. JUGGOBUNDOO PAUL*

[W. R., 1864, Mis., 37

**286.** ———— *Order dismissing appeal for default—Suit struck off for default—Civil Procedure Code, 1859, ss. 119, 347—Order striking off.*—In regular suits, where a Court of first instance refuses to re-admit a suit, there is an appeal under s. 119, Act VIII of 1859; but there is no provision under s. 347 for an appeal where an Appellate Court has refused to re-admit an appeal struck off for default. *ANONYMOUS* . . . 1 Ind. Jur., O. S., 49

*FUZZOO KHAN v. ISSUR CHUNDER SIRCAR*

[Marsh., 30

**287.** ———— *Order to attend as witness—Decree against defendant—Civil Procedure Code, 1859, s. 170.*—A defendant who has been ordered to attend and give evidence under Act VIII of 1859, s. 170, and has failed to do so, is not precluded from appealing against a decree in favour of the plaintiff. *KHOUMKAR ABDDOOL GUFFOOR v. KHODA NEWAZ*

[Marsh., 568

*KEDARNATH BHUTTACHARJEE v. KRIPA RAM BHUTTACHARJEE* . . . 5 W. R., 270

**288.** ———— *Decree on default of party summoned as witness—Civil Procedure Code, 1859, s. 170.*—A regular appeal lies from the judgment of a first Court passed on the default of a party summoned to attend as witness under s. 170, Act VIII of 1859. *CHUNDER MOHUN MOJOMDAR v. TEETOORAM ROSE*

[4 W. R., Act X, 18

**289.** ———— *Decree on default of plaintiff summoned as witness.*—The right of appeal is not lost to a plaintiff whose suit is dismissed for default by reason of non-appearance as a witness, or when the appellant wants to prove that he should not have been summoned at all. *ЛЕКНАЖ РОУ v. BUCKLAND* . . . 5 W. R., Act X, 65

**11. EX-PARTE CASES.**

**290.** ———— *Order admitting application to set aside ex-parte decree.*—Where

## APPEAL—continued.

## 11. EX-PARTE CASES—continued.

to set it aside. RADHA BENODE CHOWDHRY v. JUGGUT SURNOKAR . . . 6 W. R., 300

aside an *ex-parte* judgment on an application presented after the period allowed by law has elapsed, an appeal against that order will lie on the ground that it has been made without jurisdiction. KESHAY-RAM VALAD HIRACHAND v. RAMCHANDRA TRIMBAK . . . [8 Bom., A. C., 44

TOOLSEEN DOSSEN v. DOORGA CHURN PAUL . . . [15 W. R., 175

292. ——— Appeal from *ex-parte* de-

BARA PILLAJ v. KAMAN . . . 1 Mad., 189

293. ——— Order setting aside *ex-parte* decrees—*Civil Procedure Code*, 1859, s.

decree. *Held* that, in so far as the Munsif had decided that the application was in time, he did not come under s. 119, and therefore his order was not final, and the lower Appellate Court had jurisdiction to enquire into his proceedings. BIMOLA SOONDURK DASSEN v. KALEE KISHEN MOJOOMDAR . . . [22 W. R., 5

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*parte*, was rejected. Under that law, this order was appealable. No appeal was, however, filed until October 1st, 1877, on which date Act X of 1877 came in force. *Held* that the appeal was inadmissible, there being no provision in Act X of 1877 for such an appeal. IN THE MATTER OF JAN KOER . . . [1 C. L. R., 403

295. ——— Order setting aside *ex-parte* decrees—*Civil Procedure Code*, 1859, s. 119. —A District Judge is not competent to entertain a summary or miscellaneous appeal from an order setting aside an *ex-parte* judgment. But where an *ex-parte* judgment has been set aside and a judgment afterwards come to on trial, and where a regular appeal

## APPEAL—continued.

## 11. EX-PARTE CASES—continued.

[33 W. R., 147

for an order setting aside a decree made *ex-parte* against a defendant. GULAB SINGH v. LACHMAN DAS . . . I L. R., 1 All., 748

297. ——— *Civil Procedure Code*, s. 531.—An appeal lies from an order made under s. 531 of the *Civil Procedure Code* of 1877, refusing to set aside an *ex-parte* decree. LUCKMIDAS VITHALDAS v. EBRAHIM OOSMAN . . . [I L. R., 3 Bom., 644

298. ——— Refusal to re-hear appeal—*Civil Procedure Code*, 1877, ss. 560, 581, 558—

not appealed from the order refusing to re-hear the appeal, from appealing from the decree of the Appellate Court. RAMJAS v. BAIJ NATH . . . [I L. R., 2 All., 567

299. ——— Order *ex-parte* directing attachment in execution of decree.—An appeal lies from an *ex-parte* order directing attachment in execution of a decree. ZAMINDAR OF SIVAGIRI v. ALWAR ATTANGAR SANGI VIRAPANDIA CHINNATHANBIAR v. ALWAR ATTANGAR . . . [I L. R., 3 Mad., 42

300. ——— Order against defendant *de*, 1877, *ure Code*, *ite*. If a *ad files a* *ex-parte*.

ANANTHARAMA PATTEN v. MADHAVA PANIKER . . . [I L. R., 3 Mad., 264

See LUCKMIDAS VITHALDAS v. EBRAHIM OOSMAN . . . [I L. R., 3 Bom., 644

and EX-PARTE MODALATHA . . . [I L. R., 3 Mad., 75

301. ——— *Civil Procedure Code*, 1877, ss. 108, 540.—*Held* by STUART, C.J., and STRAIGHT and TIERRELL, JJ. (OLDFIELD and BRODBURST, JJ., dissenting), that a defendant against whom a decree has been passed *ex-parte*, and who has not-adopted the remedy provided by s. 108 of the *Civil Procedure Code*, cannot appeal

## APPEAL—continued.

## 11. EX-PARTE CASES—continued.

from such decree under the general provisions of s. 510. *LAL SINGH v. KUNJAN*

[I. L. R., 4 All., 387

302. ———— *Application to defend refused—Ex-parte decree against defendants—Right of defendants to appeal without taking steps to set aside the decree—Civil Procedure Code (Act X of 1877), ss. 101, 108.*—Defendants who put in no appearance at the original hearing, and who have subsequently been refused leave to appear and defend, are at liberty, where an “*ex-parte*” decree has been passed against them, to appeal to a higher Court without previously taking any steps to have the *ex-parte* decree set aside under s. 108 of Act X of 1877. *ASHRUFUNNISSA v. LEHAREAUX*

[I. L. R., 8 Calc., 272  
10 C. L. R., 502

303. ———— *Civil Procedure Code, s. 108—Decree against defendant under s. 136—“Ex-parte” decree.*—A defendant failing to comply with an order to answer interrogatories, the Court, under s. 136 of the Civil Procedure Code, struck out his defence, and proceeding *ex-parte* passed a decree against him. *Held* that the decree could not be treated, in respect of the remedy by appeal, as an *ex-parte* decree, and therefore, under the ruling in *Lal Singh v. Kunjan*, I. L. R., 4 All., 387, is not appealable, but that an appeal would lie from the decree. *CHUNNI LAL v. CHAMMAN LAL*

[I. L. R., 7 All., 159

304. ———— *“Appearance” of defendant under Civil Procedure Code, s. 101—Civil Procedure Code, ss. 64, 100, 103, 157.*—The first hearing of a suit was fixed for the 12th December 1883, on which day the defendant did not appear, and the case was adjourned to the 18th December, and, as the defendant did not then appear, a decree was passed in favour of the plaintiff. A vakalat-nama had been previously filed on the defendant's part, and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment. *Held* that these acts on the defendant's part did not constitute an “appearance” by him within the meaning of s. 100 of the Civil Procedure Code, which referred to an appearance in answer to a summons to appear and answer the claim on a day specified, issued under s. 64; that the decree was therefore *ex-parte* within the meaning of ss. 100 and 108, and an appeal consequently lay to the High Court under s. 583, cl. (9), from an order rejecting an application to set the decree aside. *Zain-ul-abdin Khan v. Ahmad Raza Khan*, I. L. R., 2 All., 67; I. L. R., 5 I. A., 233, distinguished. *The Administrator-General of Bengal v. Dyaram Dass*, 6 B. L. R., 688, *Bhimacharya v. Fakirappa*, 4 Bom., 206, and *Bibee Haloo v. Atwaro*, 7 W. R., 81, referred to. *Per MAHMOOD, J.*—That the Court on the 18th December seemed to have acted under s. 157 of the Civil Procedure Code, and, choosing the first of the alternative courses allowed by that section, acted under Chapter VII of the Code, and passed an *ex-parte* decree under the

## APPEAL—continued.

## 11. EX-PARTE CASES—continued.

provisions of s. 100 of that Chapter. *HIRA DAI v. HIRA LAL* . . . I. L. R., 7 All., 538

305. ———— *Order setting aside ex-parte decree—Civil Procedure Code (1892), ss. 103 and 157.*—No appeal will lie from an order made under s. 157 read with s. 103 of the Code of Civil Procedure setting aside a decree passed *ex-parte* in default of appearance of the defendant on a day to which the hearing of the suit had been adjourned. *Jonardan Dobey v. Ramdhone Singh*, I. L. R., 23 Calc., 738, referred to. *BIHAGWAN DAI v. HIRA* . . . 19 All., 355

306. ———— *Civil Procedure Code, ss. 100, 101, 108, 540—Appeal from ex-parte decree.*—A defendant against whom a decree has been passed *ex-parte*, and who has not adopted the procedure provided by s. 108 of the Code of Civil Procedure, can appeal from such decree under the general provisions of s. 540. *Lal Singh v. Kunjan*, I. L. R., 4 All., 387, dissented from. *KARTUPPAN v. ARYATHORAI* . . . I. L. R., 9 Mad., 445

307. ———— *Civil Procedure Code (1882), ss. 103, 540—Decree passed ex-parte through non-attendance of defendants—Order on appeal for re-trial de novo on ground that defendants had insufficient opportunity for being heard—Jurisdiction of Subordinate Judge.*—The defendants in a suit for possession of property and an injunction filed written statements, but failed to appear, either in person or by pleader, when the suit came on for hearing in the District Munsif's Court. Evidence adduced by the plaintiff was taken and a decree passed in plaintiff's favour as prayed. Some of the defendants applied to the District Munsif for an order to set aside the *ex-parte* decree, which application was refused; and the defendants then appealed against the original *ex-parte* decree, when the Subordinate Judge reversed the said decree and remanded the suit for re-trial *de novo* on the ground that the defendants had not had a proper opportunity for being heard. *Held* that it was not competent for the Subordinate Judge to pass such an order; that he could only deal with the case on the materials on the record; and that the decree of the District Munsif must be restored. *CAUSSANEL v. SOUBRES* . . . I. L. R., 23 Mad., 260

308. ———— *Order against respondent not appearing—Civil Procedure Code, ss. 103, 108, 540, 560, 584—Construction of Statute—General words.*—*Held* by the Full Bench (STRAIGHT, Offg. C.J., and TYRRELL, J., expressing no opinion) that a respondent in whose absence the appeal has been heard *ex-parte*, and against whom judgment has been given, may prefer a second appeal from the decree, under the provisions of s. 584 of the Civil Procedure Code, and his remedy is not limited to an application under s. 560 to the Court which passed the decree to re-hear the appeal. *Ramjas v. Baijnath*, I. L. R., 2 All., 567, approved. *Per OLDFIELD, J.*—There is a distinction between the case of a defendant in a Court of first instance and that of a respondent in an Appellate Court not appearing.

## APPEAL—continued.

## 11. EX-PARTE CASES—concluded.

with reference to ss. 198 and 500 of the Code. *Lal Singh v. Kunjan*, 1 L. R., 4 All., 357, and *Ramsket Bachaset v. Balkishna Abadhat*, 6 Bom., A C., 161, referred to. *Per* MAHMOOD, J.—The dis-

one of them must not be taken as operating in derogation of the other. *AJUDHIA PRASAD v. BALAKAND* . . . . . I L. R., 8 All., 354

309. ——— Order admitting appeal—*Ex-parte* order.—An *ex-parte* order admitting an appeal is subject to reconsideration on the hearing of the appeal. *MOSHAULAH v. AHMEDULLAH* (I L. R., 13 Calc., 78

310. *Ex-parte* order of 1882. There is *ex-parte*. *SINGH* . . . . . I L. R., 16 Calc., 428

## 12. EXECUTION OF DECREE.

## (a) QUESTIONS IN EXECUTION.

co-decree-holder. *GOOROO DASS ROY v. RAM RUNGEE DOSSIA* . . . . . 17 W. R., 138

*ODHOYA PERSHAD v. MOHADEO DUTT BHANDAREE* . . . . . 17 W. R., 415

312. ——— Order on application for execution by one or more joint decree-

meaning of s. 244. *Gooroo Dass Roy v. Ram Rungees Dossia*, 17 W. R., 136, and *Odhoia Pershad v. Mahadeo Dutt Bhandaree*, 17 W. R., 415, distinguished. *LAKSHMI ANNAH v. PONNASSA MENON* (I L. R., 17 Mad., 394

313. ——— Order refusing to allow execution by one of several joint decree-holders—*Civil Procedure Code* (1852), s. 231.—No appeal lies against an order under s. 231 of the Code of Civil Procedure (Act XIV of 1852), refusing

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

to allow one of several joint decree-holders to execute joint decree. *RATANLAL v. BAI GULAB* (I L. R., 23 Bom., 623

314. ——— Adjustment of decrees more than three years old—*Civil Procedure Code*, 1852, ss. 257, 258—Reference to High Court under s. 617 of a question arising under these sections.—On the 22nd March 1856, the appli-  
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of 1882). *Held* that the question could not be referred under s. 617 of the Civil Procedure Code

(I L. R., 11 Bom., 57

315. ——— Order in matter specially provided for—*Act XXIII of 1861*, s. 11—*Civil Procedure Code*, 1859, ss. 243, 364.—S. 11 of Act XXIII of 1861 did not allow an appeal in matters already specifically provided for in the different sections of the Procedure Code (*et seq.*, ss. 243 and 364). *GUREJANUND OOPADHYA v. RUTTEE RAMAN OOPADHYA* . . . . . 8 W. R., 138

316. *Comm* 1861, s.

(Act VIII of 1859). That section is in terms confined to questions arising in the execution of decrees, which expression, as used in the said Code, means the enforcement of the decree on the application of

section, and was, therefore, not appealable. *RUSTOMJI BURJORJI v. KESSOWJI NAIK* (I L. R., 8 Bom., 287

317. ——— deceased s. 11.—Acc<sup>y</sup> appeal lay heirs of a deceased decree-holder as to their respective rights. *RASCHUNDER ROY CHOWDHURY v. GRISCHUNDER ROY* . . . . . 5 W. R., Mia., 45

318. ——— Order under s. 240, Civil Procedure Code, 1859—*Act XXIII of 1861*,

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

s. 11.—S. 11, Act XXIII of 1861, did not alter or modify the effect of s. 246, Act VIII of 1859, so as to give an appeal from orders passed under the latter section. *DHEERAJ MAHATA CHAND v. PEAREE DOSSEE*. 6 W. R., Mis., 61

319. — Order rejecting appeal in execution case—*Act XXIII of 1861, s. 11.*—Under s. 11 of Act XXIII of 1861, an appeal lay from the order of a lower Appellate Court rejecting an appeal in an execution case as presented out of time. *GOPEENATH ROY v. GOPEENATH CHATTERJI*. [6 W. R., Mis., 106]

320. — *Act XXIII of 1861, s. 11.*—The Munsif, on the application of a judgment-debtor, set aside a sale held in execution of a decree passed against him on the ground that the decree was barred by lapse of time. The judgment-creditor appealed to the Judge, who rejected the appeal on the ground that no appeal was allowed under s. 11 of Act XXIII of 1861, an appeal lay from the order of the Munsif. *DHAN BIBEY v. HARADIAN RAM*. [2 B. L. R., Ap., 11: 11 W. R., 4]

321. — Order passed on application for discharge from arrest in execution of decree—*Act XXIII of 1861, s. 11—Civil Procedure Code, 1859, ss. 273, 283, 365.*—Held that the procedure, on an application for his discharge under s. 273 of Act VIII of 1859, by a person arrested in execution of a decree for money, was such a question as came within the words introduced by s. 11 of Act XXIII of 1861, in addition to the original provision in Act VIII of 1859, s. 283; and the order passed thereon by the Court executing the decree was subject to appeal, notwithstanding that orders as to imprisonment in execution of a decree were excepted from the operation of s. 365 of Act VIII of 1859, as this exception, there being no affirmative prohibition, was removed by the provision of ss. 8 and 11 of Act XXIII of 1861, which Act, as directed by s. 44 thereof, was to be read as part of Act VIII of 1859. *YESVANTRAY AMRITRAO JAMIN v. ISMAIL ALI KHAN*. [2 Bom., 99, 2nd Ed., 94]

322. — Order refusing refund of purchase-money—*Act XXIII of 1861, s. 11.*—A sale in the execution of a decree having been cancelled, the auction-purchaser applied for the refund of the purchase-money, which the Court executing the decree ordered, subject to the deduction of the sale fees. The auction-purchaser then applied for the return of the sum deducted. The Court passed an order refusing the application, which order the auction-purchaser questioned in appeal. Held that an appeal did not lie. *HURDEI BEEBEE v. SURJOO PERSHAD*. 6 N. W., 309

323. — Order on application to correct error in proceeding—*Act XXIII of 1861, s. 11.*—Where an application was made to correct an error in a proceeding in which interest

## DIGEST OF CASES.

## APPEAL—continued.

12. EXECUTION OF DECREE—continued.  
was calculated, the order passed on the application was open to appeal under s. 11, Act XXIII of 1861. *AMANUT AZI v. BINDHOO* 13 W. R., 138

324. — Order as to sum due on mortgage accounts—*Usufructuary mortgage—Suit by mortgagor for possession.*—In a suit by a mortgagor against a mortgagee to recover lands in the possession of the latter under a usufructuary mortgage, the only question in issue is whether the plaintiff is entitled to enter; and no appeal lies from the finding of the Judge that a specific sum is still due, it being open to the parties to dispute that decision by a separate suit. *MOTEE SOONDEREE v. INDRAJIT KOWAREE*. Marsh., 112

S. C. BRIJOLALL UPADHYA v. MOTEE SOONDEREE [W. R., F. B., 33]

325. — Order allowing mortgagor to deposit in Court amount due after date fixed—*Ministerial act—Civil Procedure Code, ss. 244, 588.*—S. 244 of the Civil Procedure Code contemplates that there must be some question in controversy and conflict in execution which has been brought to a final determination and conclusion so as to be binding upon the parties to the proceedings, and which must relate in terms to the execution, discharge, or satisfaction of the decree. A judgment-debtor under a decree for foreclosure made an application to the Court two days after the expiry of time prescribed by the decree for payment of the amount due thereunder, in which she alleged that, by reason of the two previous days having been holidays, she had been unable to pay the money before, and asked to be allowed to deposit the same. Upon this application the Court passed the following order:—"Per-mission granted. Applicant may deposit the money." The money was deposited accordingly. Held that the order was merely a ministerial act, and nothing more than a direction from the Judge to his subordinate official to receive the money, which, as it did not fall within either s. 244 or s. 588 of the Civil Procedure Code, was not appealable; and that the deposit to have not been made in time, was to apply for an order absolute for foreclosure, which order would be subject to any steps the parties affected by it might take by way of appeal or otherwise. *HULAS RAI v. PIRTHI SINGH*. I. L. R., 9 All., 500

326. — Order rejecting appeal in execution case—*Act XXIII of 1861, s. 11.*—Question whether decree is barred by limitation.—The question whether the execution of a decree is barred by limitation is a question arising between the parties to the suit; and an appeal lay under s. 11 of Act XXIII of 1861 from a decision on such question, whether it be raised by the Court *proprio motu* or by the parties. *HARI VISHNU v. GOPAL BIN RAGAI*. 6 Bom., A. C., 181

327. — Order in case transferred for execution—*Act XXIII of 1861, s. 11.*—*Beng. Act III of 1870.*—Where a decree by a

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

1861, s. 11. CHREDE SINGH v. PRABHOONISSA  
[20 W. R., 19]

328. ——— An order passed by a Court to which a decree has been transferred for execution is not open to appeal, unless the order has been made in the course of the actual execution of the transferred decree. *Quare*—Whether, where a decree has been transferred to the Munsif's Court for execution, an appeal will lie to the Judge from the Munsif's order in the matter of the execution? IN THE MATTER OF THE PETITION OF SUMAT DAS

[13 B. L. R., Ap., 27]

SOOMUT DASS v. BHOORUN LALL

[21 W. R., 292]

See this case at a former stage in which the question was raised. SOOMUT DASS v. BHOORUN LALL  
[20 W. R., 478]

329. ——— A decree trans-

MOBARUCK ALI v. SOOMER RUNGA CHAREE  
[3 N. W., 168]

[6 N. W., 73]

331. ——— Order rejecting application as to mode of sale of property—*Civil Procedure Code, 1877, ss. 244, 588*—*Question relative to the execution of decree*.—A judgment-debtor having applied, under s. 234 of Act X of 1877, that certain property attached in execution of a decree against him should be sold in successive 8-pie

although no appeal was given by the Act against an order under s. 234, there was an appeal under s. 588 (r). CHANDHARI SITAL PERSAD SINGH v. JUMAH SINGH . . . 4 C. L. R., 27

332. ——— Order as to means profits subsequent to decree, and as to costs of

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

execution—*Civil Procedure Code, 1877, s. 244*—There is no appeal against an order made under s. 244 of the Code of Civil Procedure (X of 1877), determining the questions between the parties to a suit as to the amount of means profits recovered by the plaintiff subsequently to the decree and as to the amount payable on account of the costs of the execution of that decree. DALPATBHAI BHAGUBHAI v. AMARSANG KHEMBABI

[I. L. R., 2 Bom., 553]

333. ——— Order disallowing objection to attachment—*Civil Procedure Code, 1877, ss. 244 (c), 281*—*Execution of decree—Decree against firm—Attachment of property as property of firm—Claim by partner to property as private property*.—The holder of a decree against a firm caused certain property to be attached in execution of the decree as the property of the firm. One of the partners in the firm objected to the attachment on the ground that such property was not the property of the firm, but was his private property. The Court disallowed the objection, whereupon such partner appealed from the order disallowing the objection. *Held* that such order was not one under s. 244 (c) of Act X of 1877, but under s. 281, and was therefore not appealable. ABDUL RAHMAN v. MUHAMMAD YAR . . . I. L. R., 4 Ail., 190

334. ——— Order of security in execution—*Civil Procedure Code (Act X of 1877) ss. 2, 244, cl. (c), ss. 546, 593*—*Security for restitution of property*.—Where an order, requiring the decree-holder to give security within three days, is made, under s. 546 of the Code of Civil Procedure, by the Judge of the Court in which the decree was passed and in which the execution is pending, such order is appealable as a decree under the provisions of the Code of Civil Procedure, s. 2, and s. 244, cl. (c). LUCHAMIPUT SINGH v. SITA NATH DOSS  
[I. L. R., 8 Calc., 477; 10 C. L. R., 517]

335. ——— Order for attachment and sale of property—*Civil Procedure Code (Act X of 1877), ss. 244 and 588, cl. (i) and (r)*.—An order for attachment and sale of property in execution of a decree is an order "of the same nature with" an order made in the course of a suit for attachment of the debtor's property. The latter order is appeal-

and therefore is appealable under that section. POLOKHARI RAI v. RADHA PERSAD SINGH  
[I. L. R., 8 Calc., 23  
I. L. R., 8 I. A., 165]

Reversing the decision of the High Court in POLOKHARI RAI v. RADHA PERSAD SINGH  
[I. L. R., 5 Calc., 50; 4 C. L. R., 343]

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

**330.** ——— Claim by legal representative to property as his own independently of deceased judgment-debtor—*Separate suit*—*Juxta*—*Civil Procedure Code*, ss. 231, 244, 278 and 283.—*Held* by the Full Bench (TYNNELT, J., dissenting): where a judgment-debtor dies after the passing of the decree, and his legal representatives are brought on the record in execution proceedings to represent him in respect of the decree, questions which they raise as to property which they say does not belong to his assets in their hands, and as such is not capable of being taken in execution, are questions which under s. 244 (c) of the *Civil Procedure Code* must be determined in the execution department, and not by separate suit. There is no distinction in this respect between the positions of legal representatives added to the suit before, and those added after, the decree. Under the last paragraph of s. 244, the Court executing the decree may try and determine the question whether property in the legal representative's hands formed part of the deceased judgment-debtor's estate, and find this fact for the purpose of bringing the property to sale in execution, and giving the auction-purchaser a good title under the sale; and the Court's order is subject to appeal, but not to a separate suit under s. 233. *SETH CHAND MAL v. DURG ADEI*. . . I. L. R., 12 All., 313

**337.** ——— Questions between execution-creditor and persons placed on the record as representative of deceased judgment-debtor—*Civil Procedure Code* (1882), ss. 244, 278, and 283.—Certain decree-holders obtained during the lifetime of their judgment-debtor attachment of certain immovable property as belonging to the said judgment-debtor; but, on the decree-holders seeking to bring the property to sale, one S D came forward with an objection that the property was his, and was not liable to sale in execution of the decree in question. Pending the decision of the Court on this objection, the decree-holders applied to the Court to have the names of S D and the widow of the judgment-debtor (who died about the time the previous objection was filed) placed on the record as representatives of the judgment-debtor. S D filed a similar objection to this application also; but both objections, being heard together on the 6th September 1892, were dismissed, and S D was placed on the record as representative of the deceased judgment-debtor. On appeal by S D against "the order of the District Judge of Jaunpur of the 6th September 1892," it was *held* that the order making S D a party to the execution proceedings as representative of the judgment-debtor rendered any order as to his former objection superfluous, and that order was appealable under s. 244 of the *Code of Civil Procedure*. *SHANKAR DAT DUBE v. HAHMAN*

[I. L. R., 17 All., 245]

**338.** ——— Assignment of decree—*Limitation—Civil Procedure Code* (1882), ss. 232, 244, 540, and 588.—Where a Court, on the application of a transferee of a decree for execution, decides that he is not a transferee under s. 232 of the

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

*Civil Procedure Code*, or that, although he is a transferee within the meaning of that section, he is not a representative of a party to the suit, or that by reason of limitation he is not entitled to obtain execution of the decree, it has determined a question or questions mentioned or referred to in s. 244 of the *Code*, and though not specified in s. 558, an appeal lies under s. 510. *Paramanadas Jivandas v. Vallabji Wallji*, I. L. R., 11 Bom., 506, and *Gulzari Lal v. Daya Ram*, I. L. R., 9 All., 46, approved. *Ram Baksh v. Panna Lal*, I. L. R., 7 All., 457, considered. *Haldar Shaha v. Hargobind Das Koibarto*, I. L. R., 13 Cal., 405, *Sambasiva v. Srinivasa*, I. L. R., 12 Mad., 611, *Rama v. Nappil Nayar*, I. L. R., 14 Mad., 478, and *Vijayal Begam v. Intizar Begam*, W. N., All. (1893), 106, referred to. *BADRI NARAIN v. JAI KISHEN DAS*. . . I. L. R., 16 All., 483

**339.** ——— Question whether transferee of decree is the representative of decree-holder—*Civil Procedure Code*, 1882, ss. 232, 244—*Decree*.—An order of a Court executing a decree determining whether an alleged transferee from a decree-holder or from his legal representative is or is not the representative of the decree-holder within the meaning of s. 244, cl. (c), of the *Code of Civil Procedure*, is an order under that section and therefore a decree, and an appeal lies from such order. *Dwar Baksh Sircar v. Fatik Sali*, I. L. R., 26 Cal., 250, and *Badri Narain v. Jai Kishen Das*, I. L. R., 16 All., 483, followed. *GANGA DAS SEAL v. YAKUB ALI BOBASAH*. . . I. L. R., 27 Cal., 870

**340.** ——— Order refusing to allow representative to take out execution until granted certificate—*Civil Procedure Code*, s. 244.—On appeal from an order allowing an application by the legal representative of a deceased decree-holder for execution, the Appellate Court, holding that the applicant must obtain a certificate under Act XXVII of 1860 before he could take out execution of the decree, made an order directing that execution of the decree should be stayed until the applicant had obtained such certificate. *Held* that such order fell under s. 244 of the *Civil Procedure Code*, and was therefore appealable. *HORI LALL v. HARDEO*. . . I. L. R., 5 All., 212

**341.** ——— Order staying execution of decree.—All orders staying execution of decrees, whether passed by the Court which passed the decree or by the Court to which it is sent for execution, are "questions arising between the parties to the suit in which the decree was passed, and relating to the execution" thereof, within the meaning of s. 244 (c) of the *Civil Procedure Code*, and, as such, appealable, irrespective of the provisions of s. 588. *Kristomahing Dossee v. Bama Churn Nag Chowdhry*, I. L. R., 7 Cal., 733, and *Luchmeepunt Singh v. Seeta Nath Doss*, I. L. R., 8 Cal., 477, followed. The widest meaning should be attached to cl. (c) of s. 244 of the *Civil Procedure Code*, so as to enable the Court of first instance and the Court of Appeal to adjudicate upon all kinds of questions arising between

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

the parties to a decree and relating to its execution.  
GHAZIDIN v. FAKIR BAKSH . I. L. R., 7 All., 73

342. ———— Order staying execution of  
decree—*Civil Procedure Code, 1882, ss. 2, 213.*

fore lies from such order. STEEL v. JONCHAMOFF  
CHOWDHRAIN . I. L. R., 13 Calc., 111

343. ———— *Civil Procedure Code, 1882, ss. 2 and 211—Stay of execution—Amount of security required in granting of execution: a question in execution and order thereon appealable.*—The defendant in a redemption suit against whom a decree had been passed appealed to the High Court, which on his application granted the usual stay of execution pending the appeal, upon

to execution as contemplated by s. 214 of the Code,

344. ———— *Civil Procedure Code (1882), s. 211—Question as to what had actually been subject of sale—Question between*

and consequently the decision of the lower Appellate Court was right. MAXMON v. LOCKE

[I. L. R., 20 Mad., 487

345. ———— Order staying sale in execution of decree—*Civil Procedure Code, 1877, s. 211, cl. (c).*—In execution of a decree on a mort-

debt remained unsatisfied, by the sale of the other

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

decree was passed and relating to the execution of that decree, and as such coming within the provision of cl. (c), s. 214, Act X of 1877. *Gambhirmal v. Chaymal Jodhmal, 11 Bom., 151*, distinguished. KRISTOMOHNEY DOSSEE v. BAMA CHURN NAG CHOWDHRY . I. L. R., 7 Calc., 733  
[9 C. L. R., 344

346. ———— Order directing application to stay sale in execution proceedings on ground of under-valuation—Decree—An applica-

lay from the order of dismissal.—*Held* that an

v. RATNASAMI NAICKER . I. L. R., 23 Mad., 568

347. ———— *Civil Procedure Code (Act XIV of 1882), ss. 214, 318, 583—*

v. GANESHA KOER . I. C. W. N., 658

made. SEENATH ROY v. RADHANATH MOOKERJEE  
[I. L. R., 9 Calc., 773

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

349. ——— Civil Procedure Code, 1882, s. 293—Question for Court executing decree—Defaulting purchaser answering for loss by re-sale—Description of property at sale and re-sale—Difference of—Regular suit.—An appeal will lie against an order made under s. 293 of the Code of Civil Procedure. *Sree Narain Mitter v. Mahtab Chund*, 3 W. R., 3, *Soornj Buksh Singh v. Sree Kishen Dass*, 6 W. R., Mis., 126, *Joobraj Singh v. Gour Buksh*, 7 W. R., 110, *Bisokha Moyee Chowdhraim v. Sonatun Dass*, 16 W. R., 14, and *Ram Dial v. Ram Das*, I. L. R., 1 All., 181, followed. *BAJNATH SAHAI v. MOHEEP NARAIN SINGH* [I. L. R., 18 Calc., 535]

*KALI KISHORE DEB SARKAR v. GURU PRASAD SUKUL*

[I. L. R., 25 Calc., 99 : 2 C. W. N., 408]

*RAJENDRANATH ROY v. RAM CHABAN SINHA*

[2 C. W. N., 411]

## (b) PARTIES TO SUITS.

350. ——— Person other than party to suit—Act XXIII of 1861, s. 11.—No one but a party to a suit can appeal under s. 11 of Act XXIII of 1861, against an order passed in such suit. *CAEMMERER v. BIRCH*. *EX-PARTE BROOKS*. 1 Mad., 8 *KALUB HOSSEIN v. DEEN ALI*. 4 N. W., 2

351. ——— Liability of defaulting purchaser—Civil Procedure Code, 1882, ss. 244, 293, 306—Appeal from order under s. 293.—At a sale in execution of a decree, a decree-holder, who had obtained leave to bid, was alleged to have made a bid through his agent of Rs. 90,000, but he shortly afterwards repudiated the bid, and did not pay the deposit. The property was put up for sale again on the following day under s. 306 of the Code of Civil Procedure, and was in due course knocked down for a smaller sum. The judgment-debtor filed a petition under s. 293 to recover from the decree-holder the loss by resale; the petition was rejected. On appeal:—*Held* that the question at issue was one arising between the parties to the suit, and that an appeal lay against the order rejecting the petition. *VALLABHAN v. PANGUNNI*

[I. L. R., 12 Mad., 454]

352. ——— Civil Procedure Code (1882), ss. 21, 244, 293, and 306—Default by purchaser in paying deposit—Order refusing remedy against purchaser.—The purchaser at an execution-sale failed to make the deposit of 25 per cent. under Civil Procedure Code, s. 306, alleging that the property was discovered by him subsequently to the sale to be subject to an incumbrance. The property was put up for sale again and knocked down for a smaller sum. The decree-holder sought in execution to recover the amount of the difference from the first purchaser. The Court of first instance made an order dismissing the application. *Held* that an appeal lay against the order in question. Orders made in respect of a default by the purchasers

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

in such a case are in the nature of decrees, and the parties affected must be deemed to be parties to the suit within the meaning of s. 244 of the Code.

*AMIR BAKSHI SAHIB v. VENKATACHAIA MUDALI* [I. L. R., 18 Mad., 439]

353. ——— Purchaser, objection by—Act XXIII of 1861, s. 11—Civil Procedure Code, 1859, ss. 246, 247, 364.—Where the holder (G) of a simple money-decree, who is at the same time a mortgagee, applies to a Civil Court to sell mortgagor's property in execution of said decree, such property having previously been sold in execution of K's decree and purchased by N (G's claim upon it being at the same time notified), and in his (G's) application inserts the name of N, and calls him a judgment-debtor in the room of the heir and representative of the deceased debtor; and a purchaser comes in and denies that he is a judgment-debtor or liable, and asks for the release of the property, and the Judge disallowed his objection:—*Held* that, if the Judge's order was made after investigation, then, under s. 246 of Act VIII of 1859, an appeal was barred; if it was an order refusing to investigate the objection, then the appeal was barred either by s. 247 or by s. 364, unless allowed by s. 11, Act XXIII of 1861. *Held*, also, that the objector was not a party to the suit, and that he was not entitled to appeal under s. 11. S. 223, Code of Civil Procedure, can have no bearing on such a case. *NARAIN ACHARJEE v. GREGORY*

[8 W. R., 304]

354. ——— Purchaser, Substitution of, for original party in record—"Party to suit."—A party who had sued, on the party of himself and of his minor brother, to recover possession of ancestral property alleged to have been alienated, sold his rights and interests in the suit to a third party, whose name was accordingly substituted in the place of plaintiff. *Held* that the substitution of such party for the plaintiff, in respect of part of the latter's share in the subject-matter of the suit, did not make that party a party to the suit, and gave him no status which would enable him to appeal. *SAHEB ROY v. CHOONEE SINGH*

9 W. R., 487

355. ——— Intervenor—Act XXIII of 1861, s. 11—Party to suit.—The first Court gave a decree to the plaintiff for possession of land against A, the original defendant in the suit, but exempted land in the possession of B, an intervenor, whom the Court had made a co-defendant. The Appellate Court reversed so much of that decree as adjudicated upon the claim as between the plaintiff and B and confirmed its decree for possession against A, but awarded costs against B. *Held* that B continued to be a defendant in the suit, and had a right of appeal under s. 11, Act XXIII of 1861, and that he was not as "a person other than the defendant" bound to come in under s. 230, Act VIII of 1859. *HUREE KISHORE ROY v. KALEE KISHORE SEIN*

8 W. R., 114

356. ——— Claimant under title created subsequently to suit—Act XXIII of

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

1861, s. 11—*Party to suit*.—A female plaintiff obtained a decree against certain defendants, declaring certain ekarnamahs, etc., void as against her husband and his representatives. After his death she proceeded to execute the decree as one for possession, and obtained an order, under s. 223, Act VIII of 1859, for delivery of possession of property in the possession of a third party as being a person claiming under a title created by the defendants subsequently to the institution of the suit. The third party appealed from that order. *Held* that this was not a case in which an appeal lay under s. 11, Act XXIII of 1861, inasmuch as the questions raised by the appeal were not questions between the parties to the suit. AMERBOONISSA KHATOON v. ABBDOONISSA KHATOON 16 W. R., 307

357. ——— *Representative of deceased debtor—Act XXIII of 1861, s. 11—Execution of decree—Limitation*.—A decree was obtained in 1849, and execution issued in 1862. Several subsequent applications for execution were made, against one of which the objection was raised by some of the representatives of the judgment-debtor,

passed in execution of a decree against his ancestor. BISHTU NARAYAN BANOOPADHYA v. GANGA NARAYAN BISWAS

[3 B. L. R., A. C., 40: 11 W. R., 368

358. ——— *Civil Procedure Code, 1882, s. 244—Decree passed against representative of debtor—Attachment of property as belonging to debtor—Objection to attachment by judgment-debtor setting up an independent title—Appeal from order disallowing objection—Civil Procedure Code, ss. 2, 283*.—The decree-holders, in execution of a simple money-decree passed against the legal representatives of their debtor, and which provided that it was to be enforced against the debtor's property, attached and sought to bring to sale a house as coming within the scope of the decree. The judgment-debtors objected to the attachment and proposed sale on the ground that the house was their own private property and not the property of the debtor within the meaning of the decree, having been validly transferred to them during the debtor's lifetime. The objection was disallowed by the

Bhagwan Das, 1 L. R., 7 All., 723, followed.

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

Shankar Dial v. Amir Hasdar, 1 L. R., 2 All., 752; Abdul Rahman v. Muhammad Yar, 1 L. R., 4 All., 190; Awadh Kwar v. Rukta Tiwari, 1 L. R., 6 All., 109; Choudhry Wahed Ali v. Jumara, 11 B. L. R., 149; Ameeroonissa Khatoon v. Meer Mahomed, 20 W. R., 280, and Kurruli v. Mayan, 1 L. R., 7 Mad., 255, referred to. MUMTARI v. ASHFAK AHMAD 1 L. R., 9 All., 805

359. ——— *Civil Procedure Code (1882), s. 244—Representative of judgment-debtor—Agreement for satisfaction of judgment-debt*.—A money-decree was passed against a zamindar by the High Court in 1883, and it was transferred to the District Court for execution. The

parties. Both before and after the mortgage the decree-holder received from the zamindar certain sums in consideration of his agreeing to postponements of the sale, also it was agreed between them at a date subsequent to the mortgage that interest should be computed at a higher rate than that provided by the decree. Subsequently the decree-holder sought to bring the land to sale, and in computing the amount then due gave credit for none of the sums so received, and calculated interest at the enhanced rate. The mortgagee objected that the computation was erroneous in both these respects, and the District Judge upheld his objection. The judgment-debtor took no part in the contest. *Held* that the mortgagee was a representative of the judgment-debtor within the meaning of the Civil Procedure Code, s. 244, and that an appeal lay against the order of the District Judge. PARAMANANDA DAS v. MAHADEB DOSHI

[1 L. R., 20 Mad., 378

360. ——— *Assignee of decree—Act XXIII of 1861, s. 11—Act VIII of 1859, s. 208—Assignment of decree*.—Under s. 11, Act XXIII of

13 W. R., 224

See contra, FRANJI RUSTOMJI c. RATANSHA PESTANJI 9 Bom., 49

361. ——— *Surety—Order between judgment-creditor and surety—Act XXIII of 1861, s. 11—Civil Procedure Code, 1859, s. 204*.—By virtue of s. 11 of Act XXIII of 1861 and the provisions of

[4 Bom., A. C., 119

GHAZEE LALL JHA c. SHEO NARAIN SINGH [8 W. R., 24

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

382. — *Execution of decree—Act VIII of 1859, ss. 204 and 363—Act XXIII of 1861, ss. 11 and 36.*—Where a person becomes a surety in the course of the proceedings on an appeal to pay all such sums as may be decreed against the plaintiff on appeal, the decree, when passed, can be executed against the surety under s. 204 of the Civil Procedure Code, and an appeal will lie from an order made in execution of such decree against the surety. *AKHUT RAMANA v. AHMED YOUSAFFJI* 7 B. L. R., 81 (15 W. R., 538)

383. — *Purchaser of interest in suit—Assignment of interest in subject-matter of suit—Right of purchaser.*—The purchaser of the right, title, and interest of the defendant in a suit in and to the land the subject-matter of that suit, has no right as such to appeal from a decree passed against the defendant. *GAJADHAR PRASAD v. GANESH TEWARI* 7 B. L. R., 149 (15 W. R., 485)

*BEET BHUNJUN SINGH v. JOWHER DOSS* 4 W. R., Mis., 17  
*KRISTOMONEE THAKOOR v. BISUMBUH DOSS* 5 W. R., 215

384. — *Purchaser at sale in execution—Interlocutory order obtained by purchaser at execution sale.*—No appeal lies from an interlocutory order obtained by a purchaser at a sale in execution of a decree, who was not a party to the original suit. *BHOONDUR MUL v. GUNGA PERSHAD* 2 W. R., Mis., 50

385. — *Objector not party to suit.*—An appeal does not lie by an objector who is not one of the parties, i.e., who is neither the decree-holder nor the judgment-debtor. *LUCHMIPUT SINGH v. LEKRAJ ROY* 2 W. R., Mis., 58  
*RAGHOONATH NARAIN SINGH v. RAM CHURN SAHOO* 2 W. R., Mis., 48  
*GOSSAIN JHUNMI POOREE v. ANUND MOYEE DOSSEE* 3 W. R., Mis., 9  
*SOODHA MONEE DOSSEE v. BROJONATH MOZOOM-DAR* 4 W. R., Mis., 14

386. — *Purchaser at sale in execution—Order refusing to put purchaser at sale in execution to possession.*—The order of a Munsif declining to put the purchaser, at a judicial sale of immoveable property, in possession thereof, was open to appeal under s. 11, Act XXIII of 1861. IN THE MATTER OF GORUPPA BIN RACHAPPA [1 Bom., 90]

387. — *Civil Procedure Code, 1882, ss. 244 and 318—Petition by purchaser at Court-sale for possession.*—On an application made in 1888 under Civil Procedure Code, s. 318, by the purchaser at a Court-sale (who was the assignee of the decree which was being executed), praying for delivery of possession of the property purchased, it appeared that the sale took place in

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

1885, that it was confirmed in 1886, and that in January 1887 an order was made for delivery of possession to the purchaser. The judgment-debtor had resisted the purchaser's efforts to obtain possession in 1887, and set up in bar of the application in 1888 an oral agreement alleged to have been made between him and the purchaser. The application was rejected. Held that the question was one relating to the execution of the decree between the representative of the original decree-holder and one of the defendants to this suit, and fell within s. 244 of the Civil Procedure Code, and an appeal therefore lay against the order rejecting the application. *MUTTA v. APPASAMI* 1 L. R., 13 Mad., 504

388. — *Purchaser in execution of decree—Order refusing to recognize purchaser.*—No appeal lies from an order of a Judge refusing to recognize the position of a purchaser of a decree. *LALLA OJEE LALL v. LOOPT ALI KHAN* 2 W. R., Mis., 33  
*CHUNDEE PERSHAD MISSEER v. NIEANUND SINGH* 2 W. R., Mis., 38

389. — *Purchaser at sale in execution—Act XXIII of 1861, s. 11—Representation of decree-holder and the auction-purchaser.*—An appeal did not lie under s. 11, Act XXIII of 1861, from an order in execution, in which the representative of a decree-holder was on one side and a stranger (the auction-purchaser) on the other. *LUCHMUN PERSHAD v. AMEER ALI* [W. R., 1864, Mis., 15]

370. — *Act XXIII of 1861, s. 11.*—An auction-purchaser of property sold in execution of decree is not "a party to the suit," he is not therefore entitled to appeal from an order passed as to the execution of the decree. *LUCHMUN NARAIN v. BAIROW PERSHAD* 1 Agra, Mis., 5

371. — *Third party—Order excluding property from sale.*—No appeal lies from an order passed at the instance of a third party for excluding a particular property from sale in execution of decree. *SAHEB JEHAN v. ASUDOOULLAH* 5 W. R., Mis., 28

372. — *Order passed in execution of decree between party to suit and a third party.*—No appeal lies from an order passed in execution of a decree between either of the parties to the suit and a third party, but a regular suit may be brought to set aside the order. *GOBINDNATH SANDYAL v. RAMMOOMAR GHOSE* 6 W. R., 21

373. — *Rival decree-holders—Act XXIII of 1861, s. 11—Act VIII of 1859, ss. 270, 271—Proceeds of sale in execution.*—An appeal did not lie, under s. 11 of Act XXIII of 1861, from an order made under ss. 270 and 271 of Act VIII of 1859 with regard to the claims of several rival decree-holders in respect of the proceeds of property sold in execution of a decree. *MURDER KOOR v. MAHESWAR BUKSH SINGH; GURDI MISREE v. MAHESWAR BUKSH SINGH*

**APPEAL—continued.****12. EXECUTION OF DECREE—continued.**

MAHESWAR BUKSH SINGH. SRIONGO KOOR v.  
MAHESWAR BUKSH SINGH B. L. R., Sup. Vol. 13  
[Marsh., 527: W. R., F. B., 116]

CHOONEE LALL v. PULTOO BHUKET  
[6 W. R., Mis., 74]

ALLY HOSSEIN v. DHUNPUT SINGH  
[W. R., 1884, Mis., 19]

JUNGER LALL, MAHAJAN v. BRIJO BEHARER  
SINGH . . . . . 2 W. R., Mis., 21

AFZOOLOONISSA BEGUM v. PARBUTTY KOONWAR  
[2 W. R., Mis., 41]

MAHOMED KHAN KUZULBASH v. THAKOOR SINGH  
[3 W. R., Mis., 1]

JUGOHUNDHOO SHAH PORAMANICK v. OFFICIAL  
ASSIGNEE . . . . . 21 W. R., 194

**374.** ———— *Act XXIII of 1861, s. 11—Attachment under s. 237, Act VIII of 1859.*—One of several decree-holders, who had obtained separate decrees against the same judgment-debtor, attached, under s. 237 of Act VIII of 1859, a fund in the hands of the Collector belonging to the debtor, being the surplus proceeds of a sale for arrears of Government revenue, and

case for the rateable distribution of the fund amongst the creditors. On appeal by the first attaching creditor, who claimed to be entitled to be paid the amount of :  
rival decree  
were made  
SETON-KARI  
the several orders of the Principal Sudder Ameen

the judgment-debtor alone. DEEN DYAL SAKHO v. RADHA MUDDUN MOHUN DOSS. HATTIE LALL BHUGOOT v. RADHA MUDDUN MOHUN DOSS. KANYA LALL PUNDIT v. RADHA MUDDUN MOHUN DOSS  
[B. L. R., Sup. Vol. 927  
6 W. R., 223]

**375.** ———— *Co-defendants—Appeal by defendant against co-defendant.*—One defendant

**APPEAL—continued.****12. EXECUTION OF DECREE—continued.**

cannot be allowed to appeal as against his co-defendants. KASHEE CHUNDER ROY v. DOORGA  
[11 W. R., 410]

**376.** ———— *Rival defendants.*—In a suit for possession, where a second defendant is admitted (though improperly) upon the record, and both defendants claiming under different titles, issues are raised between the plaintiff and each of them, and the suit is dismissed, the decision on these issues cannot be regarded as a decision between the rival defendants, so as to give one a right of appeal against the other. KALEE KINKUR BACHUSPUTTY v. KISTO MUNGLE BRUTTACHARJEE 11 W. R., 462

**377.** ———— *Assignee of interest in suit—Civil Procedure Code, 1877, s. 244, and ss. 278, 283—Representative.*—The holders of a taluk hypothecated certain other property belonging to them as security for the rent. A decree for rent was obtained against them. Prior to attachment, the talukhdars assigned their interest in eight annas of the hypothecated property to A, and made a mautai lease of the remaining eight annas to him. The decree-holder then obtained an order for summary sale for the rent due for 1876-77. She then attempted

[I. L. R., 7 Cal., 403  
9 C. L. R., 79]

**378. ———— Attachment—Objection to**

matter of attachment, either on his own account

to the suit under s. 244 of the Code of Civil Procedure. But where the judgment-debtor raises the claim or objection on behalf of third parties who are not represented before the Court, the order passed thereon must be regarded as an order under s. 250 of the Code, and the only mode in which that order can be contested is in a regular suit as provided by s. 283. In execution of a decree against a judgment-debtor in his private capacity, the judgment-creditor attached certain property. Thereupon the judgment-debtor objected that the property attached had been dedicated by him some time previous as

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

wakf under a registered wakfnamah, and that he was only in possession as mutwali under the deed. The lower Court found that the document created a valid wakf, and allowed the objection and released the property from attachment. The judgment was set aside on appeal. At the hearing of the appeal it was contended that no appeal lay, inasmuch as the order was one under s. 280 of the Civil Procedure Code. On behalf of the judgment-debtor it was contended that the order was one under s. 244, and was thus appealable. *Held* that the order was one under s. 280, and that no appeal lay, the remedy of the judgment-debtor lying by way of a regular suit as provided by s. 281. *RAM LALL DAS v. DEWANI MOHUN MOHUN MOHUN ROY & DEWANI MOHUN*

[I. L. R., 15 Cal., 537]

370. ———— Order on claim by trustee for release of trust property attached under personal decree against trustee—*Civil Procedure Code (1882), ss. 214, 278 to 281*.—*Appeal from such order*.—A decree-holder having attached certain property in the course of execution, two of the defendants in the suit in which the decree had been passed presented a petition praying that the property might be released from the attachment on the ground that it had been set apart for charitable purposes, and that it was held by defendants as trustees. The Subordinate Judge upheld the trust, and ordered the properties to be released from the attachment. Plaintiff then appealed to the High Court, when objection was taken that no appeal lay against the order of the Subordinate Judge. The Court referred to a Full Bench the question whether an appeal lies against an order passed with regard to a party to a suit against whom there is a personal decree, in respect of a claim he may set up to hold property, attached in execution of that decree, as a trustee on behalf of third persons not parties to the suit. *Held* that such a claim falls under s. 278, and not under s. 244 of the Code of Civil Procedure, and that no appeal lies against any order passed on it by the Court executing the decree. The claims of third parties, whether put forward by themselves or by a party to the suit, must be dealt with under ss. 278 to 283 of the Code of Civil Procedure, and not under s. 244. *Roop Lall Dass v. Dewani Mohun, I. L. R., 15 Cal., 437*, referred to. *RAMANATHOOR CHETTIAR v. LEWAI MARATHOOR*

[I. L. R., 23 Mad., 105]

380. ———— Co-decree-holders—Order on questions arising between co-decree-holders—*Civil Procedure Code (Act X of 1877), s. 214, art. (c), s. 588*.—A decree-holder, having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds arising from such execution should only be paid over to the co-decree-holders jointly. *Held* that the question in dispute being one between co-decree-holders, and not between parties to the suit or their representatives as contemplated by art. (c),

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

s. 244 of the Civil Procedure Code, no appeal would lie from such order. *GRANOSER v. RADHA ROMON*  
[I. L. R., 5 Cal., 502]

381. ———— Collector—*Civil Procedure Code, 1877, s. 214*—*Refusing execution of order for costs*.—A Subordinate Judge admitted a plaintiff in *formal papers*, but, holding that he had no jurisdiction to try the suit, returned the plaint to the plaintiff for its presentation in the proper Court, and ordered each party to pay his own costs. After the presentation of the plaint in another Court, and before the termination of the suit, the Collector applied to the Subordinate Judge for execution of the order as to costs, by seeking to recover the amount of the stamp duty from the plaintiff. The Subordinate Judge refused to execute the order, on the ground that the paper suit was still pending in another Court. His order was affirmed by the District Judge on appeal. On second appeal to the High Court, *Held* that there was no appeal, and, therefore, no second appeal, under s. 244, cl. (c), of the Civil Procedure Code (Act X of 1877), against the order of the Subordinate Judge refusing execution of the order as to costs, inasmuch as the question was not between the parties to the suit. *Collector of Ratanagiri v. JANARDAN KAMAT*

[I. L. R., 8 Bom., 590]

See *Collector of Trichinopoly v. SIVARAMA-KRISHNA SASTRIGAL*. I. L. R., 23 Mad., 73

382. ———— Decree-holder in character of purchaser—Order in execution of decree—*Fraud—Cancellation of sale in execution of decree—Civil Procedure Code (Act XIV of 1882), ss. 2, 214, cl. (c), 311, and 588, cl. 16*.—Where it was shown that a judgment-debtor was himself the purchaser at an execution-sale, and the amount for which he so purchased the property of his judgment-debtor was set off against the amount due to him under his decree, and where on the application of the judgment-debtor the Court passed an order setting aside the sale on the ground of fraud practised by the judgment-debtor on the judgment-debtor in connection with the sale, in consequence of which fraud the property had been sold at an undervalue, *Held* that, inasmuch as the order involved the decision of a question between the parties to the suit relating to the execution, discharge, or satisfaction of the decree (the decree having been satisfied as far as the purchase-money bid by the decree-holder went, and the order cancelling that *pro tanto* satisfaction), though not appealable under the provisions of s. 588, cl. 16, was appealable as a decree under the provisions of the Code of Civil Procedure (Act XIV of 1882), s. 2, and s. 244, cl. (c). *BALLODAN LALL BHAGAT v. ANADI MOHAPATRO*  
[I. L. R., 10 Cal., 410]

383. ———— Purchase by decree-holder at auction-sale—Order for delivery of possession.—Certain holders of a decree for sale upon a mortgage, having brought the property ordered to be sold to sale, purchased it themselves. Having taken out certificates of sale, they applied to be put in possession

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

*Sri Gopal, I. L. R., 17 All, 222, referred to.*  
*GHULAM SHABIEH v. DWARAKA PRASAD*  
 [I. L. R., 18 All, 38]

384. ——— Representative of decree-holder—*Civil Procedure Code, ss. 244 and 303—Order cancelling sale.*—One who had attached a decree and obtained leave to bid at the sale of land ordered to be sold in execution, and to have the purchase-money and the amount due under the decree set

latter decree and sale, *B* obtained a decree against *D* for possession of certain lands which were proved to belong to this mahal. *E* then obtained a decree against *B*, in execution of which the right, title, and interest of *B* in this same mahal was sold and purchased by *F*. *C* and *F* transferred their rights under

the order of the Subordinate Judge, the order not being a decree within the meaning of ss. 2 and 244 (cls. a, b, and c) of the Civil Procedure Code.  
*MOHAMMAD SINGH v. RAM BAGHWAN CHOWHET*  
 [I. L. R., 11 Calc., 150]

## APPEAL—continued.

## 12. EXECUTION OF DECREE—continued.

in execution thereof he brought to sale land belonging to *C*. *B* applied to have the sale set aside, and his application was refused:—*Held* that *B* had a right of appeal under Civil Procedure Code, s. 311, and not under s. 244. *SAMI PILLAI v. KRISHNASAMI CHETTI*  
 [I. L. R., 21 Mad., 417]

their representatives. *BUNGSHIDHAR HALDAR v. KEDAR NATH MONDAL*  
 [I. C. W. N., 114]

the position of decree-holder and judgment debtor, and the order was made upon an application to set aside the sale. *KRIPA NATH PAL v. RAM LAKESHMI DASTA*  
 [I. C. W. N., 703]

## 389. ——— Appeal by some of the

the District Judge rejected it. The plaintiff then preferred a second appeal to the High Court, which finally decided in plaintiff's favour. To this second appeal *A* was not made a party. In execution of the High Court's decree, *A* was dispossessed, but was restored to possession by the Subordinate Judge under s. 332 of the Code of Civil Procedure. This order

decree under execution was passed, and that, therefore, no appeal lay to the District Judge from the Subordinate Judge's order:—*Held* that, *A* being a party to the suit, though not to the appeal in which the final decree was passed, the District Judge had

## APPEAL—continued.

## 12. EXECUTION OF DECREE—concluded.

jurisdiction to hear the appeal under s. 244, cl. (c), of the Code of Civil Procedure. *GOWRI v. VIGNESHWAR* . . . I. L. R., 17 Bom., 49

**390.** ——— Application by exonerated defendant—*Civil Procedure Code (1882), s. 244*—*Right of appeal.*—A defendant, against whom no decree has been passed, but whose rights are invaded in execution, is entitled to come in under Civil Procedure Code, s. 244, and to appeal against an order made in such proceedings. *Karriyali v. Mayan, I. L. R., 7 Mad., 255*, referred to. *Vagamuthu v. Satarimuthu, I. L. R., 15 Mad., 226*, and *Vasudera Upadaya v. Viscaraja Thirthasami, I. L. R., 19 Mad., 331*, referred to. *VINUDAPRIYA THIRTHASAMI v. VIDIANIDHI THIRTHASAMI* . . . [I. L. R., 22 Mad., 131]

## 13. LETTERS PATENT, CL. 12.

**391.** ——— Order granting leave—*Leave to institute suit.*—An appeal lies from an order granting leave to the plaintiff to institute a suit under cl. 12 of the Letters Patent. *ISMAIL HAJEE HUBUB v. MAHOMED HAJEE YOUSUF. ROHM BYE v. MAHOMED HAJEE YOUSUF* . . . [13 B. L. R., 91: 21 W. R., 303]

**392.** ——— Order refusing leave to sue.—Where at the time of filing the plaint an application for leave to sue was granted under cl. 12 of the Letters Patent, leave being reserved to the defendant to move to have the order set aside, and the plaint was then filed, but in the settlement of issues the defendant questioned the jurisdiction of the High Court, and the Court eventually withdrew the permission to sue in the High Court.—*Quere*—Whether the order appealed against, finally deciding that leave ought not to be granted to institute a suit for want of jurisdiction under cl. 12 of the Letters Patent, was an appealable order. *RADHA BIBEE v. MUCKSOODUN DOSS* . . . 21 W. R., 204

## 14. MADRAS ACTS.

**393.** ——— Madras Forest Act, s. 10—*Decision as to title to land—Appeal to High Court from decision of District Court on appeal.*—An appeal lies to the High Court from a decision of a District Court passed under s. 10 of the Madras Forest Act, 1882, on appeal from the decision of a Forest Settlement Officer. *KAMARAJU v. SECRETARY OF STATE FOR INDIA* . . . I. L. R., 11 Mad., 309

**394.** ——— Madras Rent Recovery Act (Madras Act VIII of 1865)—*Order of Collector.*—By Madras Act VIII of 1865, an appeal from the decree of the Collector lies to the Civil Court. *OLAGA SUNDARAM PILLAY v. MUTTIEN CHETTY* . . . 4 Mad., 227

**395.** ——— *Procedure.*—The Civil Court, in hearing an appeal from the decision of a Collector under the Act, must be guided by the Civil Procedure Code. *SUBRAMANAY PILLAY v. PERUMAL CHETTY* . . . 4 Mad., 251

## APPEAL—continued.

## 14. MADRAS ACTS—concluded.

**396.** ——— s. 10—*Order to eject tenant.*—No appeal lies to the District Court from an order passed on an application to eject a tenant under s. 10 of the Rent Act (Madras Act VII of 1865). *MAHOMED YAKUB SAHEB v. MAHOMED JAFFER ALI SAHEB* . . . I. L. R., 4 Mad., 167

**397.** ——— ss. 10, 69, 73—*Decision of Collector ejecting tenant.*—An appeal lies from the decision of a Collector ejecting a tenant under s. 10 of the Rent Recovery Act (Madras), 1865. Such a decision, notwithstanding the use of the word "order" in the section referred to, is a judgment within the meaning of s. 69. *Mahomed Yakub Sahab v. Mahomed Jaffer Ali, I. L. R., 4 Mad., 167*, not followed. *NARASIMHASWAMI v. LAKSHMANNA* . . . I. L. R., 22 Mad., 436

## 15. MANAGEMENT OF ATTACHED PROPERTY.

## See CASES UNDER APPEAL—RECEIVERS.

**398.** ——— Order postponing sale to enable debtor to raise amount—*Civil Procedure Code (Act VII of 1859), s. 243—Civil Procedure Code, 1882, ss. 305, 503—Order postponing sale—Act XXIII of 1861, s. 11.*—An appeal lay from an order passed under s. 243 of Act VIII of 1859, postponing the sale of the property attached, in order to enable the judgment-debtor to raise the amount of the decree against him (JACKSON, J., dissenting). *HANUMAN PRASAD v. AJODHYA PRASAD* . . . [1 B. L. R., F. B., 7: 10 W. R., F. B., 5]

**399.** ——— Order refusing application to appoint a manager.—An appeal lay from an order refusing the request of a judgment-debtor for the appointment of a manager under s. 243, Act VIII of 1859. *BISHAM SINGH v. INDERJEET KOONWAR* . . . 2 W. R., Mis., 49

**400.** ——— *Quere*—Is a refusal to make an order on an application for the appointment of a manager an order from which an appeal lies under s. 11, Act XXIII of 1861? *NUZMOODDEEN AHMED v. ABDUL AZEEZ* . . . [13 W. R., 242]

**401.** ——— Order of Manager—*Civil Procedure Code, 1859, s. 243.*—There was no appeal against the order of a manager appointed under s. 243, Act VIII of 1859. *BHOOBUN MOYEE DEBEA v. MOOTY* . . . 1 W. R., Mis., 11

## 16. MEASUREMENT OF LANDS.

**402.** ——— Order of Deputy Collector.—An appeal from the decision of a Deputy Collector in a suit under s. 9, Bengal Act VI of 1862, lay, not to the Collector, but to the Zilla Judge. *ERSKINE & Co. v. GHOLAM KHEZUR* . . . 9 W. R., 520

**403.** ——— Question as to standard pole of measurement.—Where a question as to the standard pole of measurement in use in a pargana

## APPEAL—continued.

## 16. MEASUREMENT OF LANDS—concluded.

[24 W. R., 424]

404. — Order of Collector in survey and measurement of lands.—An appeal lay to the Judge from the decision of a Collector in matters of survey and measurement falling within ss. 9 and 10, Bengal Act VI of 1862. No appeal lay from the decision of a Collector under s. 11 of the same Act. TARUCK NATH MOOKERJEE v. MEYDEE BISWAS 5 W. R., Act X, 17

405. — Order of Deputy Collector as to standard pole of measurement.—No appeal to the Judge lay from the decision of a Deputy Collector under s. 11, Bengal Act VI of 1862, on the question of the standard pole of measurement. RAKHAL DAS MOOKERJEE v. TUNOO PORAMANIC 7 W. R., 239

406. — Order of Collector as to standard of measurement.—Beng. Act VI of 1862, ss. 9 and 11.—When the right of a proprietor to make, under s. 9, Bengal Act VI of 1862, a measurement of a tenure, is disputed solely on the ground that the proper standard pole of measurement under s. 11 is not employed, the Collector has power to enquire into and decide the true length of the standard pole, and an appeal lay from his decision. MANMOHINI CHOWDHRAIN v. PREMCHAND ROY

[8 B. L. R., 1; 14 W. R., F. B., 4]

BRJENDRO COOMAR ROY v. KRISHNA COOMAR GHOSH I. L. R., 7 Calc., 684  
[9 C. L. R., 444]

[24 W. R., 171]

See ABDUL BAKK v. NITTAYANUND KOONDOD

[21 W. R., 103]

where an appeal was heard, though the question was not raised.

## APPEAL—continued.

## 17. N.-W. P. ACTS.

410. — N.-W. P. Rent Act (XVIII of 1873), s. 148.—Landholder and tenant.—Suit in which right to receive rent is disputed.—Determination of such right.—Determination of proprietary right.—C sued J for the rent for certain land, alleging that he was the tenant of such land and

District Judge. CHOTU v. JITAN

[I. L. R., 3 All., 63]

411. — Suit for rent where the right to receive it is disputed.—Question of title.—Jurisdiction of Civil and Revenue Courts.—District Judge, Jurisdiction of.—M sued I and another for rent in the Court of the Collector. The defendants pleaded payment to F, who was accordingly brought on to the record as a co-defendant under s. 148 of the North-Western Provinces Rent Act (XII of 1881). The Collector decided in favour of F. The plaintiff appealed to the District Judge,

and, that being so, had no power to award costs against him. ANAND RAM v. MAUSUMA BEGAM

[I. L. R., 13 All., 364]

412. — ss. 148, 183, 189.—Landholder and tenant.—Suit for arrears of rent.—Right to rent disputed by third person.—Appeal by interfeitor.—K sued B for arrears of rent, such arrears not exceeding Rs. 100. His right to receive rent was disputed by H, a third person, who was made a defendant under the provisions of s. 148 of Act XVIII of 1873. The suit was tried by an Assistant Collector of the second class, who decided that K was entitled to the rent. H and B appealed to the Collector, who decided that H was entitled

District  
Collector.  
that the

not entertainable, the District Judge not having decided any question of proprietary right that would justify such an appeal. KRISHNA RAM v. HIRGO LAL I. L. R., 4 All., 237

## APPEAL—continued.

## 17. N.-W. P. ACTS—continued.

**413.** ————— s. 189—*Question of title—Suit for arrears of rent.*—Where the defendant pleaded in answer to plaintiff's suit for arrears of rent that defendant no longer held as tenant, but as sub-proprietor under a settlement made direct with defendant by the settlement officer,—*Held* that under s. 189 of Act XVIII of 1873 the suit involved a question of proprietary title, and that an appeal lay to the Judge of the district, although the amount in suit was less than Rs. 100. *BISHESAR SINGH v. SUGUNDHI* . . . I. L. R., 1 All., 366

**414.** ————— *Appeal to District Judge.*—An appeal lies to the District Judge under s. 189 of the North-Western Provinces Rent Act, as well from appellate as from original decisions of the Collector. *RAJA SINGH v. SULKHA*

[I. L. R., 6 All., 398]

**415.** ————— N.-W. P. Rent Act Amendment Act (XIV of 1886), s. 5—*"Rent payable by the tenant"*—Rate of rent.—The words "rent payable by the tenant" in s. 189 of the North-Western Provinces Rent Act (XII of 1881, as amended by Act XIV of 1886) mean the rate of rent payable by the tenant, and not merely the actual amount of money which is due at any given time by the tenant to his landlord as rent. The appeal therefore given by that section is limited to cases in which the Court of first instance has determined the rate of rent. *RADHA PRASAD SINGH v. PERGASH RAI*

[I. L. R., 13 All., 193]

**416.** ————— N.-W. P. Rent Act Amendment Act (XIV of 1886), s. 5—*Rent, Rate of.*—Where a zamindar sued a tenant for rent of certain alluvial land, the amount claimed not being above Rs. 100, and the tenant objected that there was a custom in the village by which rent was paid in case of alluvial land only on the culturable portion, and that during some of the years in suit a less portion of the land than that for which rent was claimed had been culturable:—*Held* that in such a suit the rate of rent was in dispute, and an appeal would therefore lie. *Radha Prasad Singh v. Pergash Rai*, I. L. R., 13 All., 193, followed. *Payag Sahu v. Matadin*, *Weekly Notes*, 1890, p. 229, overruled. *RADHA PRASAD SINGH v. MATHURA CHAUBE*

[I. L. R., 14 All., 50]

**417.** ————— *Landholder and tenant—Rent payable by tenant—Rate of rent.*—The criterion to be used in deciding whether an appeal lies under s. 189 of Act XII of 1881 is whether the decision would merely affect a particular year, or whether it would supply a plea of *res judicata*, if not appealed against, for all succeeding years in which the landlord and tenant stood in the same relation as when the suit was brought. *Radha Prasad Singh v. Mathura Chaube*, I. L. R., 14 All., 50, referred to. *MOHIB ALI KHAN v. MARTIN*

[I. L. R., 16 All., 51]

**418.** ————— *Suit to recover arrears of revenue—"Rent"—"Revenue."*—The term "rent," as used in s. 189 of Act XII of 1881, cannot be extended so as to include revenue. Hence

## APPEAL—continued.

## 17. N.-W. P. ACTS—continued.

where a plaintiff sued to recover arrears of revenue alleged to be payable to the plaintiff by the defendants under an agreement, the defendants being admitted to be inferior proprietors of the land in respect of which the revenue claimed was payable, it was *held* that no appeal lay to the District Judge under s. 189 of Act XII of 1881. *TILAKDHARI RAI v. SOGHRA BIBI* . . . I. L. R., 18 All., 302

**419.** ————— *"Rent payable by the tenant" not in issue—Landholder and tenant.*—Certain defendants, being sued by the zamindars for the rent of land held by them, pleaded in effect that, whatever the rent of the land in suit might be, they were entitled to retain it under an agreement between them and the predecessor in title of the plaintiffs in lieu of interest payable to them on account of a mortgage given by the said predecessor in title. *Held* that the case was not one in which an appeal would lie to the District Judge under s. 189 of the N.-W. P. Rent Act, inasmuch as the rent payable by the tenant was not in issue in the suit. *DEOCHARAN SINGH v. BENI PATHAK*

[I. L. R., 21 All., 247]

**420.** ————— and s. 93—*Question as to rate of rent payable by the tenant not in issue in the appeal.*—Under s. 189 of Act XII of 1881, an appeal lies in a suit under s. 93 of the Act, where the rent payable by the tenant has been a matter in issue and has been determined. It is not necessary that the rent payable by the tenant should be a matter in issue in the appeal. *SARJU PRASAD v. HADAR KHAN* . . . I. L. R., 18 All., 463

**421.** ————— s. 191—*Appeal to High Court from appellate decree of District Judge passed in appeal from appellate decree of Collector.*—An appeal lies to the High Court from a decree of a District Judge passed in appeal from an appellate decree of a Collector. *JAI RAM v. DULARI CHAND* . . . I. L. R., 5 All., 309

**422.** ————— N.-W. P. Land Revenue Act (XIX of 1873), ss. 113 and 114—*Partition.*—Where in the course of carrying out an order for a partition and of assigning the lands to each co-sharer, certain co-sharers claimed certain plots of land as belonging to them in severalty and demanded that the same should be assigned to them, and the Collector decided that some of such plots were held in severalty and one was held in common,—*Held* that his decision was not passed under s. 113 of Act XIX of 1873, and was therefore not appealable under s. 114 of that Act. *SHIBBAN LAL v. TILUKE CHAND* . . . I. L. R., 2 All., 619

**423.** ————— *Order for partition by Assistant Collector confirmed by Collector—Objection subsequently made to mode of partition—Question of title.*—Upon an application made under s. 103 of the N.-W. P. Land Revenue Act (XIX of 1873) for partition of a share in a mehal, no question of title or proprietary right of the nature contemplated by s. 113 was raised, nor any serious objection made by any of the co-sharers, and the Assistant Collector recorded a proceeding setting

## APPEAL—continued.

## 17. N.-W. P. ACTS—concluded.

partition, and, in taking steps to do so, stated the principle upon which he proposed to distribute the common land. An objection was then for the first time raised by two of the co-sharers in the Court of the Assistant Collector to the inclusion of a particular piece of land in the partition, on the ground that it appertained exclusively to their share. This objection was disallowed by the Assistant Collector and, on appeal, by the District Judge. *Held* that, at the stage of the proceedings when objections were taken, it was too late to determine questions of title under s. 113 of the Act; that accordingly the Assistant Collector could not be said to have done so; that the objections could, therefore, only be regarded in the light of objections to the mode in which it was proposed to make the partition; and that consequently there was no appeal from the order of the Assistant Collector to the District Judge, or from the District Judge to the High Court. *POTA RAM v. ISHUR DAS* . . . I. L. R., 9 All., 445

424. ———— *Question of title—Appeal from order under first part of s. 113.*—No appeal lies to the High Court from a decision of a Collector or Assistant Collector under the first part of s. 113 of the North-Western Provinces Land Revenue Act (XIX of 1873), declining to grant an application for partition until the question in dispute has been determined by a competent Court. *IMTIAZ BANO v. LATAPAT-UN-NISSA*

[I. L. R., 11 All., 323]

*BEGAM v. ABDUL KARIM KHAN*

[I. L. R., 14 All., 500]

*MATRU MAL*

I. L. R., 18 All., 210

## 18. ORDERS.

## See CASES UNDER APPEAL—DECREES.

## APPEAL—continued.

## 18. ORDERS—continued.

ISSUE. IN THE MATTER OF THE PETITION OF THE COURT OF WARDS . . . 7 W. R., 223

428. ———— *Illegal order.*—The plaintiff obtained a decree in the Court of first instance. The defendant appealed. The lower Appellate Court improperly directed the Court of first

the lower Appellate Court was unwarranted by law, and must be taken to be, if anything, an interlocutory order, and, as such, unappealable. *LUXU RAM v. BUNSEE DHUR* . . . 5 N. W., 180

429. ———— *Order dismissing part of claim before final decree—Civil Procedure*

allows an appeal against a portion of the decision when there has been a decision relating to the disposal of the entire suit, or on the part of the defendant, inasmuch as there had been no final order to take an account. *VENCATAGHI RAJA v. MAHOMMED RAHIMULLA SAHIB* . . . I. L. R., 3 Mad., 13

430. ———— *Order rejecting application for refund of stamp duty.*—An appeal does not lie from an order of the lower Court made on an application for refund of sufficient stamp duty and penalty, after a case remanded to it had been compromised. Redress should be sought by way of motion rather than as an appeal. *RAMANOOJ DOSS v. GOVERNMENT* . . . 2 W. R., Mss., 38

431. ———— *Order of Munsif dismiss-*

[7 W. R., 183]

432. ———— *Order disallowing appointment of ministerial officer—Act XVI*

[14 W. R., 338]

433. ———— *Order of Magistrate dismissing ministerial officer—Commissioner of Revenue and Circuit.*—The Commissioner is the proper authority to whom an appeal lies from the order of a Magistrate dismissing a ministerial officer from his post, and the order of the Commissioner

## APPEAL—continued.

## 18. ORDERS—continued.

passed in appeal is final. *IN RE PARBHU NARAYAN SINGH* 3 B. L. R., A. C., 370: 12 W. R., 323

434. ——— Order giving possession to purchaser—*Civil Procedure Code, 1859, s. 264*.—No appeal lay from an order of a Court giving possession under s. 264, Act VIII of 1859, to a purchaser at a sale in execution of a decree. *OMRITO MOYEE DOSSEE v. GOOROO DOSS ROY* [17 W. R., 395

435. ——— Order refusing to grant possession—*Civil Procedure Code, 1859, ss. 259, 263*.—No appeal lay from an order refusing to grant possession, under ss. 259 and 263, Act VIII of 1859. *GOPAL CHUNDER GHOSE v. RAJ CHUNDER DUTT* [2 W. R., Mis., 9

436. ——— Order admitting claim of dar-patnidar—*Civil Procedure Code, 1859, s. 269*.—No appeal lay from an order admitting the claim of a dar-patnidar who has intervened under s. 269, Act VIII of 1859. *JADUB CHURN THAKOOR v. BHOJANATH SINGH ROY* 5 W. R., Mis., 51

437. ——— Order on application to review—*Civil Procedure Code, 1882, s. 629—Appeal from decree as amended*.—A second appeal lies against an order of a lower Appellate Court passed under s. 629 of the Civil Procedure Code (Act XIV of 1882) where the appeal to the lower Appellate Court has been, not from the order allowing a review, but from the original decretal order itself as amended by the original Court on the application for review. *Than Singh v. Chundun Singh, I. L. R., 11 Calc., 296*, distinguished. *Semble*—The words of s. 629, "an order of the Court for rejecting the application shall be final," *prima facie* apply to the Court which has passed the original decree, but in spirit they would seem properly to apply also to an order of an Appellate Court. *BALA NATHA v. BHIVA NATHA* . . . I. L. R., 13 Bom., 496

438. ——— Order rejecting review—*Civil Procedure Code, 1859, s. 378*.—No appeal lies from the order of a Judge rejecting an application for a review of his order dismissing an appeal for default of prosecution. *CHOWDHRY RPTTUN PERSAD v. HUNOOMAN JAH W. R., 1864, Mis., 20*

439. ——— Under s. 378, Act VIII of 1859, an order rejecting an application for review of judgment is final. *CALLY DASS SIRCAR v. JANOKENATH ROY* 1 W. R., Mis., 7

440. ——— Order rejecting application for review of order dismissing execution proceedings for default in payment of process-fees—*Civil Procedure Code (Act XIV of 1882), ss. 2, 244 (c), 540, 623, and 629*.—That an application for review of an order dismissing an execution case for nonpayment of process-fees is not an application under s. 244, cl. (c), of the Code of Civil Procedure, but one for review, and no appeal lies therefrom. *PUDMANUND SINGH v. DOORGA PERSHAD DOBBEY* . . . 4 C. W. N., 39

## APPEAL—continued.

## 18. ORDERS—continued.

441. ——— Order disposing of application for review on the merits.—Where an application for review is disposed of as upon a rehearing on the merits, an appeal lies from the order so passed. *AMANUT ALI v. BINDHOO* [13 W. R., 138

442. ——— Order granting review—*Civil Procedure Code (Act XIV of 1882), s. 629*.—No appeal lies from an order granting a review of judgment, except in the cases set forth in s. 629 of the Civil Procedure Code (Act XIV of 1882). *BOMBAY AND PERSIA STEAM NAVIGATION COMPANY v. S. S. "ZUARI"* . . . I. L. R., 12 Bom., 171

443. ——— *Letters Patent, High Court, cl. 15—"Judgment"*—Order granting review of judgment—*Civil Procedure Code, 1882, s. 629*.—A second appeal was decided on the 1st June 1888 in favour of the respondents by two Judges of the High Court. On the 24th July 1888, an application for review was filed with the Registrar. Various reasons prevented the two Judges from sitting together until the month of March 1889. On the 6th March the matter came up before them when a rule was issued, calling upon the respondents to show cause why a review should not be granted, and made returnable on the 28th March 1889. On that day one of the Judges had left India on furlough, and the rule was taken up, heard, and made absolute by the other of the two Judges sitting alone. *Held* that the order was not a judgment within the meaning of cl. 15 of the Letters Patent; and that no appeal would lie therefrom, the order being final under s. 629 of the Code of Civil Procedure. *Bombay and Persia Steam Navigation Company v. The "Zuari," I. L. R., 12 Bom., 171, and Achaya v. Ratnavelu, I. L. R., 9 Mad., 253, approved.* *AUBHOY CHURN MOHUNT v. SHAMANT LOCHUN MOHUNT* . . . I. L. R., 16 Calc., 788

444. ——— Order granting review of judgment—*Civil Procedure Code (1882), s. 629*.—No appeal lies from an order granting a review of judgment except as provided by s. 629 of the Civil Procedure Code. *Bombay and Persia Steam Navigation Co. v. S.S. "Zuari," I. L. R., 12 Bom., 171, followed.* *HAR NANDAN SAHAI v. BEHARI SINGH* [I. L. R., 22 Calc., 3

*MAHABIR PRASAD v. NATHNI THAKUR* [1 C. W. N., 338

445. ——— In general final appeal an order for review can only be challenged upon the grounds stated in s. 629 of the Civil Procedure Code. *Har Nandan Sahai v. Behari Singh, I. L. R., 22 Calc., 3, followed.* *BARODA CHURN GHOSE v. GOBIND PROSHAD TEWARY* [I. L. R., 22 Calc., 984

446. ——— *Civil Procedure Code (1882), ss. 626 and 629*.—No appeal will lie from an order granting a review of judgment except under the conditions specified in s. 629 of the Code of Civil

## APPEAL—continued.

## 18. ORDERS—continued.

Procedure. *Bombay and Persia Steam Navigation Co. v. S.S. "Zuori"* 1. L. R., 12 Bom., 171, followed. *DARYAL BIBI v. BADRI PRASAD*

[1. L. R., 13 All., 44]

See *CHUNILAL HAJARIMAL v. SONIBAI*

[1. L. R., 21 Bom., 328]

447. ——— Grounds of ap-

valid ground of appeal under s. 624. *MUNSI RAM CHOWDHRY v. BISHEN PERKASH NARAIN SINGH*

[1. L. R., 24 Cal., 878]

448. ——— Civil Procedure Code (1882), ss. 626, 629, 586, and 591—Order granting a review in a suit of Small Cause Court nature

raised in the suit; a review can only be granted on special grounds, and it may well be that, although an appeal is not allowed from the final decree in the suit, an appeal is allowable from an order granting a review, which could re-open the case after it had been disposed of. *GTANUND ASWANI v. BEPIN MOHUN SEN*

[1. L. R., 22 Cal., 734]

See *MANICKA MUDALIAR v. GURUSAMI MUDALIAR*

[1. L. R., 23 Mad., 493]

449. ——— Order amending decree—Correction of clerical mistake in original order.—Where the Court, on the application for a review of judgment, amends a clerical mistake in its original order, the decree drawn up in conformity to this order becomes the final decree, and an appeal will lie against it if brought within the time prescribed for bringing an appeal against any other similar decree. *JOYKISHEN MOOKERJEE v. ATACOR ROHMAN* 1. L. R., 8 Cal., 22; 6 C. L. R., 575

450. ——— Order rejecting insufficiently-stamped document.—The question of the admissibility of an insufficiently-stamped document once admitted as evidence by a Court can form

## APPEAL—continued.

## 18. ORDERS—continued.

no valid ground of appeal. *KHOON LALL v. JUNGLE SINGH* . . . 1. L. R., 3 Cal., 787  
[2 C. L. R., 439]

452. ——— Order compensating defendant for loss of property attached.—Held that no appeal lies to the District Court from an order made by a Munsif compensating a defendant for loss of property attached before judgment under s. 84 of Act VIII of 1859. *TRIKAM GOVARDHAN v. DULLABH KUBER* . . . 2 Bom., 389, 2nd Ed., 367

453. ——— Order for compensation on release of attached property.—No appeal lies from an award of compensation on release of attached property. *HURO SOONDREE DOSSEE v. BUNGSE-MOHUN DASS* . . . 3 W. R., Mis., 23

*HURO SOONDREE CHOWDHRAIN v. BUNGSE-MOHUN DASS* . . . 8 W. R., 332

property from attachment, and no appeal therefrom lay to the Judge. *GEORGE v. RAM BUTTUN*  
[3 Agra, 272]

455. ——— Certain property having been attached in execution as belonging to the judgment-debtor, a portion was claimed by a third party and released from attachment. Held that no appeal by the judgment-debtor lay from the order of release. *SHAM SOONDER KOONWAR v. RUGHONATH SHARMA* . . . 11 W. R., 264

456. ——— No appeal lies from the order of a Court releasing a property from attachment, on the ground that it is in the possession of the judgment-debtor, not on his own account, but on account of, or in trust for, some other person. *RADHA KISHEN v. AMBERUDEEN* . . . 11 W. R., 204

457. ——— Where property attached in execution is released at the instance of an intervenor, under s. 246, Civil Procedure Code, and retained in his possession, the decree-holder has no right of appeal. *IN THE MATTER OF MOODHTA DASS* . . . 12 W. R., 354

## APPEAL—continued.

## 18. ORDERS—continued.

158. ———— *Suit to establish right—Civil Procedure Code, 1877, ss. 278, 283.*—An objection was made to the attachment of certain property in the execution of a decree by the judgment-debtor on the ground that such property was in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under s. 278 and following sections of Act X of 1877. The Court executing the decree made an order against the decree-holder releasing the property from attachment. *Held* that such order was not appealable, the fact that the objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit under the provisions of s. 283 of Act X of 1877. *SHANKAR DIAL v. AMIR HAIDER* [I. L. R., 2 All., 753]

159. ———— *Appeal by decree-holder.*—Where parties holding a decree which declares that they have a lien to be satisfied by the sale of certain property proceed to attach and sell the property, and in pursuing this course are met by an objection under Act VIII of 1859, s. 246, and that objection is adjudicated unfavourably to them, no appeal lies from such adjudication, though the parties are at liberty to bring a suit to establish their rights. *MITTOO LALL v. MAHTAB KOERER* [19 W. R., 98]

160. ———— *Civil Procedure Code, 1859, s. 246—Act X of 1859, s. 106.*—Where land is attached in execution of a rent-decree, and on an application either under Act VIII of 1859, s. 246, or under Act X of 1859, s. 106, it is released from attachment by order of a Court of competent jurisdiction, such order is not subject to appeal, and can only be impugned by a regular suit. *IN THE MATTER OF THE PETITION OF UNJOON SAHOY. UNJOON SAHOY v. NILMONEE SINGH DIO* [20 W. R., 90]

161. ———— *Order dismissing claim to attached property—Civil Procedure Code, 1877, ss. 281, 283—Execution of decree—Objection to attachment.*—The heirs of the deceased obligor of a bond were sued thereon on the ground that they were in possession of the property of the deceased, and a decree was made in this suit for the recovery of the amount claimed "from the property of the deceased." In execution of this decree, the plaintiff caused certain property to be attached as belonging to the deceased. The defendants objected to the attachment on the ground that the property belonged to them. The Court executing the decree proceeded to investigate this objection, and finding that the property did not belong to the defendants, but to the deceased, disallowed it. *Held* that the proceedings upon such objection were taken under s. 281 of the Civil Procedure Code, and the order disallowing it was therefore not appealable. *AWADH KUARI v. RAKTU TIWARI* . . . I. L. R., 6 All., 109

162. ———— *Civil Procedure Code, 1859, s. 240.*—Where a claim under s. 246

## APPEAL—continued.

## 18. ORDERS—continued.

of Act VIII of 1859 is dismissed, there is no appeal from the order of dismissal. *BUKSHER v. BUNGSHER-MUN* . . . 6 W. R., Mis., 46

163. ———— *Order on application to add party—Civil Procedure Code, 1859, s. 73.*—No appeal lies against an order passed on an application made before decree under s. 73 of the Civil Procedure Code, except in case of an appeal from the decree itself as provided for in s. 363. *Pararattani v. Ambalavama Pillai, 1 Mad., 197*, does not conflict with this ruling, as the petition there was presented in the course of a regular appeal then pending in the High Court. *MUTHAYAMMAL v. TIRUMALA GAUNDAN* . . . 4 Mad., 22

164. ———— *Civil Procedure Code, 1859.*—The action of the Court under s. 73, Act VIII of 1859, is a matter of discretion, and, upon a true construction of ss. 363 and 350, not a matter of appeal; but an appeal will lie after decree against interlocutory orders, if they affect the decision on the merits or the jurisdiction of the Court. *RIDHNATH SAHOY v. GOPER SAHOY* . . . 14 W. R., 90  
See *UPENDRA KRISHNA DEB v. NOMIN KRISHNA BOSE* . . . 17 W. R., 370 note  
[3 B. L. R., O. C., 113]

165. ———— *Order refusing application to add party—Civil Procedure Code, 1877, s. 32.*—An order refusing an application under s. 32 of Act X of 1877 by a person to be added as a defendant in a suit is not appealable. *KARMAN BINI v. MISRI LAL* . . . I. L. R., 2 All., 804

166. ———— *Order rejecting application to add party—Civil Procedure Code, ss. 32 and 588, cl. 2.*—An order rejecting an application under s. 32 of the Civil Procedure Code to be made a party to a suit is not appealable under cl. 2, s. 588. *ABIRUNNISA KHATOON v. KOMERUNNISA KHATOON* . . . I. L. R., 13 Calc., 100

167. ———— *Civil Procedure Code, ss. 32, 588 (2)—Appeal against order that a plaintiff be made defendant.*—An appeal lies under Civil Procedure Code, s. 588 (2), against an order under s. 32 that a plaintiff be made defendant. *LAKSHMANA v. PARAMASIVA* [I. L. R., 12 Mad., 489]

168. ———— *Order dismissing petition for examination of witness—Civil Procedure Code, 1859, ss. 162, 163.*—The order of a Court dismissing a petition under ss. 162 and 163, Act VIII of 1859, is final. But the Court is bound to show, on the face of its judgment, that judicial discretion has been used, and the limit of its powers not exceeded. *RAM SURUN SINGH v. GOOROO DYAL SINGH* [I. W. R., 83]

*HARO CHAND PORAMANICK v. KRISHTO MOHUN GIREE* . . . 1 W. R., 297

*NEEM CHAND DEY v. ANUND COOMAR ROY CHOWDHURY* . . . 7 W. R., 147

## APPEAL—continued.

## 18. ORDERS—continued.

469. ——— Order as to expenses of witness—*Civil Procedure Code, 1859, s. 151.*—An order was made directing the realisation (under s. 151, Civil Procedure Code, 1859) by attachment

[12 W. R., 430]

decree held by the judgment-debtor. SMITH v. BULWANT SINGH. 2 W. R., Mis., 24

[11 Bom., 151]

DASSEE I. L. R., 9 Calc., 314; 12 C. L. R., 53

473. ——— Stay of execution pending suit between decree-holder and judgment-debtor—Appeal from order staying execution—*Civil Procedure Code, s. 243.*—An appeal lies from an order passed under s. 243 of the Civil Pro-

cedure Code, 1859, which was made by the High Court, and he was ordered to pay defendant Rs. 1,000 as costs of the litigation. Plaintiff then brought this suit against defendant in the Court of the Subordinate Judge of Farukhabad, and while it was pending,

Mithun Bibi v. Buzloor Khan, 8 W. R., 392, disapproved. KASSA MAL v. GOFI I. L. R., 10 All., 339

## APPEAL—continued.

## 18. ORDERS—continued.

474. ——— Security bond—*Civil Procedure Code, Act XIV of 1882, ss. 545, 549.*—The Court which passed a certain decree ordered execution thereof to be stayed pending appeal, on the debtor's furnishing security to the amount of Rs. 70,000, under the provisions of s. 545 of the Code of Civil Procedure. The debtor objected to the amount of security required, and appealed to the High Court on that ground. The decree-holder contended that no appeal lay. Held that the order was appealable. Held also, on the facts, that the security required was excessive. UNDEYADETA DEVI v. GREGSON. I. L. R., 12 Calc., 624

475. ——— Order releasing surety for stay of execution.—No appeal will lie from an order by a District Judge, releasing a surety from security taken from him by the High Court, to enable a decree-holder to take out execution of his decree pending an appeal to the Privy Council, although it is an improper one. ABEDOONISSA KHATOON v. AMBEROONISSA KHATOON

[17 W. R., 464]

476. ——— Order rejecting application to stay execution, etc., for want of sanction of Court under s. 462—*Civil Procedure Code, s. 462.*—Decree by consent of guardian of minor defendant.—An application to stay execution of, and to set aside, a decree, passed with the consent of the guardian of a minor defendant, for want of sanction of the Court under s. 462, Civil Procedure Code, was rejected. Held no appeal lay against the order of rejection. ARUNACHALLAM v. MURUGATTA

[I. L. R., 12 Mad., 503]

477. ——— Order rejecting petition for execution by transferee of decree—*Civil Procedure Code, s. 232.*—A petition, by one claiming to be the purchaser at a Court-sale of the interest of a decree-holder under a decree, for execution of the decree was rejected. Held no appeal lay from the order rejecting the petition. SAMBASIVA v. SRINIVASA

I. L. R., 12 Mad., 511

[I. L. R., 20 Mad., 366]

479. ——— Order refusing application to be declared insolvent—*Insolvency—Code of Civil Procedure (Act X of 1877), ss. 351, 358, cl. 17.*—An order refusing to grant an application to be made an insolvent is appealable under cl. 17, s. 358 of the Code of Civil Procedure. Such an order must be considered to be one made under s. 351. Juggutjeebun Gooptoo v. Horroccomar Pal, I. L. R., 5 Calc., 719, dissented from. NUBBI BEKSH v. CHANSI

[I. L. R., 6 Calc., 168; 7 C. L. R., 282]

## APPEAL—continued.

## 18. ORDERS—continued.

480. ————— *Civil Procedure Code (Act X of 1877), ss. 351, 588, cl. 17.*—There is no appeal from an order made under s. 351 of the Code of Civil Procedure refusing to grant an application to be made an insolvent. The appeal allowed under s. 588, cl. 17, so far as an order under s. 351 is concerned, is on behalf of the judgment-creditor only. *JUGGUDEN GOORTA v. HAROCHOMAR PAL*. I. L. R., 5 Cal., 710

*JUGGUDEN GOORTA v. HAROCHOMAR PAL*  
[8 C. L. R., 135]

481. ————— An appeal lies against an order passed under s. 351 of Act X of 1877, although it was an order refusing to declare petitioner an insolvent. *DAYACHI PAKSI v. PIERCE LESLIE & Co.* I. L. R., 2 Mad., 219

482. ————— *Civil Procedure Code, 1877, s. 588 (a).*—An order dismissing an application to be declared an insolvent is appealable under s. 588 (a) of the Code of Civil Procedure, 1877. *MUMTAZ HOSSEIN v. BRIJ MOHUN THAKOOR*  
[I. L. R., 4 Cal., 888]

483. ————— *Civil Procedure Code, 1882, ss. 344, 588—Insolvent judgment-debtor.*—A debtor was arrested on civil process. He presented a petition to the Court from which process issued, alleging that he was unable to pay the debt, and praying to be declared insolvent and to be released. The Court passed an order on the same day, directing that he should be released, and that the creditor should proceed against his property. *Held* that an appeal lay against the order. *KOMARASAMI v. GOVINDU*. I. L. R., 11 Mad., 138

484. ————— Order dismissing petition of insolvent debtor—*Provincial Small Cause Courts Act (IX of 1887), s. 24—Insolvency petition in execution of decree in Small Cause suit—Civil Procedure Code, ss. 314, 588.*—In proceedings in execution of the decree passed in a Small Cause suit by a District Munsif who had been invested with insolvency jurisdiction, the judgment-debtors filed a petition under s. 314 of the Civil Procedure Code praying that they might be declared insolvents. Their petition was dismissed by the District Munsif. *Held* an appeal lay to the District Court against the order dismissing the petition. *VAIKUNTA PRABHU v. MOHIN SAHEB*. I. L. R., 15 Mad., 80

485. ————— Appeal against order of a subordinate Court on a petition of insolvency—*Civil Procedure Code, s. 589—Civil Procedure Code Amendment Acts (VII of 1888, s. 56) (Act X of 1888, s. 3).*—The judgment-debtor, having been arrested in execution of a decree passed by the Small Cause Court at Madras, which was transferred for execution to the subordinate Court of South Malabar, applied to the District Court to be declared an insolvent. The District Court transferred the application for disposal to the subordinate Court, and the application was granted on 25th July 1888. On 5th November 1888 one of the opposing creditors appealed

## APPEAL—continued.

## 18. ORDERS—continued.

to the High Court. *Held* that the appeal did not lie. *SITHARAMA v. VATHILINGA*

[I. L. R., 12 Mad., 472]

486. ————— Order refusing to discharge surety for insolvent—*Civil Procedure Code, ss. 336, 344.*—An order refusing to discharge a surety under s. 336 of the Civil Procedure Code for an insolvent judgment-debtor filing his petition, where the surety was entitled to his discharge, is not an appealable order. *BAIMA MAL v. JAMNA DAS*  
[I. L. R., 15 All., 183]

487. ————— Order releasing from attachment after acquired property of insolvent judgment-debtor—*Civil Procedure Code (1882), s. 357, and s. 588, cl. 17.*—Where some of the scheduled creditors of a judgment-debtor who had been declared an insolvent, and in respect of whose property a receiver had been appointed, but who had not been discharged, presented an application to the Court purporting to be made under s. 357 of the Civil Procedure Code, praying for the sale of certain property which had come by inheritance to the judgment-debtor, and the Court, also purporting to act under s. 357 of the Code, made an order on such application allowing the property in question to be released from attachment on deposit by the insolvent of one-third of the scheduled debts:—*Held* that the order was appealable as an order under s. 357 by virtue of s. 588, cl. 17, of the Code of Civil Procedure. *GANESHI LAL v. MUSABRAT ALI GIRWAN LAL v. MUSABRAT ALI*  
[I. L. R., 16 All., 234]

488. ————— Order giving possession to mortgagor on payment after expiry of time—*Transfer of Property Act (IV of 1882), s. 57—Decree for foreclosure—Mortgagor's application for extension of time.*—In a suit on a mortgage a decree for foreclosure was passed, a period of three months being fixed for the discharge of the mortgage-debt. The mortgagor having made default, the decree-holder applied for and was placed in possession of the property. The mortgagor, to whom no notice had been given of the decree-holder's application, then applied for and obtained an extension of time for payment, and he made the payment and recovered possession. *Held* that the mortgagee was entitled to appeal against the order. *NARAYANA REDDI v. PARAYYA*. I. L. R., 22 Mad., 133

489. ————— Order on investigation of claim—*Civil Procedure Code, 1859, s. 229—Jurisdiction of District Judge.*—The plaintiff obtained a decree against T, A, and J in a suit, the subject-matter of which exceeded Rs. 5,000, and in part execution thereof attached property worth less than that amount, D having resisted the execution of the decree. The plaintiff's claim was numbered and registered as a suit under s. 229 of Act VIII of 1859. Upon investigation, the First Class Subordinate Judge made an order staying the execution of the decree. The plaintiff appealed to the District Judge, who held that no appeal lay to him, as the subject-matter of the

## APPEAL—continued.

## 18. ORDERS—continued.

original suit out of which the execution suit arose exceeded Rs. 5,000. The plaintiff appealed against this

there was, therefore, no appeal against the order in question to the District Judge. *RAVLOJI TAMAJI v. DHOLAPA RAGHU*. I. L. R., 4 Bom., 123

of 331 sub- do-  
cree for possession of certain land against B and others, under s. 9 of the Specific Relief Act. He was obstructed by the defendant, a third party, when he went to take possession. Thereupon he applied to the Munsif's Court for the removal of the obstruction, and his application was registered as a regular suit under s. 331 of the Code of Civil Procedure. The

Judge. *Ravloji Tamaji v. Dholapa Raghu*, I. L. R., 4 Bom., 123, distinguished. *Muttanmal v. Chinnanna Gounden*, I. L. R., 4 Mad., 220, and *Kalima v. Nainan Kutti*, I. L. R., 13 Mad., 520, referred to. *NASIR ALI FAKIR v. MEHER ALI*  
[I. L. R., 22 Cal., 830

and registered the claim as a suit, as directed by s. 229 of the Code, which, in his opinion, did not apply to the claim of a mortgagee in possession; and the senior Assistant Judge, though of opinion that the Munsif was in error in not proceeding under s. 229, ruled that there was no appeal from his order, as the claim had not been numbered and registered, and

and the case remanded, that the claim might be numbered and registered as a suit, and an order passed thereon after the investigation, as directed by

## APPEAL—continued.

## 18. ORDERS—continued.

s. 229 of the Code. *MUSABBI v. SHAHNUDDIN HISHMUDDIN*. 4 Bom., A. C., 35

492. ———— Civil Procedure Code, ss. 328, 331—Obstruction to execution of decree—Dismissal of decree-holder's petition.—Obstruction was offered to the execution of a decree

this petition was rejected, and the claim was not numbered and registered as a suit. Held that an appeal lay against the order rejecting the petition. *GOPALA v. FERNANDES*. I. L. R., 16 Mad., 127

ing and registering as a suit a complaint made at a time beyond a month from the time of the obstruction in an application under s. 328, such order can be objected to when the final order, which is appealable as having the force of a decree under s. 331, is appealed against. The Judge in appeal is bound to entertain the objection that is then made and to dismiss the application when he finds that it has been wrongly admitted. *LALA v. NARAYAN*  
[I. L. R., 21 Bom., 392

the title of the decree-holder. *RASUL BINI v. MOBARIK ALI*  
[3 B. L. R., A. C., 303 note: 11 W. R., 186

495. ———— Person not party to suit—Civil Procedure Code, 1859, s. 220.

of decree. *KHELUT CHANDER GHOSH v. PROSNOMOY DASS*. W. R., 1864, Mis., 24  
*GOLUCK NARAIN DUTT v. BISTO PRFA DASS*  
[1 W. R., 140

decree-holder to dispossess him of certain immovable property, and the Civil Judge rejected the application. —Held that s. 231 of the Civil Procedure Code did not give the petitioner a right of appeal to the High Court. *STEINARASIMMA CHARIFAR v. NARASIMMA CHARIFAR*. 5 Mad., 183

## APPEAL—continued.

## 15. ORDERS—continued.

497. ———— *Civil Procedure Code, 1877, s. 230.*—Where an application for the remedy provided in Act VIII of 1859, s. 230, is refused by a Munsif in the exercise of his discretion, no appeal lies against the order of refusal. But where the application is admitted and filed, the opposite side called upon to meet it, and the claim subsequently rejected, the order of rejection is a decision between the parties on the merits of the application within the scope of s. 231 from which an appeal lies to the Judge. *Mohammad Munir v. Suroo Lecturer Patrick*. . . . . 21 W. R. 33

498. ———— Order allowing claim to possession.—*Civil Procedure Code, 1877, s. 230, 231.*—Said under s. 15, Act XIV of 1859, claimed a decree, and took possession. After this *B* applied under s. 230, Act VIII of 1859, alleging that he had been in possession and was dispossessed by *A* in execution of a decree against an third party. The Munsif decreed the case in favour of *B*. Held that the latter was not a proceeding under the former suit, and the decision upon it was appealable under s. 231, Act VIII of 1859. *Ramdeo Mohan Datta v. Bhester Sindhu*. . . . . 13 W. R. 284

499. ———— Order refusing to set aside an injunction.—*Civil Procedure Code, s. 495, 588, cl. 21.*—An appeal will lie under s. 588, cl. 21, of the Code of Civil Procedure, from an order under s. 496 of the Code refusing to set aside an injunction. *Nabbi Dutt v. Chinnai*. I. L. R. 6 Cal. 198, referred to. *Zabara Jan v. Muhammad Tahir* (I. L. R., 15 All. 8

500. ———— Order for issue of notice made under s. 494.—*Civil Procedure Code, s. 491, 588.*—A petition praying for a temporary injunction in a suit was presented by the plaintiff in a subordinate Court. The Judge refused to pass orders on it without hearing the defendants, and ordered notice to issue to them. The plaintiff appealed to the District Judge, who granted the injunction prayed for.—Held that no appeal lay from the subordinate Court, and that the District Judge had pur ported to exercise a jurisdiction not vested in him by law. *Luis v. Luis* (I. L. R., 13 Mad. 186

501. ———— Order rejecting plaint as insufficiently stamped.—*Said B and C* (i) for a declaration of his title to certain property, and (ii) for an injunction restraining *C* from paying, and *B* from receiving, an allowance of Rs. 200 a year out of the income of the property in dispute. *A* valued each of the reliefs sought at Rs. 100, and affixed a Court-fee stamp of Rs. 20 to the plaint. The Court of first instance rejected the plaint as insufficiently stamped, holding that the claim for the injunction sought should be valued at ten times the annual allowance paid by *C* to *B* as provided by s. 7, cl. 2, of Act VII of 1870. On appeal to the High Court,

## APPEAL—continued.

## 18. ORDERS—continued.

Held that the order rejecting the plaint as insufficiently stamped was appealable. *SANDANARAJU v. GURRAMUDDI*. . . . . I. L. R., 17 Bom., 50

502. ———— Order rejecting plaint for want of jurisdiction.—*Civil Procedure Code, 1877, s. 11.*—Whether the Court acting under s. 14, Act VIII of 1859, enquires into and determines the preliminary question of jurisdiction or rejects the plaint, the proceeding is open to appeal; and if it appears that jurisdiction has been unduly assumed, the subsequent enquiry of right must be set aside as carried on without jurisdiction. *Mohammad Bhekar Shaitan v. Collector of Ghazipur*. . . . . [2 Agra, 214

503. ———— Order returning plaint for presentation in proper Court.—*Civil Procedure Code, 1877, s. 584.*—A suit to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted and the parties called on to produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Munsif. Held that, under Act VIII of 1859, the Munsif's order was appealable to the lower Appellate Court, and, under Act X of 1877, the Lower Appellate Court's order to the High Court. *KALIAN DASS v. NAWAL SINGH*. . . . . I. L. R., 1 All., 620

504. ———— *Civil Procedure Code, 1877, s. 588 and s. 57—Act XII of 1879, s. 2.*—Where, after the issues in a suit were framed, the Court decided that it had no jurisdiction, and returned the plaint to be presented in the proper Court.—Held that in so doing the Court acted under s. 57 of Act X of 1877, and its decision, not coming within the definition of a "decree" in s. 2 of Act XII of 1879, was not appealable as such, but was appealable under s. 588 of Act X of 1877 as an order. *ABDUL SAMAD v. RAJENDRO KISHOR SINGH* (I. L. R., 2 All., 357

505. ———— *Civil Procedure Code, 1877, s. 510, 588 (6)—Second appeal.*—The Lower Appellate Court (Subordinate Judge) decided on appeal by the defendant from the decree of the Court of first instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit, as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction, and ordered that the "appellant's appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court." The plaintiff appealed to the High Court from such order as an order returning a plaint to be presented to the proper Court. Held that such order could not be regarded as one to which art. 6 of s. 588 of Act X of 1877 was applicable. That relates to orders returning plaints for amendment or to be presented

## APPEAL—continued.

## 18. ORDERS—continued.

to the proper Court passed by a Court of first instance, and not to an order by an Appellate Court upon an appeal to it from the decree of a Court of first instance on general grounds. The plaintiff's proper course was to have preferred a second appeal.

BINDESHRI CHAUDHRY v. NANDU

[I. L. R., 3 All., 456]

Contra, CHINNASAMI PILLAI v. KARUPPA UDAYAN

[I. L. R., 21 Mad., 234]

508. ————— Civil Procedure Code (Act XIV of 1882), ss 57, 582, 588, 589—Returning plaint to be presented to the proper Court—Order under Civil Procedure Code, s. 528—Where an order is made by the lower Court of Appeal, returning a plaint under s. 57 of the Civil Procedure Code, by virtue of the powers conferred on it by s. 582, an appeal lies to the High Court under s. 589. S. 588 does not prohibit such appeal. *Bindeshri Chaudhry v. Nandu*, I. L. R., 3 All., 456, distinguished. *GOON BUX SAHOO v. BIRJI LAL BENKA* . . . I. L. R., 28 Cal., 275 [3 C. W. N., 243]

507. ————— Civil Procedure

[I. L. R., 3 All., 556]

508. ————— Civil Procedure Code, 1877, ss. 57, 588 (6)—Institution of suit in wrong Court—Transfer of suit—Power of the Court to which suit is transferred to return plaint to be presented to the proper Court—Jurisdiction.—A District Court transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it. The Court in which the suit was instituted was not the one in which the suit should have been instituted, and consequently the Court to which it was transferred made an order dismissing it, and directing the return of the plaint for presentation to the proper Court. Held that such order must be taken to have been passed under s. 57 of the Civil Procedure Code, and was therefore appealable under s. 588 (6). *PACHAONT AWASTHI v. ILAHI BAKSHI* [I. L. R., 4 All., 478]

## APPEAL—continued.

## 18. ORDERS—continued.

509. ————— Order allowing amendment of plaint—Civil Procedure Code, 1877, ss. 53, 539 (6).—The plaintiff in a suit applied for the amendment of the plaint. The defendant objected to the amendment, and a day was fixed by the Court for the "admission or rejection of the petition of amendment and the determination of the defendant's objections thereto." The Court, after hearing the parties, made an order allowing the "petition of amendment," and rejecting the defendant's objections. The defendant appealed from

[I. L. R., 3 All., 854]

510. ————— Order amending decree—Civil Procedure Code, 1882, s. 206.—Per *OLDFIELD, J.*—When an original decree is amended under s. 206 of the Civil Procedure Code, it, as amended, is the decree in the suit; and an appeal therefore lies from it under the provisions of s. 510, when the validity of the amendment can be questioned. Per *MAHMOOD, J.*—An order passed under s. 206 amending a decree is a separate adjudication, and is not merely a part of the original decree, and cannot alter its date, and such an order is not appealable under s. 588 of the Code. *RAGHUNATH DAS v. ILAJ KUMAR*

[I. L. R., 7 All., 276]

SURTA v. GANGA . . . I. L. R., 7 All., 411

511. ————— Decree—Judgment—Objections by respondent to decree—Res judicata—Civil Procedure Code, ss 13, 540, 561, 564.—In a suit to obtain possession of certain property, and to set aside a deed called a deed of endowment (*wakfnama*) on the ground that the defendant had fraudulently obtained its execution, the defendant pleaded (i) that the deed was a valid one, and (ii) that she was in possession of the property in satisfaction of a dower-debt, and her possession could not be disturbed so long as the debt remained unsatisfied. The Court of first instance held that the deed was invalid, but that the defen-

defendant filed objections under s. 561 of the Civil Procedure Code in regard to the first Court's decision

*MAHMOOD, J.J.*, dissenting; that if a decree is, upon the face of it, entirely in favour of a party to a suit,

## APPEAL—continued.

## 19. ORDERS—continued.

such decree being the thing which by law is made appealable, and nothing else, that party has no right of appeal therefrom. If, in the judgment of which such decree is the formal expression, findings have been recorded upon some issues against that party, and he desires to have formal effect given to them by the decree, so as to allow of his filing objections thereto under s. 561 of the Civil Procedure Code or of appealing therefrom under s. 540, he must take steps under s. 206 to have the decree properly brought into conformity with the judgment, so that there may be matter on the face of it to show that something has been decided against him; but if he fails to take this course, the decree, though in general terms, will stand good as finally deciding the issues raised by the pleadings upon which the ultimate determination of the cause and the decree itself rested. The findings in a judgment upon matters which subsequently turn out to be immaterial to the grounds upon which a suit is finally disposed of, as to the plaintiff's right to any portion of the relief sought by him as declared by the decree, amount to no more than *obiter dicta*, and do not constitute a final decision of the kind contemplated by s. 13 of the Civil Procedure Code. *Held*, also, that in the present case the Judge was right in holding that the question as to the validity or otherwise of the deed of endowment was wholly immaterial. The judgment of STRAIGHT, J., in *Lachman Singh v. Mohan, I. L. R., 4 All., 497*, approved and followed. *Per* OLFIELD, J., *contra*, that the decree, to agree with the judgment and fulfil the requirements of s. 206 of the Civil Procedure Code, should contain the material points for determination arising out of the claim and material for the decision thereon; that if this has not been done, the defect is a good ground of appeal, notwithstanding that the decree, on its face, may be altogether in favour of the appellant, and notwithstanding that he may not have applied for amendment of the decree under s. 206 or for review of judgment; and that, in the present case, the defect in the decree would afford a good ground of appeal. *Per* MAHMOOD, J., that, inasmuch as the provisions of s. 13 of the Civil Procedure Code relate as well to the trial of issues as to the trial of suits, and in the present case the validity or otherwise of the deed was a matter directly and substantially in issue between the parties, and was adjudicated upon, the finding of the first Court upon that issue was not a mere *obiter dictum*, but would be binding upon the defendant as *res judicata* notwithstanding the fact that the suit against her was dismissed on the ground that she held possession of the property in lieu of dower; that whatever has the force of *res judicata* is necessarily appealable; that the word "from" as used in s. 540 or s. 584, and the expression "objection to the decree" in s. 561, refer not only to matters existing upon the face of the decree, but also to those which should have existed, but do not exist there; and that the defendant in the present case was aggrieved or injured by the omission in the decree of the first Court, and was therefore entitled to file objections to it, and, for the same reason, to appeal to the High Court from the decree of the lower

## APPEAL—continued.

## 18. ORDERS—continued.

Appellate Court. Also *per* MAHMOOD, J., that, if it was doubtful whether the reliefs contemplated by ss. 206 and 623 were open to the defendant; but that, even conceding that she ought to have sought her remedy under either of those sections, her neglect to do so did not make her incapable of obtaining the same result by the exercise of her right of appeal. *Anusuyabai v. Sakaram Pandurang, I. L. R., 7 Bom., 484, Man Singh v. Narayan Das, I. L. R., 1 All., 480, Mohan Lal v. Ram Dayal, I. L. R., 2 All., 843, Niamat Khan v. Phadu Buldia, I. L. R., 6 Calc., 319, and Pan Kooer v. Bhagwant Kooer, 6 N. W., 19*, referred to. JAMAITUNISSA v. LUTFUNNISSA . . . I. L. R., 7 All., 606

512. ———— Decree affirmed on appeal—Amendment of decree by first Court after affirmance—Objection by judgment-debtor to execution of amended decree—Appeal from order disallowing objection—Objection allowed on appeal. —The decree of a Court of first instance having on appeal been affirmed by the High Court, the first Court altered the decree which had been affirmed, intending to bring it into accordance with the judgment of the High Court. After the decree had been altered, application was made to execute it as altered, but this was opposed by the judgment-debtor on the ground that that was not the decree which could be executed. *Held* by the Division Bench that the order of the first Court disallowing the objection and directing that execution of the decree as altered should proceed could not be regarded as passed under s. 206 of the Civil Procedure Code, but was an order passed in execution of decree, and as such was appealable. MUHAMMAD SULAIMAN KHAN v. FATIMA [I. L. R., 11 All., 314

513. ———— Order of remand after former remand.—There is no appeal from the order of a lower Appellate Court remanding a case a second time on the ground that the former order of remand had not been carried out. RADHABALLUB SURMA v. ANUNDMOYEE DEBIA [W. R., 1864, Mis., 39

514. ———— Order of remand.—*Quære*—Whether, when a lower Appellate Court reverses a decree of a lower Court on the plea of limitation, and remands the case to be tried upon the merits, such decision is an order prior to decree from which no appeal will lie. MAHOMED ANJOB v. GOUBER PERSHAD SHA . . . 6 W. R., 61

515. ———— Order of remand on special point—Reversal of decree on appeal.—In a suit for the enhancement of rent, the Collector dismissed the suit. On appeal the Judge held that the rent was liable to enhancement, and remanded the case to the Collector to find what rate was equitable. *Held* that an appeal lay from the decision of the Judge, notwithstanding the remand to find the rates. NEELMONEY SINGH DEO v. SHOBHUN BIBE [Marsh., 600

## APPEAL—continued.

## 18. ORDERS—continued.

order of remand. KURUMOONNISA BIBER v. GOO-  
ROO PERSHAD SHAH . . . 7 W. R., 331

on a "preliminary point" under s. 562, and not a  
disposal of the case in accordance with the award.  
KRISHNAN CHETTI v. MUTHU PALANDE VACHA  
MAXALI TEVAR . . . I. L. R., 23 Mad., 172

518. ——— Order of remand made  
without jurisdiction—*Civil Procedure Code*  
(Act XIV of 1882), ss. 562, 583—Proceedings taken  
by first Court pending appeal from order.—In a  
case where neither of the parties desired to have a  
local investigation, though suggested by the Courts,  
the lower Court dealt with the case on the material

costs of the local investigation, and, on default being  
made by the plaintiff, it dismissed the suit. The  
order of remand was found to be invalid as made with-  
out jurisdiction. *Held* that all proceedings taken  
by the Court of first instance after the remand  
and pending the hearing of the appeal against the  
remand order were null and void, inasmuch as the  
jurisdiction of that Court to hear the case upon  
remand depended upon the validity of the remand

v. CHERRA TEA COMPANY . . . I. L. R., 12 Calc., 45

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801

order remanding the case was not appealable, and con-

## APPEAL—continued.

## 19. ORDERS—continued.

sequently that the petition for revision was maintain-  
able. TIMMANNA BANTA v. MAHABALA BHATTA

[I. L. R., 19 Mad., 167

520. ——— N. W. P. Bent

29.—S. 190 of Act XII of 1881 makes a 562 of Act

521. ——— Order of re-  
mand—Rule 17 of the Kumaon Rules, 1894, made  
under Scheduled Districts Act (XIV of 1874), s. 6—  
*Code of Civil Procedure*, ss. 562, 564—Right of  
appeal against order under s. 562.—Where the  
Deputy Commissioner of Naini Tal decided that a suit  
was barred by limitation, but at the same time also  
came to a definite decision on each of the other issues,  
and the Commissioner in appeal, setting aside the find-  
ing as to limitation, remanded the case under s. 562  
of the Code of Civil Procedure.—*Held* that, under  
Government Notification No. VII—5695, dated 27th  
June 1894, rule 17, an appeal lies from such an  
order of remand. *Muzhar Hossein v. Bodha Bibi*,  
I. L. R., 17 All., 112. L. R., 22 I. A., 1, referred to.  
HAZIZ ABDUL RAHIM KHAN v. HARI RAJ SINGH  
[I. L. R., 23 All., 405

523. ——— Order remanding case  
after local investigation—*Civil Procedure*  
*Code*, 1839, s. 363.—An appeal lies from an order  
remanding a case for re-trial after local investigation,  
such order not being one under s. 363. JEEBEN  
KISSEN ROY v. DWARKANATH ROY CHOWDHURY  
[W. R., 1894, 363

524. ——— Order directing a local  
investigation.—No appeal lies from the order of a  
Judge directing a local investigation by an ameer.  
BAHADUR ALI v. BHADO SOONDREER DEBIA  
CHOWDHURAI . . . 7 W. R., 425

525. ——— Order in case on appeal  
after compromise reported—*Civil Procedure*  
*Code*, 1839, s. 363.—An appeal having gone down on  
remand from the High Court, the Zillah Judge con-  
sidered he was bound to proceed with it, notwith-  
standing a representation made to him by petition  
that a compromise had been entered into between  
the parties. *Held* that, by s. 363 of the Civil

**APPEAL—continued.****18. ORDERS—continued.**

Procedure Code, an appeal could not be preferred against this order of the Judge. **SOROOP NABAIN PANDAH v. SOONDUR PORYA** . . . **11 W. R., 505**

**526.** ——— **Order of remand—Civil Procedure Code, 1877, ss. 562, 586—Suit of the nature cognizable in Small Cause Court.**—An order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes under s. 562 of Act X of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders. **THE COLLECTOR OF Bijnor v. JAFAR ALI KHAN** . . . **I. L. R., 3 All., 18**

**527.** ——— **Right of second appeal—Suits cognizable by Courts of Small Causes—Act X of 1877, ss. 562, 586, 588, 589.**—The right of appeal given by ss. 588 and 589 of Act X of 1877 from an order of remand, as contemplated by s. 562, is not taken away by s. 586. **Collector of Bijnor v. Jafar Ali Khan, I. L. R., 3 All., 18**, followed. **MAHADEV NARSINGH v. RAGHO KESHAV** **[I. L. R., 7 Bom., 292]**

**528.** ——— **Order of remand in suit cognizable by Small Cause Court—Civil Procedure Code, ss. 588 (28) and 586.**—In a suit to recover R238 (being the purchase-money for certain land) on failure to perform the contract to sell the plaintiff the land, the Munsif decided the case on the issue of limitation only, and held the suit was barred. The Judge held it was not barred, and made an order remanding the case for trial on the other issues. It was objected that, the suit being for a sum less than R500 and of a nature cognizable by a Small Cause Court, no appeal lay against the order of remand. Held, following **Collector of Bijnor v. Jafar Ali Khan, I. L. R., 3 All., 18**, and **Mahadev Narsingh v. Ragho Keshav, I. L. R., 7 Bom., 292**, that the right of appeal conferred by s. 588, Civil Procedure Code, is not controlled by s. 586, and therefore an appeal lay. **CHINNATAMBI GOUNDEN v. CHINNANA GOUNDEN** . . . **I. L. R., 19 Mad., 391**

**529.** ——— **Order in Small Cause Court suit by Judge without jurisdiction—Institution in Court of Subordinate Judge invested with powers of a Court of Small Causes—Trial by Subordinate Judge—so invested—Transfer of suit—Procedure Code, s. 25.**—A suit of the nature cognizable in a Court of Small Causes was instituted in the Court of a Subordinate Judge, the Judge of which at the time of the institution of the suit was personally invested with Small Cause Court jurisdiction. That Judge retired from office without trying the suit, and the District Judge directed his successor, who was not invested with Small Cause Court jurisdiction, to try it, and he did so. Held that it must be taken that the suit was transferred under s. 25 of the Civil Procedure Code to the Court of the Subordinate Judge; and that therefore, regard being had to the provisions of that section that the Court trying any suit withdrawn

**APPEAL—continued.****18. ORDERS—continued.**

thereunder from a Court of Small Causes shall, for the purposes of such suit, be deemed a Court of Small Causes, no appeal would lie in the case to the District Judge. **KAULESHAR RAI v. DOST MUHAMMAD KHAN** **[I. L. R., 5 All., 274]**

**530.** ——— **Interlocutory order in Small Cause Court suit.**—Although no appeal lies to the High Court from the final decree made in a suit cognizable by a Small Cause Court, an appeal lies from an interlocutory order made in such a suit by a District Court. **GOLAM HUSEN v. MUSA MIYA HAMAD ALI** . . . **I. L. R., 8 Bom., 260**

**531.** ——— **Order of remand in Small Cause Court suit—Civil Procedure Code (Act XIV of 1882), ss. 562, 586, 588 (cl. 28), and 589.**—A Court, in the exercise of appellate jurisdiction, passed an order under s. 562 of the Civil Procedure Code, remanding a case of the Small Cause Court class as described in s. 586. Held that, under the express words of the second portion of s. 589 of the Code, an appeal does lie to the High Court from such an order. **KIRTE MOHALEDAI v. RAMJAN MOHALEDAI** **[I. L. R., 10 Calc., 523]**

**532.** ——— **Order of Small Cause Court in execution.**—No appeal lies to the High Court from the order of a Small Cause Court in execution. **MUTTEE LALL v. RAM DAS** **[W. R., 1864, Mis., 38]**

**533.** ——— **Order of Judge refusing to execute Small Cause Court decree.**—An appeal lies from the order of a Judge refusing to execute a decree of a Small Cause Court. **DELLAWAR ALI v. DABEE PERSHAD** . . . **11 W. R., 203**

**534.** ——— **Order refusing to execute Small Cause Court decree transferred for execution to Munsif—Civil Procedure Code, 1882, ss. 223, 228, 249, 622—Mofussil Small Cause Court Act (XI of 1865), ss. 20, 21—Execution-proceedings.**—The plaintiff obtained a decree in a Small Cause suit in a subordinate Court in the mofussil, and a certificate was granted to him under s. 20 of the Mofussil Small Cause Court Act for the execution of the decree against immoveable property of the judgment-debtor in the jurisdiction of a District Munsif. He accordingly presented a petition to the District Munsif under s. 247 of the Code of Civil Procedure, but his petition was dismissed. Held that an appeal lay to the District Court. **PERUMAL v. VENKATARAMA** **[I. L. R., 11 Mad., 130]**

**535.** ——— **Order of Subordinate Judge in overvalued Small Cause Court suit—Valuation of suit—Act : 21**—**Subordinate Judge invested . . . of a Small Cause Court.**—A suit was filed in the Court of a First Class Subordinate Judge invested with the powers of a Small Cause Court up to R500. The claim was for R530-7-3, as money had and received by the defendant to the plaintiff's use. The Subordinate Judge did not deal with the case under his Small Cause Court jurisdiction, but tried it as an ordinary

## APPEAL—continued.

## 18. ORDERS—continued.

TRIMBAK SAKHARAM . I. L. R., 10 Bom., 370

537. ——— bounds of land lies to th to entertain such an appeal. NARAYAN VAYANKATESH v. DHANDU DAMODHAR . 4 Bom., A. C., 187

538. ——— Order allowing decree-holder to take credit for his decree as pur-

open to appeal under s. 270, Act VIII of 1859. RAJARAM CHOWDHURY v. SENTOLA BUESH MISSEN . 17 W. R., 113

ESHAN CHUNDER DUTT v. PRANNATH CHOWDHURY [Marsh., 270: 3 Hay, 238

540. ——— Order in execution of decree—Power of Senior Assistant Judge.—Held

ASSIGNER . 11 W. R., 100  
NEET LALL v. MILLER . 11 W. R., 420

## APPEAL—continued.

## 18. ORDERS—continued.

542. ——— Order rejecting appeal—Civil Procedure Code, 1859, s. 336.—An appeal is not admissible against an order passed under s. 336, Act VIII of 1859. IN THE MATTER OF GOFFER SUNKUR . 11 W. R., 568

543. ——— Order rejecting application to sue as pauper—Civil Procedure Code, 1877, s. 589.—No appeal lies under Act X of 1877 from an order made under that Act rejecting an application for permission to sue as a pauper. COLLIS v. MANOHAR DAS . I. L. R., 1 All., 745

544. ——— Order allowing withdrawal of suit—Civil Procedure Code, 1852, s. 373

appealable by s. 588, or being a "decree" within the meaning of s. 2, is not appealable. KALIAN SINGH v. LEKHRAJ SINGH . I. L. R., 6 All., 211

HIRDHAMUN JHA v. JINGHOOR JHA [I. L. R., 5 Calc., 711

546. ——— Order of Civil Court on conviction of escape from custody—Civil Procedure Code, 1877, s. 651.—Quære—Whether a person convicted, under s. 651 of the Civil Procedure Code, of escaping from lawful custody, who is sentenced to one month's imprisonment only, can under s. 688 (29) of that Code appeal. ENTRESS v. AMAR NATH . I. L. R., 5 All., 318

MADHO PRASAD v. HANSA KUR. MAN KUR v. RAM KISHORE . I. L. R., 5 All., 314

548. ——— Order disallowing claim—S. 322B of Civil Procedure Code, Act X of 1877—Miscellaneous appeal.—An appeal from the decision by which a disputed claim is settled under s. 322B of the Code of Civil Procedure, Act X of 1877, is cognizable as a miscellaneous appeal, i.e., as

## APPEAL—continued.

## 18. ORDERS—continued.

appeal from a decree not passed in a regular suit.  
SRINIVASA AYYANGAR v. PERIA TAJIBI NAYAKAR

[I. L. R., 4 Mad., 420]

549. ——— Order directing penalty to be enforced under Stamp Act—*Decision as to penalty not appealable as a decree—Civil Procedure Code (Act VIII of 1859), s. 365—Civil Procedure Code, Act X of 1877, s. 588.*—A decision of a Judge directing a penalty to be enforced under the Stamp Act, the case being afterwards proceeded with, is not appealable as a decree, as it cannot be said to be a decree affecting the merits of the case or the jurisdiction of the Court. Nor can such a decision be said to be “an order as to a fine” within the meaning of s. 365 of Act VIII of 1859 (with which s. 588 of Act X of 1877, cl. 29, corresponds).  
SONAKA CHOWDRAIN v. BHOOBUNJOY SHAHA

[I. L. R., 5 Calc., 311]

550. ——— Order dismissing suit on failure to serve summons—*Civil Procedure Code (Act X of 1877), ss. 97, 588.*—An order under s. 97 of the Civil Procedure Code dismissing a suit on it being found that the summons has not been served on the defendant, in consequence of the failure of the plaintiff to pay the Court-fee leviable for such service, is not appealable. LUCKY CHURN CHOWDHRY v. BUDURRUNNISA . I. L. R., 9 Calc., 627  
[12 C. L. R., 484]

551. ——— Order dismissing suit on failure to give security for costs—*Civil Procedure Code, s. 381—Decree.*—Held by the Full Bench that an appeal lies from an order passed under s. 381 of the Civil Procedure Code, dismissing a suit for failure by the plaintiff to furnish security for costs as ordered, such order being the “decree” in the suit. WILLIAMS v. BROWN

[I. L. R., 8 All., 108]

552. ——— Order of single Judge of High Court—*Civil Procedure Code, 1877, s. 589.*—S. 588, Act X of 1877, restricting appeals against orders, does not apply to prevent an appeal to the High Court from the order of a Judge of that Court. HURRISH CHUNDER CHOWDHRY v. KALISUNDARI DEBI

[I. L. R., 9 Calc., 482; 12 C. L. R., 511]

553. ——— Order setting aside sale in execution of decree for rent—*Bengal Tenancy Act (VIII of 1885), s. 173.*—No appeal lies from an order setting aside a sale under s. 173 of the Bengal Tenancy Act. ROGHU SINGH v. MISRI SINGH . I. L. R., 21 Calc., 825

HARABANDHU ADHIKARI v. HARISH CHANDRA DEY PAL . . . . . 3 C. W. N., 184

554. ——— Order on further directions varying report of Commissioners under decree for account in partnership suit—*Time for appeal—Letters Patent, cl. 15—Civil Procedure Code (Act XIV of 1882), ss. 588, 591.*—A decree was passed in a partnership suit directing (*inter alia*) the taking of an account. The

## APPEAL—continued.

## 18. ORDERS—continued.

Commissioner having taken the account and made his report, an order was made, on further directions, varying it in certain respects. Subsequently a final decree was passed, founded in part on the order on further directions. An appeal was filed against the final decree, in which objection was taken to the order on further directions. It was contended that no appeal having been filed against the order on further directions, as might have been done under s. 15 of the Letters Patent, so much of the appeal as arose out of that order had been barred by lapse of time. Held that the order passed on further directions was not appealable under Chapter XLI of the Civil Procedure Code (Act XIV of 1882), and that it fell, therefore, under the concluding portion of s. 591 of the Civil Procedure Code, and any error in it might subsequently be set forth as a ground of appeal against the final decree. *Per JENKINS, C.J.*—Assuming that the order on further directions was a judgment within the meaning of s. 15 of the Letters Patent, and as such appealable, the contention of the respondent cannot prevail, as that would not deprive the appellants of their right to appeal under the Code. JAMSETJI DADABHOY BARIA v. DADABHOY DAJIBHOY BARIA . . . . . I. L. R., 24 Bom., 302

555. ——— Order made in the course of execution proceedings and not appealed against—*Right to raise the question as to its propriety in the appeal against the final order.*—A decree having in 1894 been passed in favour of the plaintiff in a suit against a number of defendants for the recovery of land with mesne profits, the amount of such mesne profits was ordered to be fixed in execution. In 1897, an order was passed declaring that all the defendants were liable jointly and severally for such mesne profits, which order was not appealed against. Later in the same year a Commissioner was appointed to ascertain the amount of the said mesne profits, and in due course a final order in execution was passed by the District Court. At the time when the last-mentioned order was passed, certain of the defendants desired to re-open the question of their joint liability, but were not permitted to do so. Held that, even assuming that the order declaring the defendants to be jointly and severally liable was one from which an appeal could have been preferred, as to which there might be some doubt, it was a determination of one of the questions which had to be determined before the particular application for execution could be finally disposed of; and the question of the propriety of the order was one that need not be at once raised by appeal, but could be raised in the appeal against the final order. CAUSSANET v. SOURES, I. L. R., 23 Mad., 260, referred to. GODAVARI SAMULO v. GAJAPATI NARAYANA DEO

[I. L. R., 23 Mad., 494]

556. ——— Order confirming appointment of head of muths—*Nomination by a pandaram under a decree—Revocation of such nomination by the pandaram's successor.*—The pandaram

**APPEAL—continued.****18. ORDERS—continued.**

of a math, being empowered under a decree to nomi-

nation had been confirmed was a necessary party to the appeal. **GNANASAMBANDA v. VISVALINGA**

[I. L. R., 13 Mad., 339]

**557. ——— Order in execution of decree of Privy Council—Civil Procedure Code, s. 610.**—Land was put up and purchased in execution of a decree, and the sale was confirmed, and the

appeal lay therefrom. **ARUNACHELLAM v. ARUNACHELLAM**

[I. L. R., 15 Mad., 203]

for pre-emption of the share in suit on payment of

paying in the pre-emptive price fixed thereby, both as to the correctness of the pre-emptive price and as to the reasonableness of the time allowed for payment. **KODAI SINGH v. JAISRI SINGH**

[I. L. R., 13 All., 189, 370]

**APPEAL—continued.****18. ORDERS—continued.**

obtained a decree conditioned on payment by them of the pre-emptive price within a certain fixed period, could, after the expiration of such period, appeal against such decree on the ground that a condition of the contract out of which their right to pre-empt arose had not been embodied in the decree. **Kodai Singh v. Jaisri Singh, I. L. R., 13 All., 376**, referred to. **WAZIR KHAN v. KALE KHAN**

[I. L. R., 16 All., 139]

**580. ——— Order of Collector con-**

Recovery Act (Bengal Act VII of 1850). Application was made to the Collector to set aside the sale, but the application was refused. *Held*, following the ruling in **Sadhu Saran Singh v. Panchdeo Lal, I. L. R., 14 Calc., 1**, that an appeal lay to the Revenue Commissioner against the Collector's order affirming the sale. **LALA PRYAG LAL v. JAI NARAYAN SINGH**

[I. L. R., 22 Calc., 419]

**561. ——— Order setting aside ex-**  
**parte decree—Civil Procedure Code (1882).**

Civil Procedure Code, and the suit heard upon the

[I. L. R., 22 Calc., 981]

from such order was superfluous, and must be dismissed. **RATTANJI v. HARI HAR DAR DEB**

[I. L. R., 17 All., 243]

deposit tendered under that section on the ground that it was too late. **BASHIR-UDDIN v. JHORI SINGH**

[I. L. R., 19 All., 140]

## APPEAL—continued.

## 18. ORDERS—concluded.

584. — Order amending sale-certificate—Order granting application for review of order—Civil Procedure Code (Act XIV of 1882), s. 211—Question relating to execution of decree.—No appeal lies from an order granting an application for the amendment of a sale-certificate. *Bhimlal Das v. Ganesh Kuer*, 1 C. W. N., 658, approved. *BEJHA ROY v. RAM KUMAR PERSHAD*. I. L. R., 28 Calc., 520 [3 C. W. N., 374]

585. — Order rejecting claim of alleged representative of deceased plaintiff, and for abatement of suit—Civil Procedure Code (1882), ss. 366 and 367—Dispute as to right to represent a deceased plaintiff—Right of his adopted son to continue the suit.—The plaintiff in a partition suit in which his brother was defendant died, and an application was made on behalf of a boy alleged to have been adopted by the widow of the deceased under his authority that his name be brought on to the record as plaintiff. This application was made within six months of the death of the original plaintiff. The Court of first instance rejected the application, which the defendant opposed on the ground that the boy had not been adopted, and dismissed the suit on the ground that it had abated. Held that appeals lay against the rejection of the above application, and also against the dismissal of the suit. *Per Curiam*.—A dispute within the meaning of Civil Procedure Code, s. 367, need not be between persons claiming to represent the deceased plaintiff. *SUBBAYYA v. SAMINADIVAR* [I. L. R., 18 Mad., 498]

See *HAMIDA BIBI v. ALI HUSEN KHAN*  
[I. L. R., 17 All., 172]

586. — Order rejecting application for suit to abate—Civil Procedure Code (1882), s. 366.—Held that an order rejecting an application that a suit might be declared to have abated by reason of the death of the plaintiff and the invalidity of an application to the Court to bring his legal representative on to the record was not one of the orders contemplated by s. 366 of the Code of Civil Procedure, and that no appeal would lie therefrom. *BHAGWAN DAS v. MAHARAJA OF BHARTPUR* [I. L. R., 17 All., 288]

## 19. PROBATE.

587. — Order to suspend probate—Succession Act, s. 265—Civil Procedure Code, 1882, s. 363.—Where an application for probate has been granted, and an objection being made, a subsequent order is passed directing that the case be re-opened, that probate be suspended for a time certain, and that the executor bring in his evidence to prove his right to obtain probate.—Held that no appeal lies from such an order. Act X of 1865, s. 263, and Act VIII of 1859, s. 363, discussed. *BROJO NATH PAL v. DASMONY DASER* 2 C. L. R., 589

## APPEAL—continued.

## 10. PROBATE—concluded.

588. — Order of District Judge admitting person as caveator—Probate and Administration Act (V of 1881), s. 86—Civil Procedure Code, s. 589, cl. 2.—S. 86 of the Probate and Administration Act (V of 1881) makes the Code of Civil Procedure applicable to orders passed under that Act. An appeal therefore lies to the High Court from the order of a District Judge admitting a person as a caveator under s. 69 of the Act; such an order is appealable under s. 589, cl. 2, of the Code. *ABHIRAM DASS v. GOPAL DASS*

[I. L. R., 17 Calc., 48]

589. — Order refusing to make person party defendant to an application for probate—Probate and Administration Act (V of 1881), ss. 53 and 86.—S. 86, read with s. 53 of the Probate and Administration Act (V of 1881), only allows an appeal to the High Court in cases in which an appeal is allowable under the Code of Civil Procedure. No appeal therefore lies against an order refusing to make a person opposing probate a party defendant to an application for probate. *Abirunnissa Khatoon v. Komurunnissa Khatoon*, I. L. R., 13 Calc., 100, and *Kurman Bibi v. Misri Lal*, I. L. R., 2 All., 904, followed. *KHETRAMANI DASI v. SHYAMA CHURN KUNDU*

[I. L. R., 21 Calc., 539]

570. — Order refusing to amend probate—Probate and Administration Act (V of 1881), s. 86—Succession Act (X of 1865), s. 263.—No appeal lies from an order refusing to amend a clerical error in a grant of probate either under s. 86 of the Probate and Administration Act (V of 1881) or s. 263 of the Succession Act (X of 1865). *Khettraman Dasi v. Shyama Churn Kundu*, I. L. R., 21 Calc., 539, referred to. *GEHINDRA KUMAR DASS GUPTA v. RAJESWARI ROY* I. L. R., 27 Calc., 5

## 20. RECEIVERS.

571. — Order refusing to remove a receiver—Civil Procedure Code (Act X of 1877), ss. 2, 214, 503, 510, 589—Act XXIII of 1861, s. 11.—By a decree in an administration-suit, A was appointed receiver "to manage the estate." A died, and by a subsequent order B was appointed receiver. One of the defendants in the suit applied to have B removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. Held that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree. *MIRHIBAI v. LUNJI NOWROJI BANAJI* I. L. R., 5 Bom., 45

572. — Orders submitting person for and confirming nomination as receiver—Reference to the District Court—Appealable order—Civil Procedure Code (Act X of 1877), ss. 503, 504, and 505.—No appeal lies from an order passed under s. 505 of the Civil Procedure Code by a

## APPEAL—continued.

## 20. RECEIVERS—continued.

Court subordinate to a District Court, submitting

being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver. *BIRAJAN KOORE v. RAM CHURN LALL MAHATA*

[I. L. R., 7 Cal., 718; 9 C. L. R., 203]

## 574. Civil Procedure Code, 1859, s. 92.—An appeal did not lie against

an order refusing to appoint a receiver under Act VIII of 1859, s. 92. *EX-PARTE IMBICHI PATAMA*

[1 Mad., 129]

s. 603 of the Civil Procedure Code (Act XIV of 1882) as explained by s. 603. When he does appoint, his

considered. *John v. John, L. R., 2 Ch., 578*, referred to. *SANGAPPA v. SHIVBASAWA*

[I. L. R., 24 Bom., 38]

## 576. Order dismissing application for appointment of receiver—Civil Pro-

an order under that section and not under s. 503, and is, therefore, appealable under s. 588 of the Civil Procedure Code as amended by Act XII of 1879. *Gossain Dulmir Puri v. Tekait Hetaarain*

[9 C. L. R., 467]

577. Civil Procedure Code, ss. 503, 505, 588—Order rejecting application to appoint receiver—Appealable order.—An order rejecting an application to appoint a receiver is an order passed under s. 503, and is, therefore, appealable under s. 588, cl. 24, of the Code of Civil Procedure. *Subramanya v. Apparami, I. L. R., 6 Mad., 355*, overruled. *VENKATASAMI v. STRIDAYAMMA*

See ANONYMOUS CASE [I. L. R., 10 Mad., 180 note]

## APPEAL—continued.

## 20. RECEIVERS—concluded.

578. Order rejecting

the order on appeal is final under s. 658. *Gossain Dulmir Puri v. Tekait Hetaarain, 6 C. L. R., 467*, followed. The Court to which such an appeal lies from the order of a Subordinate Judge is, under s. 21 of Act XII of 1887, the High Court where the value of the suit is above Rs. 5,000, and the District Judge's Court in other cases. *BOIDYA NATH ADYA v. MAKHAN LAL ADYA*

I. L. R., 17 Cal., 680

## 21. REGULATIONS.

## 579. Beng. Reg. XV of 1793—

Order refusing application by mortgagor for return of excess payment under Reg. XV of 1793—No appeal lies from an order refusing an application by a mortgagor for the return of excess payment alleged to have been made by him in a proceeding under Regulation XV of 1793 by which he redeemed his mortgage. *SREEMAN CHUNDER BASTIEN v. MODHOO SOODUN ROY*

24 W. R., 17

## 580. Beng. Reg. I of 1793—Order

of District Judge—Act XXIII of 1881, s. 38.—No appeal was provided from a summary order made by a District Judge under Regulation I of 1793, but such order was open to question in a regular suit. Act XXIII of 1881, s. 38, gave no right of appeal in such cases, but provided merely that the mode of trial and the procedure incidental and ancillary thereto, laid down in the Civil Procedure Code, should be applied throughout in miscellaneous cases and proceedings. *MURKUMATH KOOKDOO v. MODHOO SOODUN SARA*

19 W. R., 132

## 581. Beng. Regs. V of 1812,

s. 26, and V of 1827, s. 3—Order for attachment and manager.—No appeal lay to the High Court from an order passed by a District Judge, issuing a precept to the Collector to hold an estate in attachment, and to appoint a manager under s. 26, Regulation V of 1812, and s. 3, Regulation V of 1827. IN THE MATTER OF THE PETITION OF THE COLLECTOR OF FURSEEDPORE

12 B. L. R., F. B., 369

GOOROO DASS ROY v. COLLECTOR OF FURSEEDPORE

[19 W. R., 170, and 20 W. R., 262]

## 582. Beng. Reg. V of 1812—

Order of Collector refusing to make distribution among shareholders.—An appeal did not lie to the High Court from the order of a Collector refusing to distribute amongst the shareholders the amount of their shares of the surplus proceeds of a joint undivided estate attached and administered under Regulation V of 1812. *JOJO MOHON CHOWDHURY v. THE GOVERNMENT*

3 W. R., 118, 17

## 583. Beng. Reg. VIII of 1819,

s. 9—Order of Civil Court.—There is no appeal

## APPEAL—continued.

## 21. REGULATIONS—concluded.

from an order made by the Civil Court under s. 6 of Regulation VIII of 1819. IN THE MATTER OF THE PETITION OF SOORJA KANT ACHARJ CHOWDHRY

[I. L. R., 1 Calc., 383  
25 W. R., 222

584. ———— Beng. Reg. III of 1872, s. 5

—*Suit referred to Civil Court in Sonthal Pergunnahs, Order in.*—A decision on an issue or in a suit properly referred to a Civil Court in the Sonthal Pergunnahs, under s. 5, Regulation III of 1872, was appealable to the High Court under Act VIII of 1859, which was applicable to the Sonthal Pergunnahs. TARINI PRASAD MISHRER v. MAHAMMAD CHOWDHRY

[8 C. L. R., 555

## 22. SALE IN EXECUTION OF DECREE.

585. ———— Order refusing interest in execution of decree.—When a sale in execution was set aside, and the order directing the return of the purchase-money did not also direct the payment of interest thereon,—*Held* that there was no appeal from the order of the lower Court refusing to give interest. BISHONATH DOSS v. AHMED ALI

[W. R., 1864, Mis., 19

586. ———— Order absolving purchaser from liability for damages on re-sale.—*Civil Procedure Code, 1859, s. 254.*—A purchaser at a sale in execution of a decree is liable for damages caused by re-sale consequent on his not making the required deposit. An appeal lay from the order of the lower Courts absolving the purchaser from liability. SREE NARAIN MITTER v. MAHATAB CHAND

[3 W. R., 3

SOORUJ BUKSH SINGH v. SREE KISHEN DOSS

[6 W. R., Mis., 126

587. ———— Order making defaulting purchaser liable for difference on re-sale.—An appeal lay from an order holding the first defaulting purchaser liable for the difference arising from re-sale in execution of decree under s. 254, Act VIII of 1859. JOOBRAJ SINGH v. GOUR BUKSH LALL

[7 W. R., 110

588. ———— *Civil Procedure Code, s. 254—Sale in execution.*—An appeal lay from an order passed on an application under s. 254, Act VIII of 1859, to make a defaulting purchaser liable for the loss occasioned by a re-sale. RAM DIAL v. RAM DAS

I. L. R., 1 All., 181

589. ———— Order under s. 254, Civil Procedure Code, 1859.—No appeal lay to the Judge from an order passed by a subordinate Court under s. 254, Act VIII of 1859. BINDA DABEE DOSSER v. GOPER SOONDEREE DOSSIA

[6 W. R., Mis., 82

590. ———— Order refusing refund of price to purchaser.—*Sale of immoveable property set aside—Civil Procedure Code, s. 315.*—No appeal lies from an order refusing a refund of price to a purchaser, the sale to whom has been set aside under s. 315 of the Civil Procedure Code.

## APPEAL—continued.

## 22. SALE IN EXECUTION OF DECREE

—continued.

Soudagar Mal v. Abdul Rahman Khan, *Weekly Notes, 1890, p. 85, Tapesri Lal v. Deoki Nandan Rai, Weekly Notes, 1890, p. 89, and Ram Dial v. Ram Das, I. L. R., 1 All., 181,* referred to. Baijnath Sahai v. Moheep Narain Singh, I. L. R., 16 Calc., 535, dissented from. RAHIM BAKHSH v. DHURI

I. L. R., 12 All., 397

591. ———— Order on defaulting purchaser to make good such deficiency.—*Default of purchaser at sale in execution—Deficiency in price arising on re-sale—Civil Procedure Code, ss. 2, 293, 540, 588.*—No appeal lies from an order under s. 293 of the Code of Civil Procedure directing a defaulting purchaser at a sale in execution of a decree to make good the loss happening on a re-sale occasioned by his default. Ram Dayal v. Ram Das, I. L. R., 1 All., 181, and Baijnath Sahai v. Moheep Narain Singh, I. L. R., 16 Calc., 535, dissented from. Soudagar Mal v. Abdul Rahman Khan, *Weekly Notes, 1890, p. 85, Rahim Bakhsh v. Dhuri, I. L. R., 12 All., 397,* followed. So held by EDGE, C.J., MAHMOOD and KNOX, JJ., STRAIGHT, J., dissenting. DEOKI NANDAN RAI v. TAPESRI LAL

ILAH BAKHSH v. BAJU NATH

[I. L. R., 13 All., 560

592. ———— Order under Civil Procedure Code (Act XIV of 1882), s. 293, on defaulting purchaser to make good deficiency on re-sale.—*Second appeal—Sale in execution of decree—Civil Procedure Code (Act XIV of 1882), ss. 244, 313—Misdescription of property in proclamation of sale.*—Both an appeal and a second appeal lie from an order under s. 293 of the Civil Procedure Code, directing a defaulting purchaser at an execution-sale to make good the deficiency of price happening on a re-sale owing to his default. Sree Narain Mitter v. Mahatab Chand, 3 W. R., 3, Sooruj Buksh Singh v. Sree Kishen Doss, 6 W. R., Mis., 126, Jobraj Singh v. Gour Buksh Lall, 7 W. R., 110, Baijnath Sahai v. Moheep Narain Singh, I. L. R., 16 Calc., 535, and Amir Baksha Sahib v. Venkatachala Mudali, I. L. R., 18 Mad., 439, followed. Deoki Nandan Rai v. Tapesri Lal, I. L. R., 14 All., 201, referred to and discussed. In this case it was held on appeal, reversing the decision of the lower Courts, that under the circumstances the purchaser was not liable for the deficiency. KALI KISHORE DEB SARKAR v. GURU PRASAD SUTUL

[I. L. R., 25 Calc., 99

2 C. W. N., 408

RAJENDRA NATH ROY v. RAM CHABAN SINHA

[2 C. W. N., 411

593. ———— Civil Procedure Code, 1882, s. 311.—*Rejection of application to restore to file petition to set aside sale dismissed for default.*—An application under s. 311 of the Code of Civil Procedure to set aside a sale in execution of a decree having been dismissed for default, the petitioner applied to the Court to restore the application

## APPEAL—continued.

22. SALE IN EXECUTION OF DECREE  
—continued.

to the file. The Court having rejected this application, the petitioner appealed against this order. Held that no appeal lay. *Ningappa v. Gangawa*, I. L. R., 10 Bom., 433, followed. *RAJA v. STRINIVASA* I. L. R., 11 Mad., 319

ing an application to restore to the file an application to set aside a sale under s. 311 of the Civil Procedure Code, which has been dismissed for default. *SUJA UDDIN v. REAZUDDIN* I. L. R., 27 Cal., 414

*v. BURJIN* 2 Hay, 111

order of the lower Court, rejecting a petition for the reversal of a sale in execution on the ground of irregularity. *RAJ NARAIN KOER v. INDER CHUNDER BARU* W. R., 1864, Mls., 39

*MUDDUN MOHUN ROY CHOWDHURY v. RAM CHUNDER GOOPTO* 2 W. R., Mls., 41

[2 W. R., Mls., 19

*BRUJUN RAM TEWABER v. LALLA AJOODHYA PARSAD* 2 W. R., Mls., 29

*ABDOOL KURREM v. OOHAN LAL*

[8 W. R., Mls., 119

598. ———— An order setting aside a sale on the ground of irregularity where an order has been passed by the Court executing the decree postponing the sale, but the sale has taken place in consequence of the order arriving too late, is not appealable. *MAIHA SINGH v. JHOU LAL* [8 N. W., 354

599. ———— Civil Procedure Code, 1859, s. 257.—Where the lower Court allowed an objection and makes an order setting aside the sale, such order, according to s. 257, Act VIII of 1859,

## APPEAL—continued.

22. SALE IN EXECUTION OF DECREE  
—continued.

was final. IN THE MATTER OF THE PETITION OF OODIUT ZUMAN 8 W. R., 109

600. ———— Order setting aside sale

from such order under s. 588 (m) of Act X of 1877. *KANTHI RAM v. BANKEY LAL*

[I. L. R., 2 All., 396

601. ———— Civil Procedure Code, 1877, s. 588 (m).—Execution of decree—Auction-purchaser.—Where, after a judgment-debtor has applied, under s. 311 of Act X of 1877, to have a sale set aside, the auction-purchaser is made a party to the proceedings, and the sale is set aside, the auction-purchaser can appeal against the order setting aside the sale. *KANTHI RAM v. BANKEY LAL*, I. L. R., 2 All., 396, followed. *GOPAL SINGH v. DULAR KUAR* [I. L. R., 2 All., 383

602. ———— Review of

being one granting an application for review, but one setting aside a sale, and, as such, not appealable. *BHAIKON DIN SINGH v. RAM SAHAI*

[I. L. R., 3 All., 313

603. ———— Order setting aside a sale, Appeal from.—Civil Procedure Code, 1852, ss. 312 and 588, cl. 16.—An appeal does not lie from an order setting aside a sale passed under s. 312, para. 2, of the Civil Procedure Code (Act XIV of 1852). *SAKHARAM VITHAL v. BHIKU DAYRAM*

[I. L. R., 11 Bom., 603

604. ———— Order confirming sale.—Civil Procedure Code, 1877, s. 310.—Sale in execution of decree of share of undivided estate.—Confirmation of sale in favour of co-sharer.—Appeal by auction-purchaser.—A share of undivided immovable property was put up for sale in execution of a decree, and was knocked down to M. Before it

**APPEAL—continued.****22. SALE IN EXECUTION OF DECREE**  
—continued.

was knocked down to him, *A*, the decree-holder, who had obtained permission to bid for and purchase such share, and who was a co-sharer of such share, bid the same sum as that for which it was knocked down to *M*, claiming the right of pre-emption. The Court executing such decree subsequently made an order confirming the sale of such share in favour of *A*. *M* appealed, impugning the propriety of the confirmation of the sale in favour of *A*:—*Held* that such appeal would not lie. *MUNIR-UD-DIN KHAN v. ABDUL RAHIM KHAN* . . . **I. L. R., 3 All., 674**

**605.** ——— Order confirming sale before time for filing objections has expired—*Appeal from order—Civil Procedure Code, ss. 311, 312—Objection to sale—Legal disability.*—Although s. 312 of the Civil Procedure Code contemplates that objections to a sale under s. 311 shall be filed before an order for confirmation is passed, if the precipitate action of the Court has led to the confirmation of a sale before the time allowed for filing objection to the sale has expired, whether or not that Court could entertain such objections after confirming the sale, the High Court on appeal is bound to interfere, and to see that objections which by law the appellant is empowered to make are heard and determined before a sale of his property is confirmed or becomes absolute. An application under s. 311 of the Civil Procedure Code, on behalf of a judgment-debtor who was a minor, was rejected on the ground that the applicant did not legally represent the minor, and the Court thereupon confirmed the sale. A second application to the same effect was then filed on behalf of the minor by his guardian, and was rejected on the ground that the Court had already confirmed the sale, and was precluded from entertaining objections after such confirmation, prior to which no proper application had been filed. From this order the judgment-debtor appealed. *Held* that the appeal must be considered to be one from an order under the first paragraph of s. 312 of the Civil Procedure Code, confirming the sale after disallowing the appellant's objection, and that it would, therefore, lie. The order disallowing the application and the order confirming the sale were set aside and the case remanded for disposal of the appellant's objections. *BALDEO SINGH v. KISHAN LAL* . . . **I. L. R., 9 All., 411**

**606.** ——— Order disallowing objections to sale—*Civil Procedure Code, 1882, ss. 311, 312, 588 (cl. 16)—Execution of decree—Sale in execution—Appeal.—Per PETHERAM, C.J., and OLDFIELD, BRODHPURST, and DUTHOIT, JJ.*—An order passed under the first clause of s. 312 of the Civil Procedure Code, after an objection made under the provisions of s. 311 has been disallowed, is appealable under art. 16 of s. 588. *Per MAHMOOD, J.*—An application made under s. 311 can be disposed of only under s. 312, and if the Court rejects the objection to the sale, the order must be regarded as an order "refusing to set aside a sale of immovable property" under the first paragraph of s. 312, and therefore appealable as falling under the purview of art. 16 of s. 588. *Lalman v. Rassu Lal, Weekly Notes,*

**APPEAL—continued.****22. SALE IN EXECUTION OF DECREE**  
—concluded.

*All., 1882, p. 117, and Rajan Kuari v. Lalta Prasad, Weekly Notes, All., 1883, p. 178, dissented from by MAHMOOD, J. TOTA RAM v. KHUB CHAND*  
**[I. L. R., 7 All., 253]**

**607.** ——— Order refusing to set aside sale—*Civil Procedure Code, ss. 294, 312, 313.*—There is no appeal to the High Court from an order refusing to set aside a sale, unless such order is made under s. 294, 312, or 313 of the Civil Procedure Code. *DURGA SUNDARI DEVI v. GOVINDA CHANDRA ADDY*  
**[I. L. R., 10 Calc., 366]**

**608.** ——— Order refusing permission to bid—*Civil Procedure Code, s. 294—Decree-holder.*—No appeal lies from an order passed under s. 294 of the Civil Procedure Code refusing permission to a decree-holder to bid at a sale in execution of his decree. *JODOONATH MUNDUL v. BHOJO MOHUN GHOSE* . . . **I. L. R., 13 Calc., 174**

**609.** ——— Order refusing to set aside dismissal of application to set aside sale—*Civil Procedure Code, ss. 102, 103, 588, 647—Appeal from an order refusing to set aside an order under s. 102, dismissing an application under s. 311.*—S. 647 of the Code of Civil Procedure (Act XIV of 1882), when read with cl. 8 of s. 588, does not give a right of appeal to a judgment-debtor whose application to set aside a sale of his property has been dismissed under s. 102, and whose application to set the dismissal aside has been refused under s. 103. S. 647 is not intended to confer any rights of appeal not expressly given elsewhere by the Code. *NINGAPPA v. GANGAWA* . . . **I. L. R., 10 Bom., 433**

**23. OBJECTIONS BY RESPONDENT.**

**610.** ——— Objection, Meaning of—*Civil Procedure Code, 1859, s. 348; 1877, 1882, s. 561.*—The word "objection" used in s. 348 of Act VIII of 1859 was not limited to written objections simply, but comprehended also verbal objections. *RAMNARAIN BRUTTACHARJEE v. MOHESCHUNDER ROY* . . . **2 Hay, 79**

**611.** ——— Applicability of s. 348—*Special appeal.*—S. 348, Act VIII of 1859, was as applicable to special as to regular appeals. *NARAYAN AYYAR v. LAKSHUN AMMAL*  
**[3 Mad., 216]**

**612.** ——— Time for objection—Objections under s. 348, Act VIII of 1859, might be urged at any time in the course of hearing of an appeal. *THAKUR DASS GOSHAMEE v. GORRE KISTO GOSHAMEE* . . . **15 W. R., 18**

**613.** ——— Hearing of appeal.—It was too late to take an objection under s. 348, Act VIII of 1859, when the Appellate Court has given its decision. *ABDUL GUNNEE v. GOVIND MONEE DEBIA* . . . **9 W. R., 375**

**614.** ——— Time for filing objection—*Application to file cross-appeal, Requisites of.*—An application to file a cross-appeal orally was

## APPEAL—continued.

23. OBJECTIONS BY RESPONDENT  
—continued.

rejected, firstly, because a written memorandum of its grounds had not been filed previously; secondly, because the objection, when taken, was not filed on the regulated stamp; and lastly, because the ground now urged had not been advanced as an objection in a regular appeal previously filed. *MOOLAS KOORER v. SURESHUN. SURESHUN v. MAHOMED HUSSER-GOLLAR KHAN* . . . 8 W. R., 379

[B. L. R., Sup. Vol., 587; 6 W. R., Mls., 102  
619

issued to the parties. *DEO KISHEN v. MANESHAN SHAHAI* . . . I. L. R., 4 All., 248

617. ————— Cross-appeal

[I. L. R., 9 Cal., 631  
618. ————— Practice—

before the day fixed for the postponed hearing, the object of s. 561 being merely to give the appellant timely intimation of proposed objections. *RANGILDAS v. BAI GIRJA* . . . I. L. R., 8 Bom., 559

619. ————— An appeal

tember 1879, before the actual hearing, which took

620. ————— Civil Procedure Code, 1882, s. 561—Practice—Objections to decrees by respondent—Time for filing objections—Date fixed for hearing appeal—Quare—Whether under s. 561 of the Code of Civil Procedure, objections to the decree by the respondent must necessarily be filed seven days before the date originally fixed for

## APPEAL—continued.

23. OBJECTIONS BY RESPONDENT  
—continued.

hearing the appeal, or whether it is not sufficient if they are filed seven days before the day on which the appeal is actually heard, and whether the decision of the Bombay High Court in *Rangildas v. Bai Girja*, I. L. R., 8 Bom., 559, to that effect is not correct, and the decisions of the Calcutta High Court to the contrary are not erroneous. *TULSHI PERSHAD v. RAJA MISER* . . . I. L. R., 14 Cal., 610

621. ————— Civil Procedure Code, 1882, s. 561—Filing of objections, Time for—Practice—The expression “the day fixed for the hearing” used in s. 561 of the Civil Procedure Code (Act XIV of 1882) means the day on which the hearing actually commences, and includes both the hearing section is the prop objection tioned as the notice to the respondent was held not too late. *Rangildas v. Bai Girja*, I. L. R., 8 Bom., 559, followed. *DINKAR PARSHANAM v. VINAYAK MORESHWAR* . . . I. L. R., 11 Bom., 698

622. ————— Civil Procedure Code, 1882, s. 561—Civil Procedure Code Amendment Act (Act VII of 1888), s. 49—Time allowed for memorandum of objections.—An appeal cannot definitely be posted until the Court has ascertained that notice of the appeal has been served on the respondent, and a date must then be fixed not less than one month from the date of service, as the respondent is entitled, by s. 561 of the Code, to that period within which he may file any objection he may have. *SUNDARAM v. ANNABAR* [I. L. R., 13 Mad., 482

623. ————— Civil Procedure Code, 1882, s. 561—Time for filing objections—Delay in filing them—Practice.—Where a respon-

paper books had been received from the appellant, at which date the period allowed for filing objections had expired, the Court refused to extend the time or permit the objections to be filed. *SULEMAN EBRAHIMJI v. JOOSUD JAN MAHOMED* [I. L. R., 14 Bom., 111

*PERSHAD OJHA v. BHUKOSA KOONWAR* [9 W. R., 328

625. ————— Withdrawal of appeal.—If the case is withdrawn, objections under s. 519 cannot be heard. *RAM PERSHAD OJHA v. BHUKOSA KOONWAR* . . . 9 W. R., 328

*PURESH NARAY ROY v. WATSON* [23 W. R., 229

## APPEAL—continued.

23. OBJECTIONS BY RESPONDENT  
—continued.

**626.** ————— Where, in the course of the hearing of an appeal, the appellant desired to withdraw, in order to avoid the decision of a question raised by the respondent at the hearing.—*Held* that, under s. 348 of the Civil Procedure Code, the respondent was entitled to have the case heard and determined. **VENKATARAMASAIY v. KURRI** [3 Mad., 302]

**627.** ————— *Held* that objections under s. 348, Act VIII of 1859, can only be heard when the opposite party, being appellant, presents his appeal, and not when he withdraws from it. **BAHADUR SINGH v. BHUGWAN DASS**

[1 Agra, 23]

**SHAMA CHURN GHOSE v. RADHA KRISHN CHAKLANURIS** . . . . . 14 W. R., 210

**628.** ————— *Right of respondent to have objections decided.*—An appellant, finding after the hearing had commenced that his appeal was hopeless, claimed the right of withdrawing the appeal in order to prevent the objections filed under s. 561 of the Civil Procedure Code (XIV of 1852) by the respondent against the decree from being heard. *Held* that, after the hearing of an appeal has commenced, the Appellate Court is seized of the respondent's objections, and that the appeal cannot be withdrawn so as to prevent the objections from being heard and determined. **DHONDI JAGANNATH v. THE COLLECTOR OF SALT REVENUE** . I. L. R., 9 Bom., 28

**629.** ————— Where an appeal was dismissed upon the application of the appellant himself made before the hearing.—*Held* that the respondents, who had filed objections to the decree of the Court of first instance, under s. 561 of the Civil Procedure Code, had no claim to have their objections heard, notwithstanding the dismissal of the appeal. **COONAR PARESH NARAIN ROY v. WATSON & CO.**, 23 W. R., 229, and **DHONDI JAGANNATH v. THE COLLECTOR OF SALT REVENUE**, I. L. R., 9 Bom., 28, referred to. **MAKTAB BEG v. HASAN ALI** . I. L. R., 8 All., 551

**630.** ————— *Civil Procedure Code (1852), s. 561—Withdrawal of appeal—Failure of objections.*—If an appeal in which objections have been filed under s. 561 of the Code of Civil Procedure is withdrawn, the objections cannot be heard. **Bahadur Singh v. Bhugwan Dass**, 1 Agra, 23, **Ram Pershad Ojha v. Bharosa Kunwar**, 9 W. R., 325, **Shama Churn Ghose v. Radha Krishn Chaklanuris**, 14 W. R., 210, **Puresh Narain Roy v. Watson & Co.**, 23 W. R., 229, **Subhai Dayalji v. Raghunathji Vasanji**, 10 Bom., 397, **Dhondi Jagannath v. Collector of Salt Revenue**, I. L. R., 9 Bom., 28, and **Maktab Beg v. Hasan Ali**, I. L. R., 8 All., 551, referred to. **JAFAR HUSAIN v. RAJIT SINGH** . I. L. R., 17 All., 518

**631.** ————— *Dismissal of appeal for default.*—*Civil Procedure Code, 1859, s. 348.*—Where an appeal is dismissed for default, the hearing of objections under Act VIII of 1859, s. 348, cannot be allowed to proceed. **BARODA KANT BHUTTACHARJEE v. PEARRE MOHUN MOOKERJEE** . 23 W. R., 57

## APPEAL—continued.

23. OBJECTIONS BY RESPONDENT  
—continued.

**632.** ————— *Dismissal of appeal for want of necessary parties.*—*Civil Procedure Code (Act XIV of 1852), s. 561—Right of respondent to have memorandums of objections heard.*—The plaintiff sued to recover possession of lands demised on kanom in Malabar. The defendants were the representatives of the mortgagee, and one (defendant No. 20) who claimed title to part of the land sought to be recovered. As to the last-mentioned part of the land, the plaintiffs obtained a decree for a portion of it only. The plaintiffs preferred an appeal bringing on to the record only defendant No. 20, who preferred a memorandum of objections. The appeal was dismissed for the reason that the mortgagee's representatives were not joined. *Held* that the appeal had been heard within the meaning of Civil Procedure Code, s. 561, and accordingly that the memorandum of objections should be heard. **KOMBI ACHER v. KOCHUNNI**

[I. L. R., 21 Mad., 353]

**633.** ————— *What objections may be taken.*—*Civil Procedure Code, 1859, s. 348.*—S. 348 in no way restricted respondents to the points on which they may, by way of cross-appeal, object to the decision appealed against. **HUNOOMAN SINGH v. SUDHOLALL** . . . . . W. R., 1864, 232

**MEDHOO MOKER DABEE v. GUNGA GOBIND MENDELE** . . . . . W. R., 1864, 299

**634.** ————— *Objection on ground of limitation.*—*Civil Procedure Code, 1859, s. 348.*—The first Court held that the plaintiff's suit was barred by the law of limitation, but the decision was reversed on appeal, and the case was remanded by the lower Appellate Court for trial on the merits. The first Court then gave a decree for the plaintiff, but on appeal the lower Appellate Court dismissed the suit on the merits. The plaintiff preferred a special appeal to the High Court. *Held* it was competent to the defendant on such appeal, under s. 348 of the Civil Procedure Code, to raise the objection that the suit was barred by the law of limitation. **IN THE MATTER OF THE PETITION OF HIMMAT BAHADUR**

[B. L. R., Sup. Vol., 429; 5 W. R., 91]

*See RAYEKISHOREE DOSSEE v. BONOMALLEE CHURN MYTEE* . . . . . 10 W. R., 209

**KISHEN CHUNDER GAEN v. SREESHTEE DHUR KHATTAN** . . . . . 8 W. R., 208

**635.** ————— *Civil Procedure Code, s. 561—Dismissal of appeal as barred by limitation—Objections not entertainable.*—The entertainment of objections under s. 561 of the Civil Procedure Code is contingent and dependent upon the hearing of the appeal in which such objections are taken, and when that appeal itself fails, is rejected, or dismissed without being disposed of upon the merits, the objections cannot be entertained either. **RAMJIWAN MAL v. CHAND MAL** . . . . . I. L. R., 10 All., 587

**636.** ————— *Objection on ground of jurisdiction.*—*Civil Procedure Code, 1859, s. 348.*—An appeal from an order dismissing a suit for want

## APPEAL—continued.

## 23. OBJECTIONS BY RESPONDENT

—continued.

of jurisdiction was not such an appeal as is contemplated by s. 348, Act VIII of 1859, and on such an appeal the respondent was not entitled to go into the merits. *KAMEELHATERSHAD MOOKERJEE v. LARMOUR* . . . W. R., F. B., 86

837. ——— Objections against party not appealing.—A respondent, in taking advantage of the provisions of s. 348 of the Civil Procedure Code, can only take such objections as have reference to the party appealing. If he wishes to raise objections against parties who do not appeal, he must do so by independent appeal. *GANESH PANDURANG AGTE v. GANGADHAR KAMARISHNA*

(6 Bom., A. C., 244

838. ——— Appeal only partly in respondent's favour.—*Civil Procedure Code, s. 348.*—If a decree is passed partly in favour of and partly against a plaintiff, and one of the defendants alone appeals as against the decree in favour of

[10 W. R., 326

839. ——— *Civil Procedure Code, 1859, s. 348.*—In a suit to recover possession of certain land against A, who claimed to be its proprietor, in which J B, who claimed to be a rayat, was

against J B. Held that the cross-appeal should not have been admitted. *ANWAR JAN BIBEE v. AZMUT ALI* . . . 15 W. R., 26

840. ——— *Civil Procedure Code, 1859, s. 348.*—S. 348, Act VIII of 1859, was wide enough to empower an Appellate Court on cross-appeal to re-open the whole case, and assess damages on defendants, who had been acquitted in the original suit, and who were not parties to the appeal. *ANUND CHUNDER GOORIO v. MOHESH CHUNDER MOZOOMDAR* . . . 1 W. R., 229

841. ——— Altering decree on appeal

*APPE v. MEERA NUND* . . . 2 N. W., 44

842. ——— Altering decree on appeal where respondent takes no objection.—*Civil Procedure Code, 1859, s. 348.*—In a suit to establish title to three annas and a fraction of an estate, plaintiffs, having obtained a decree for two annas, appealed, but the lower Appellate Court reduced the share

## APPEAL—continued.

## 23. OBJECTIONS BY RESPONDENT

—continued.

allotted to the plaintiff. Held that, as no question of the share to be awarded was raised before the lower Appellate Court by the defendant under s. 348, Code of Civil Procedure, that Court should not have interfered with the decision in the way it did. *RITOOBAJ v. OORJAGUR SINGH* . . . 15 W. R., 227

843. ——— Objections by opposite

parties in separate appeals.—Both parties appealed from the decree of the Court of first instance,

[9 W. R., 273

844. ——— Objections by opposite parties in separate appeals.—Both parties appealed from the decree of the Court of first instance,

tions could not be entertained. *GANGA PRASAD v. GAJANDHAR PRASAD* . . . I. L. R., 2 All., 661

pealed to the High Court from the lower Appellate Court's decree. If did not appeal from that decree, neither did he take any objections thereto under s. 561 of Act X of 1877. *STUART, C.J., and OLFIELD, J.,* before whom such appeal came for hearing, remanded the case to the lower Appellate Court for

lower Appellate Court should be accepted and the amount awarded by its decree be enlarged accordingly, notwithstanding If had not appealed from that decree or preferred objections thereto. *BIKRAMJIT SINGH v. HUSAINI BEGAM*

[I. L. R., 3 All., 643

846. ——— Objections which could

tree had not been removed, and that such tree belonged

## APPEAL—continued.

23. OBJECTIONS BY RESPONDENT  
—continued.

626. ————— Where, in the course of the hearing of an appeal, the appellant desired to withdraw, in order to avoid the decision of a question raised by the respondent at the hearing,—*Held* that, under s. 348 of the Civil Procedure Code, the respondent was entitled to have the case heard and determined. *VENKATARAMANAIYA v. KUPPI*  
[3 Mad., 302]

627. ————— *Held* that objections under s. 348, Act VIII of 1859, can only be heard when the opposite party, being appellant, prosecutes his appeal, and not when he withdraws from it. *BAHADUR SINGH v. BHUGWAN DOSS*  
[1 Agra, 23]

*SHAMA CHURN GHOSE v. RADHA KRISTO CHAKLANUVIS* . . . . . 14 W. R., 210

628. ————— *Right of respondent to have objections decided.*—An appellant, finding after the hearing had commenced that his appeal was hopeless, claimed the right of withdrawing the appeal in order to prevent the objections filed under s. 561 of the Civil Procedure Code (XIV of 1882) by the respondent against the decree from being heard. *Held* that, after the hearing of an appeal has commenced, the Appeal Court is seized of the respondent's objections, and that the appeal cannot be withdrawn so as to prevent the objections from being heard and determined. *DHONDI JAGANNATH v. THE COLLECTOR OF SALT REVENUE* . I. L. R., 9 Bom., 28

629. ————— Where an appeal was dismissed upon the application of the appellant himself made before the hearing,—*Held* that the respondents, who had filed objections to the decree of the Court of first instance, under s. 561 of the Civil Procedure Code, had no claim to have their objections heard, notwithstanding the dismissal of the appeal. *Coomar Puresh Narain Roy v. Watson & Co.*, 23 W. R., 229, and *Dhondi Jagannath v. The Collector of Salt Revenue*, I. L. R., 9 Bom., 28, referred to. *MAKTAB BEG v. HASAN ALI* . I. L. R., 8 All., 551

630. ————— *Civil Procedure Code (1882), s. 561—Withdrawal of appeal—Failure of objections.*—If an appeal in which objections have been filed under s. 561 of the Code of Civil Procedure is withdrawn, the objections cannot be heard. *Bahadoor Singh v. Bhugwan Dass*, 1 Agra, 23, *Ram Pershad Ojha v. Bharosa Kunwar*, 9 W. R., 328, *Shama Churn Ghose v. Radha Kristo Chaklanuwis*, 14 W. R., 210, *Puresh Narain Roy v. Watson & Co.*, 23 W. R., 229, *Subhai Dayalji v. Raghunathji Vasanji*, 10 Bom., 397, *Dhondi Jagannath v. Collector of Salt Revenue*, I. L. R., 9 Bom., 28, and *Maktab Beg v. Hasan Ali*, I. L. R., 8 All., 551, referred to. *JAFAR HUSAIN v. RANJIT SINGH* . I. L. R., 17 All., 518

631. ————— *Dismissal of appeal for default—Civil Procedure Code, 1859, s. 348.*—Where an appeal is dismissed for default, the hearing of objections under Act VIII of 1859, s. 348, cannot be allowed to proceed. *BARODA KANT BHUTTACHARJEE v. PEAREE MOHUN MOOKERJEE* . 23 W. R., 57

## APPEAL—continued.

23. OBJECTIONS BY RESPONDENT  
—continued.

632. ————— *Dismissal of appeal for want of necessary parties—Civil Procedure Code (Act XIV of 1882), s. 561—Right of respondent to have memorandum of objections heard.*—The plaintiff sued to recover possession of lands demised on kanom in Malabar. The defendants were the representatives of the mortgagee, and one (defendant No. 20) who claimed title to part of the land sought to be recovered. As to the last-mentioned part of the land, the plaintiffs obtained a decree for a portion of it only. The plaintiffs preferred an appeal bringing on to the record only defendant No. 20, who preferred a memorandum of objections. The appeal was dismissed for the reason that the mortgagee's representatives were not joined. *Held* that the appeal had been heard within the meaning of Civil Procedure Code, s. 561, and accordingly that the memorandum of objections should be heard. *KOMBI ACHEN v. KOCHUNNI*  
[I. L. R., 21 Mad., 352]

633. ————— *What objections may be taken—Civil Procedure Code, 1859, s. 348.*—S. 348 in no way restricted respondents as to the points on which they may, by way of cross-appeal, object to the decision appealed against. *HUNOUMAN SINGH v. SUDDOLALL* . . . . . W. R., 1864, 232

*MUDHOO MOKEE DABEE v. GUNGA GOBIND MUNDLE* . . . . . W. R., 1864, 299

634. ————— *Objection on ground of limitation—Civil Procedure Code, 1859, s. 348.*—The first Court held that the plaintiff's suit was barred by the law of limitation, but the decision was reversed on appeal, and the case was remanded by the lower Appellate Court for trial on the merits. The first Court then gave a decree for the plaintiff, but on appeal the lower Appellate Court dismissed the suit on the merits. The plaintiff preferred a special appeal to the High Court. *Held* it was competent to the defendant on such appeal, under s. 348 of the Civil Procedure Code, to raise the objection that the suit was barred by the law of limitation. *IN THE MATTER OF THE PETITION OF HIMMAT BAHADUR*  
[B. L. R., Sup. Vol., 429: 5 W. R., 91]

*See RAYEKISHOREE DOSSEE v. BONOMALLEE CHURN MYTEE* . . . . . 10 W. R., 209

*KISHEN CHUNDER GAEN v. SREESHTEE DHUR KHATTAR* . . . . . 8 W. R., 208

635. ————— *Civil Procedure Code, s. 561—Dismissal of appeal as barred by limitation—Objections not entertainable.*—The entertainment of objections under s. 561 of the Civil Procedure Code is contingent and dependent upon the hearing of the appeal in which such objections are taken, and when that appeal itself fails, is rejected, or dismissed without being disposed of upon the merits, the objections cannot be entertained either. *RAMJIWAN MAL v. CHAND MAL* . . . . . I. L. R., 10 All., 587

636. ————— *Objection on ground of jurisdiction—Civil Procedure Code, 1859, s. 348.*—An appeal from an order dismissing a suit for want

## APPEAL—continued.

## 23. OBJECTIONS BY RESPONDENT

—continued.

of jurisdiction was not such an appeal as is contemplated by s. 348, Act VIII of 1859, and on such an appeal the respondent was not entitled to go into the merits. **KAMEERHAFERSHAD MOOKERJEE v. LARMOUR** . . . . . W. R., F. B., 86

reference to the party appealing. If he wishes to raise objections against parties who do not appeal, he must do so by independent appeal. **GASEEN PANDURANG AGTE v. GANGADHAR RAMKRISHNA** [8 Bom. A. C., 244

838. . . . . Appeal only

[10 W. R., 326

839. . . . . Civil Procedure Code, 1859, s. 348.—In a suit to recover possession of certain land against *A*, who claimed to be its proprietor, in which *J B*, who claimed to be a raiyat, was made co-defendant, plaintiff obtained a decree against

15 W. R., 28

840. . . . . Civil Procedure

841. . . . . 2 N. W., 44

842. . . . . Altering decree on appeal where respondent takes no objection.—Civil Procedure Code, 1859, s. 348.—In a suit to establish title to three annas and a fraction of an estate, plaintiff, having obtained a decree for two annas, appealed, but the lower Appellate Court reduced the share

## APPEAL—continued.

## 23. OBJECTIONS BY RESPONDENT

—continued.

allotted to the plaintiff. *Held* that, as no question of the share to be awarded was raised before the lower Appellate Court by the defendant under s. 348, Code of Civil Procedure, that Court should not have interfered with the decision in the way it did. **RIZOORAJ v. OJJAGUR SINGH** . . . . . 15 W. R., 227

843. . . . . Objections by opposite

s. 348, to argue that his suit was wrongly dismissed. **SABETOOLAH MEAH v. ROHIM DEWAN** [9 W. R., 273

844. . . . . Objections by opposite parties in separate appeals.—Both parties appealed from the decree of the Court of first instance, and both the appeals were dismissed by the lower Appellate Court. The plaintiff appealed to the High Court from the decree of the lower Appellate Court dismissing his appeal, whereupon the defendant took objections to the decree of the lower Appellate Court dismissing his appeal. *Held* that such objections could not be entertained. **GANGA PRASAD v. GAJAHNAR PRASAD** . . . . . I. L. R., 2 All., 651

845. . . . . Finding in favour of respondent who had not appealed or objected

the finding that the annual rent payable by *B* was Rs. 4. *H* appealed, and the lower Appellate Court gave him a decree based on the finding that the annual rent payable by *B* was Rs. 12-0. *B* appealed to the High Court from the lower Appellate Court's decree. *H* did not appeal from that decree, neither did he take any objections thereto under s. 561 of Act X of 1877. **STUART, C. J., and OLD-FIELD, J.**, before whom such appeal came for hearing, remanded the case to the lower Appellate Court for a fresh determination of the question as to the

**JIT SINGH v. HUSAINI BEGAM**

[I. L. R., 3 All., 643

846. . . . . Objections which could not have been taken on appeal.—*Incidental decision of issue*—The plaintiff sued the defendants for compensation for the wrongful taking of the fruit on a tree which he alleged belonged to him. The defendants set up as a defence that the fruit on such tree had not been removed, and that such tree belonged

## APPEAL—continued.

## 23. OBJECTIONS BY RESPONDENT

—continued.

to them. The Court of first instance dismissed the suit on the ground that the fruit on such tree had not been removed, but found incidentally that such tree belonged to the plaintiff. The plaintiff appealed from the decree of the Court of first instance, and the defendants objected to the decree, contending that such tree belonged to them. *Held* that, inasmuch as the Court of first instance did not, in deciding that such tree belonged to the plaintiff, decide a question substantially in issue, it did not decide in this matter "against the defendants" within the meaning of s. 561 of the Civil Procedure Code, and as the decree was limited to dismissing the suit, the defendants as respondents were not qualified to take an objection which they could not have taken by way of appeal, and therefore the Appellate Court was not warranted by law in entertaining the objection taken by the defendants. *BALAK TEWARI v. KAUSIL MISR* [I. L. R., 4 All., 491]

647. — Objection by party improperly made respondent—*Extent of respondent's right*.—A obtained a decree for possession of land against B and for costs against B, C, D, and others, defendants in the suit. C and other defendants appealed against this decree so far as it awarded costs against them, making A and D respondents to the appeal. Under s. 561, D objected to that part of the decree which awarded possession of the land to A. *Held* on appeal that it was open to D, although improperly made a party to the appeal by C against A, to take objection to the rest of the decree. *TIMMAYA MADA v. LAKSHMANA BHAKTA*

[I. L. R., 7 Mad., 215]

648. — Objections on appeal as to costs—*Procedure—Notice of objections*.—The Court of first instance found for the defendants on the merits, and passed a decree in their favour without costs. The defendants appealed against that part of the decree which disallowed them their costs. The plaintiff filed a notice of objections to the decree on the merits as required by s. 561 of the Code of Civil Procedure (XIV of 1882). The lower Court of Appeal varied the decree by allowing the defendants their costs of suit, and held that the plaintiff was not entitled to file any objections. *Held* that the Court of Appeal was in error in holding that the plaintiff's objections could not be entertained. S. 561 of the Code gives the respondent the power of taking any objection to the decree at the hearing of an appeal which he could have taken by way of appeal, provided he has filed a notice of his objections not less than seven days before the date fixed for the hearing of the appeal; and this power is independent of whether an appeal lies on a mere question of costs. *KAMAT v. KAMAT* . . . I. L. R., 8 Bom., 368

649. — Unsuccessful intervenors—*Civil Procedure Code, 1859, s. 348*.—Unsuccessful intervenors (defendants) who have not appealed cannot raise questions under s. 348, Act VIII of 1859. *BIPRO PEEBHAD MYTEE v. KANYE DEYER*

[I W. R., 341]

## APPEAL—continued.

## 23. OBJECTIONS BY RESPONDENT

—continued.

650. — Co-respondents.—A defendant or respondent cannot be heard by way of cross-appeal under s. 348, Act VIII of 1859, as against a co-defendant or co-respondent. *TARUOK NATH ROY v. TABOORUNISSA CHOWDHRAIN* . . . 7 W. R., 39

651. — *Civil Procedure Code, 1859, s. 348*.—A respondent, making a cross-appeal, can take objection to any part of the judgment of the first Court adverse to him to which the appellant can answer, and which affects the appellant's interests only; but the cross-appeal of a respondent does not open up any question between himself and his co-respondents, for they cannot be allowed to interplead. The law gives a respondent a right to raise objections at the hearing of the appeal; but under s. 348, Civil Procedure Code, reasonably construed, the contest is between two parties equally interested, and not with third parties. *MAHBOOB ALI v. ZUR BANOO BIBEE* . . . 9 W. R., 78

652. — *Civil Procedure Code, 1859, s. 348*.—Plaintiff sued two tenants and his co-sharer for joint rents. His suit was dismissed, and the dakhilas produced by the tenant defendants were declared to be false. The latter appealed, making the former and his co-sharer respondents. Plaintiff then appeared and made a cross-appeal under s. 348, Act VIII of 1859. *Held* that plaintiff had no *locus standi* to entitle him to make a cross-appeal against his co-sharer upon the appeal of the tenant defendants. *ANUNTO DOSS SEIN v. RAM JOY SEIN* . . . 11 W. R., 435

653. — *Whether a respondent can prefer a cross-objection against another respondent—Civil Procedure Code (1882), s. 561*.—In a suit for possession of land the Court of first instance decreed the plaintiff's suit in part against the defendants. Some of the defendants appealed to the High Court without making the other defendants party-respondents. The plaintiffs preferred a cross-objection under s. 561 of the Code of Civil Procedure. The non-appealing defendants were added as respondents by an order of the High Court to the effect that they might be made parties without prejudice to any objection that might be urged on their behalf at the hearing of the appeal. The non-appealing defendants at the hearing of the appeal contended that they were wrongly made parties, and that the plaintiffs could not urge their cross-objection as against them. *Held* that, as a general rule, the right of a respondent to urge cross-objections should be limited to his urging them against the appellant, and it is only by way of exception to this general rule that one respondent may urge a cross-objection against another respondent, the exception holding good, among other cases, in those in which the appeal of some of the parties opens out questions which cannot be disposed of completely without matters being allowed to be opened up as between co-respondents; but as there was nothing exceptional in this case, the plaintiffs were not allowed to urge their cross-objections against the

## APPEAL—continued.

23. OBJECTIONS BY RESPONDENT  
—continued.

non-appealing defendants. BISHUN CHURN ROY  
CHOWDURY v. JOGENDRA NATH ROY  
[L. L. R., 26 Cal., 114

854. — Civil Procedure Code, 1859, s. 348.—A plaintiff (respondent) may take an objection, under s. 348, against defendants who have not appealed, but who are pro forma brought in as co-respondents. RAM LALL MOOKERJEE v. TARRA SOONDURER DEBIA  
[W. R., 1884, 3

Contra, HOSSAIN BUKSH PUTOOAH v. BAROO BEX-  
PAREE . . . 5 W. R., 49

855. — Civil Procedure Code, 1859, s. 348.—One defendant cannot take an objection under s. 348 on the appeal of a co-defendant. BYARODA SOONDURER DOSSEE v. NOBO-  
GOPAL MULLICK . . . W. R., 1884, 294

See KHEMCHUTTER DOSSEE v. NILAMBUR MEN-  
DEL . . . 2 W. R., 227

GUDHADHUR BAYERJEE v. MOYMOHSEE DOSSEE  
[7 W. R., 366

KISHEN CHUNDER v. CHUDRABOLLY DOSSEE  
[2 Hay, 180

856. — Absence of co-respondent.—Civil Procedure Code, 1859, s. 348.—The lower Appellate Court was held to be justified in refusing to enter into an objection raised by the respondent under Act VIII of 1859, s. 348, in the absence as a party to the appeal of one of the parties interested in the decision of the first Court. MOIZZU-  
NISSE v. MOORABEE DUTCH DEY . . . 22 W. R., 314

857. — Absence of co-respondent.—

decree-holders were entitled to 1 anna 10 gundah share, and rejected the objections raised by the decree-holders under s. 348, Civil Procedure Code. Held that the Judge was wrong in amending the Munsif's decree as to the share, as the objection was not taken in the Court of first instance, and that he was bound to dispose of the objections taken by the decree-holders under s. 348; and if there was any difficulty arising from the absence of some of the judgment-debtors, he ought to have directed that they should be made respondents. PRAS EZZERES DES v. MAHOMED AMER . . . 21 W. R., 223

858. — Objection against absent co-respondent.—An objection by way of cross-appeal cannot be taken against a co-respondent who is not present in Court, and so cannot answer the objection of the cross-appellant. LEE CHANG v. KUDMOO KOONWAL . . . 1 W. R., 622

859. — Allowing objection not taken.—Cred Procedure Code, 1859, s. 348.—Court Fees Act, 1870, s. 16.—The judge is not to

## APPEAL—continued.

23. OBJECTIONS BY RESPONDENT  
—concluded.

plaint in so far that he must, before the hearing, ap-

ject to the payment of the Court-fee stamp. BUA-  
RODA SOONDURER DEBEE v. GORINDHUR alias  
BROJO SOONDURER DEBEE . . . 24 W. R., 179

I. L. R., 1 Bom., 75, followed. NARAYANA v.  
KRIHNA . . . I L. R., 8 Mad., 214

in form a pauper on cross-appeal as to the portion  
of his claim decided against him in the lower Court.  
IN THE MATTER OF BROJENWALI DAS v. BROJO  
CHURN DAS . . . I L. R., 11 Cal., 735

862. — Objections filed by respon-  
dent.—Civil Procedure Code (1859), s. 348.—  
Letters Patent.—Appeal.—Held that s. 348 of  
the Code of Civil Procedure is not applicable to  
appeals under s. 10 of the Letters Patent. KAR-  
LIA v. GILAS KEAR . . . I L. R., 21 All., 297

## 24. GROUNDS OF APPEAL.

order of removal. Miranul Hossain v. Miranul  
Dutta . . . 1 H. W., 183; 24 M. 277

864. — Appellant not allowed to raise in appeal a contention connected with the case relied upon in the Court below. Various letters pleading and proof. Prerogative of appeal cannot be substituted by a writ of certiorari with the same result as in the Court below, notwithstanding that the new ground may be one that might have been brought forward in the

**APPEAL—continued.****24. GROUNDS OF APPEAL—concluded.**

first instance, as an alternative. In a suit between the widows of two brothers deceased, the plaintiff's title rested on this, that her and the defendant's late husbands, respectively, having been the sons of the same father, had, therefore, been sapindas to each other, so that the plaintiff as the widow of the one would be the heir of the other, expectant on the death of his widow. In this character she sued to have set aside an adoption made by the defendant. The Courts, however, found that the plaintiff's husband was an illegitimate son, and not a sapinda, and the suit was dismissed. The plaintiff, now appellant, on findings of fact that both the sons were illegitimate, urged that, though they could not inherit from their father, they yet could succeed to the estate of one another. *Held* that this contention was so inconsistent with the case made below that it was now inadmissible. *Srimati Dasi v. Lalammami*, 2 B. L. R., P. C., 64; 11 W. R., P. C., 27, referred to and followed. *GAJAPATHI RADHIKA v. VASUDEVA SANTA SINGARO* [I. L. R., 15 Mad., 503 L. R., 19 I. A., 179]

**25. DISMISSAL OF APPEAL.**

**665.** ——— Power of the lower Court to amend decree after dismissal of appeal—*Civil Procedure Code* (1882), ss. 551 and 577—*Practice*.—The dismissal of an appeal under s. 551 of the *Civil Procedure Code* (1882) leaves the decree of the lower Court untouched, neither confirmed, nor varied, nor reversed, and it remains the decree of the lower Court which can amend it, in order to bring it into accordance with its judgment. *BAPU v. VAJIR* . . . I. L. R., 21 Bom., 548

**666.** ——— Effect of dismissal of appeal—*Civil Procedure Code*, 1882, s. 551—*Amendment or alteration of decree*—Power of the High Court to amend decree of lower Court improperly drawn—*Civil Procedure Code* (1882), ss. 206 and 551—*Practice*.—The order of dismissal of an appeal under s. 551 of the *Civil Procedure Code*, being a final determination of, and an adjudication on, the questions raised in the appeal, is a "decree"; and in this respect there is no distinction between an appeal which is dismissed under s. 551 of the *Civil Procedure Code* and an appeal which is dismissed under any other section of the Code after full hearing. *Royal Reddi v. Linga Reddi*, I. L. R., 3 Mad., 1, referred to. When an appeal is dismissed under s. 551 of the *Civil Procedure Code*, or, in the case of a second appeal, when the decree is one of dismissal, the effect practically is to make the decree which is confirmed the final decree to be executed in the suit; and the High Court making such order has power to amend the decree of the lower Court which has been in effect confirmed by it, so as to bring it in conformity with the judgment, which is also confirmed. *UMA SUNDARI DEVI v. BINDU BASHINI CHOWDHURANI*

[I. L. R., 24 Calc., 759]

**667.** ——— Confirmation of decree on appeal—*Civil Procedure Code* (1882), s. 551.—

**APPEAL—concluded.****25. DISMISSAL OF APPEAL—concluded.**

The decision of the Full Bench in *Pichuvayangar v. Seshayyengar*, I. L. R., 18 Mad., 214, that the jurisdiction of a Court of first instance to amend a decree under s. 206 of the *Civil Procedure Code* is ousted by the confirmation of that decree on appeal, applies equally to second appeals dismissed under s. 551 of the Code and to second appeals tried after notice to the respondent. *MUNISAMI NAIDU v. MUNISAMI REDDI*

[I. L. R., 22 Mad., 293]

**APPEAL IN CRIMINAL CASES.**

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1. ACQUITTALS, APPEALS FROM	352
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**1. ACQUITTALS, APPEALS FROM.**

**1.** ——— Appellate judgment of acquittal—*Criminal Procedure Code*, 1872, s. 272.—The words "appellate judgment of acquittal" in Act X of 1872, s. 272, were meant to include all judgments of an Appellate Court by which a conviction is set aside. *GOVERNMENT OF BENGAL v. GOKUL CHUNDER CHOWDHRY*

[24 W. R., Cr., 41]

**2.** ——— Time for appealing—*Criminal Procedure Code*, 1872, s. 272—*Act XI of 1874*, s. 23—*Limitation*.—Under s. 272 of the Code of Criminal Procedure, as amended by s. 23 of Act XI of 1874, an appeal against an acquittal presented by the Government six months after the date of the judgment complained of was barred by lapse of time, even though the six months expired on the day the amending Act became law. The amended s. 273 should be read by itself, and not as a clause of the ordinary Statute of Limitations. *EX-PARTE THE GOVERNMENT OF BOMBAY. IN THE MATTER OF REG. v. DORABJI BALABHAI* . . . 11 Bom., 117

**3.** ——— *Criminal Procedure Code* (Act X of 1872), s. 272—*Limitation Act*, X of 1871, s. 5, cl. b, and sch. II, art. 153.—An

## APPEAL IN CRIMINAL CASES

—continued.

## 1. ACQUITTALS, APPEALS FROM—continued.

appeal by the Local Government under s. 272, Criminal Procedure Code, was within time if presented within six months from the date of acquittal. The sixty days' rule did not apply. *EMPRESS v. JYADULLA*. I. L. R., 2 Cal., 438

4. — Appeal by Local Government from judgment of acquittal—*Criminal Procedure Code (Act X of 1882), s. 417*.—Under the Code of Criminal Procedure (Act X of 1882), the Local Government have the same right of appeal against an acquittal as a person convicted has of

OF THE DEPUTY LEGAL REMEMBRANCE. *QUEEN-EMPRESS v. BIBHUTI BHUSAN MIT*

[I. L. R., 17 Cal., 485]

thereupon directed the Legal Remembrancer to appeal under s. 272 of the Code, and in pursuance

murder, the appeal lay. *EMPRESS v. JUDONATH GANGOOLY*. I. L. R., 2 Cal., 273

8. — Appeal upon facts from verdict of a jury—*Criminal Procedure Code (Act X of 1882), ss. 417, 418, 423*.—Under the provisions of Act X of 1882, no appeal at the instance of the Local Government lies from an order of acquittal in a case which has been tried by a jury, when the questions

[I. L. R., 10 Cal., 1029]

7. — Ground for setting aside acquittal on appeal—*Criminal Procedure Code, 1872, s. 272*.—It is not because a Judge or a Magistrate has taken a view of a case in which the Local Government does not coincide, and has acquitted

## APPEAL IN CRIMINAL CASES

—continued.

## 1. ACQUITTALS, APPEALS FROM—continued.

those instances in which the lower Court has so

that, as such judgment was an honest and not unreasonable one, of which the facts of the case were susceptible, such appeal should be dismissed. *EMPRESS OF INDIA v. GAYADIN*. I. L. R., 4 All., 148

*Per EDGE, C.J.*—In capital cases, where the Local Government appeals, under s. 417 of the Criminal Procedure Code, from an order of acquittal, it is,

on supposed analogies to other cases. *Queen-Empress v. Gayadin*, I. L. R., 4 All., 148, distinguished. *QUEEN-EMPRESS v. GONARDHAN*

[I. L. R., 9 All., 523]

## 9. — Criminal Pro-

may reasonably be arrived at upon the facts found. *Empress of India v. Gayadin*, I. L. R., 4 All., 148, referred to. *QUEEN-EMPRESS v. ROBINSON*

[I. L. R., 13 All., 212]

## 10. — Criminal Pro-

mination of a Judge who has had all the evidence taken before him, and has arrived at that determination with that great advantage in his favour. *Queen-Empress v. Gayadin*, I. L. R., 4 All., 148, and *Queen-Empress v. Gobardhan*, I. L. R., 9 All., 523, referred to. *QUEEN-EMPRESS v. PRAG DAY*

[I. L. R., 20 All., 459]

11. — Penal Code (Act XLV of 1860), ss. 96 et seq.—Right of private defence—Presumption—Pleadings.—Held that an



## APPEAL IN CRIMINAL CASES

—continued.

1. ACQUITTALS, APPEALS FROM—concluded.  
particular grounds of objection which are raised by Government against the acquittal complained of.  
*QUEEN-EMPRESS v. KARIGOWDA*

[I. L. R., 19 Bom., 51]

## 2. ACTS.

19. — Act XI of 1846—*Appeal to the High Court—Scheduled Districts Act (XIV of 1874)—Rule 44 of rules framed under s. 3 of Act XI of 1846—Agent to Governor in Khandesh District.*—The accused were convicted, under s. 201 of the Penal Code (Act XLV of 1860), of an offence committed in the village of Gulamba, in the Mehwas Estate of Nal, in the Khandesh District, and sentenced by the Agent to the Governor each to suffer rigorous imprisonment for five years. The Agent tried the case under the rules framed under Act XI of 1846. The accused appealed to the High

*Government Gazette for 1879, Part I, p. 115, or by the notification published in the Bombay Government Gazette for 1887, Part I, p. 19. QUEEN-EMPRESS v. SARYA* I. L. R., 16 Bom., 505

20. — Act XXXVII of 1855—Con-

21. — s. 4, cl. 1—

[I. L. R., 13 Cal., 536]

22. — Act II of 1864, s. 29—*Appeal from sentence of Political Resident*

Magistrate at Perum to be tried before the Political Resident at Aden. Having been found guilty and sentenced to death, he appealed to the High Court of Bombay. By the Aden Act II of 1864, s. 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the island of Perum.  
*QUEEN-EMPRESS v. MANGAL FRECHAND*

[I. L. R., 10 Bom., 268]

## APPEAL IN CRIMINAL CASES

—continued.

## 2. ACTS—continued.

23. — Act XIV of 1868, s. 11, Order of conviction under.—There is no appeal from a conviction under s. 11, Act XIV of 1868, for a registered prostitute neglecting to appear for examination. *IN RE MUKTA BIBEK*

[17 W. R., Cr., 11]

JIVAN USMAN

3 Bom., Cr., 12

under s. 16 of Act XXXV of 1850 (an Act for regulating the Bombay Ferries), to the Sessions Judge. Such appeal need not be preferred within eight days, under s. 14 of Regulation XIX of 1827. *REG. v. MALHARI LAUJI* 6 Bom., Cr., 45

26. — Burma Courts Act (XVII of 1875) s. 35—*Transfer of case from Sessions Judge—Criminal Procedure Code, 1872, s. 64—Power of Special Court at Rangoon—Burma Courts Act, XVII of 1875, s. 35.*—The Special Court of British Burma has power to entertain an appeal from a sentence of death or other sentence passed by the Judicial Commissioner, in a case transferred by him to his own Court from that of the Sessions Judge, under the powers conferred by s. 64 of the Code of Criminal Procedure and s. 35 of Act XVII of 1875 (the Burma Courts Act), the hearing subsequent to the transfer being an exercise of original jurisdiction on the part of the Judicial Commissioner. *EXPRESS v. TSIT OON* I. L. R., 4 Cal., 687

27. — Cattle Tresspass Act (I of 1871)—*Award of compensation under Cattle Tresspass Act, I of 1871, s. 22.*—No appeal lies from an award of compensation passed under s. 22, Act I of 1871. *IN RE GUNESH PERSHAD* 3 N. W., 200

28. — s. 23—*Appeal from an order awarding compensation for illegal*

*LAKHMA* I. L. R., 10 Bom., 230

*DHUKU v. DEONATH DER alias DINU*

[I. L. R., 15 Cal., 713]

*IN RE KHADAR KHAN* I. L. R., 11 Mad., 559

*QUEEN-EMPRESS v. LAKSHMI NARAYAN*

[I. L. R., 10 Mad., 238]

29. — Income Tax Act (IX of 1880), s. 25.—No appeal lay to a Sessions Judge from the order of a Magistrate fining a defaulter

## APPEAL IN CRIMINAL CASES

—continued.

## 2. ACTS—concluded.

under s. 25 of the Income Tax Act, IX of 1869.  
*QUEEN v. MUDHOOD DUTT* . 14 W. R., Cr., 71

30. ——— Police Act (V of 1861), Convictions under.—Convictions under the Police Act (V of 1861), are appealable like other convictions. When the appellants are convicted by an officer exercising the powers of a Magistrate and sentenced to imprisonment exceeding the limit prescribed by s. 411 of the Code of Criminal Procedure, the appeal lies to the Sessions Court. *QUEEN v. THAKOOR DOSS* [5 W. R., Cr., 22

31. ——— Presidency Magistrates Act (IV of 1877), s. 41.—Prosecution, Sanction of Judge to.—No appeal lay from the order of a Judge directing a prosecution under s. 41 of the Presidency Magistrates Act. IN THE MATTER OF THE PETITION OF JANAKY NATH ROY I. L. R., 3 Cal., 466

32. ——— s. 167.—Where a person has, on his own plea, been convicted on a trial held by a Presidency Magistrate, an appeal to the High Court on the ground that the conviction was illegal, and therefore also the sentence, does not lie according to the provisions of s. 167 of the Presidency Magistrates Act, No. IV of 1877, albeit that the Magistrate has sentenced the person to imprisonment for a term exceeding six months, or to a fine exceeding two hundred rupees. *EMPRESS v. JAFAR M. TALAB* . I. L. R., 5 Bom., 85

## 3. CRIMINAL PROCEDURE CODES, 1861, 1872, 1882, 1898.

33. ——— Effect of repeal of Act—*Criminal Procedure Code (Act X of 1872)*, s. 36—*Act X of 1882*, s. 408.—On the 9th of December 1882, a person was convicted under ss. 457 and 109 of the Indian Penal Code, and sentenced to three years' rigorous imprisonment by a Deputy Magistrate in Assam, exercising special powers under s. 36 of the old Code of Criminal Procedure (Act X of 1872). The new Code of Criminal Procedure came into force on the 1st of January 1883. The prisoner presented an appeal to the High Court from the conviction and sentence above mentioned on the 23rd of January 1883. Held by FIELD, J. (MITTER, J., expressing no decided opinion), that the case was governed by s. 408 of the new Code of Criminal Procedure, and that no appeal lay to the High Court. *RONGAI v. THE EMPRESS* . I. L. R., 9 Cal., 513 [12 C. L. R., 500

34. ——— Order of Deputy Commissioner—*Criminal Procedure Code, 1872*, s. 36 and s. 270.—Omission to get sanction of Sessions Judge.—Where a Deputy Commissioner's order required, under Act X of 1872, s. 36, the sanction of the Sessions Judge, the High Court had no jurisdiction to entertain an appeal from it until so sanctioned. *QUEEN v. SHAM SOONDER DASS* 25 W. R., Cr., 18

35. ——— Conviction by Deputy Commissioner under Criminal Procedure Code, 1872, s. 36.—*Quære*—Whether, where a

## APPEAL IN CRIMINAL CASES

—continued.

## 3. CRIMINAL PROCEDURE CODES, 1861, 1872, 1882, 1898—continued.

person had been convicted by a Deputy Commissioner invested under s. 36 of Act X of 1872, and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to which such Deputy Commissioner was subordinate, and such sentence had been confirmed accordingly, an appeal lay to the High Court against such conviction and sentence. *EMPRESS OF INDIA v. NADUA*

[I. L. R., 2 All., 53]

36. ——— Order sanctioning entertainment of complaint—*Case under ss. 468, 469, Criminal Procedure Code, 1872*.—No appeal lay to the District Judge from an order of a subordinate Court according sanction to the entertainment of a complaint in cases in which such sanction was required by ss. 468 and 469 of Act X of 1872. IN THE MATTER OF THE PETITION OF BULWUNT RAI 6 N. W., 124

37. ——— Order sanctioning prosecution—*Criminal Procedure Code, s. 195*—*Revision*.—No appeal lies from an order granting or refusing to grant sanction to prosecute under s. 195 of the Criminal Procedure Code. The proceeding under s. 195 of the Code of Criminal Procedure, by which such an order may be set aside, is a proceeding in revision, and not by way of appeal. *MEHDI HASAN v. TORA RAM* . I. L. R., 15 All., 61

See *QUEEN-EMPRESS v. GANESH RAMKRISHNA*

[I. L. R., 23 Bom., 50]

38. ——— Sentence by officer in Non-Regulation District—*Criminal Procedure Code, 1869*, ss. 445A, 445C.—An appeal from a sentence passed by an officer in a Non-Regulation district invested with the powers mentioned in s. 445A, Act VIII of 1869, lay under s. 445C to the High Court only. *QUEEN v. LUSTRO SINGH*

[14 W. R., Cr., 18]

39. ——— Trial held by officer with special powers—*Criminal Procedure Code (Act VIII of 1869)*, ss. 445A and 445C.—*Deputy Commissioner—Act X of 1872*, ss. 36 and 270.—The right of appeal to the High Court given by s. 445C of the Criminal Procedure Code to persons convicted on a trial held by an officer invested with the power described in s. 445A was confined to cases in which the officer has exercised that power. *QUEEN v. DHONA BHOOYA* . 5 B. L. R., F. B., 658

[14 W. R., Cr., 33]

40. ——— Right of appeal to the High Court by a person other than a European British subject jointly tried with such subject—*Criminal Procedure Code, 1882*, ss. 404, 452.—A person, not being a European British subject, who is tried before a District Magistrate jointly with a European British subject, cannot claim, under s. 452 of the Code of Criminal Procedure (Act X of 1882), the right of appeal to the High Court which is exclusively reserved to such European British subject. IN RE SOLOMON . I. L. R., 14 Bom., 160

## APPEAL IN CRIMINAL CASES

—continued.

3. CRIMINAL PROCEDURE CODES, 1861,  
1872, 1882, 1898—continued.

41. ——— Illegal conviction.—*Appeal on the merits.*—No appeal upon the merits can be entertained from a conviction which was based on no legal evidence, and which was absolutely bad in law. *Queen v. Mohesh Chunder Chuttopadhy, 2 W. R., Cr., 13*, distinguished. *QUEEN v. POORNO CHUNDER DOSA*, 8 W. R., Cr., 59

42. ——— Order for additional evidence under direct evidence was not thereby given. *REG. v. NANTANRAM UTTAMRAM*, 8 Bom., Cr., 64

43. ——— Order for additional evidence

on the merits of the case under s. 403, Act XXV of 1861.—*Held* no appeal lay to the High Court on the merits. IN THE MATTER OF THE PETITION OF DHANOBAR GHOSH, 6 B. L. R., 483

[15 W. R., Cr., 33]

Assistant Magistrate. *Held* that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) was in substance an original judgment, and that under s. 403 an appeal lay from it to the High Court upon the merits. *QUEEN v. MOHESH CHUNDER CHUTTOPADHYA*, 3 W. R., Cr., 13

45. ——— Taking of additional evidence by Appellate Court.—*Dismissal of Appeal*—*Accused's right of appeal from such dismissal*—*Code of Criminal Procedure (Act V of 1898)*, s. 429.—Where an Appellate Court has, under s. 423 of the Code of Criminal Procedure, taken additional evidence, the accused whose appeal has been dismissed by such Court has no right of appeal to the High Court. *QUEEN-EMPRESS v. ISAHAK*, [I. L. R., 37 Calc., 373]

4 C. W. N., 497

## APPEAL IN CRIMINAL CASES

—continued.

3. CRIMINAL PROCEDURE CODES, 1861,  
1872, 1882, 1898—continued.

46. ——— Order for fine and im-

not to cases in which both punishments are awarded by one sentence. In the latter case, therefore, there was a right of appeal. *ANONYMOUS CASE*, [1 N. W., Ed. 1873, 303]

[16 W. R., Cr., 66]

48. ——— Order of Sessions Judge fining assessor under Criminal Procedure Code, 1861, s. 354.—The order of a Sessions Judge under s. 354 of the Code of Criminal Procedure fining an assessor was not appealable. IN THE MATTER OF THE PETITION OF GOOR DREUN DASS, [8 W. R., Cr., 83]

49. ——— Order of Sessions Court for detention on refusal to give security.—*Criminal Procedure Code, 1872, s. 508*—No appeal

50. ——— Order for detention on refusal to give security for good behaviour

on reference by the Magistrate confirmed by the Sessions Judge under the same section, requiring a person to be detained in prison until he should provide security for his good behaviour. *CHAND KHAN v. THE EMPRESS*, I. L. R., 9 Calc., 878

51. ——— Order requiring security for good behaviour.—*Criminal Procedure Code, 1872, ss. 267 and 286, illus. (d).*—Under ss. 267 and 286, illus. (d), Act X of 1872, there was no appeal to the High Court from an order passed by a Magistrate of the district requiring a person to give security for good behaviour. *QUEEN v. NEUTAM*, [23 W. R., 68]

52. ——— Decision of Bench of Magistrates.—*Summary Procedure*—*Criminal Procedure Code (Act X of 1872)*, chap. XVIII.—No appeal lay to a District Magistrate from the decision of a Bench of Magistrates composed of an Assistant Magistrate with second class powers and two or more Honorary Magistrates, in a case tried under chap. XVIII of the Criminal Procedure Code, 1872. Is

# APPEAL IN CRIMINAL CASES

—continued.  
3. CRIMINAL PROCEDURE CODES, 1861,  
1872, 1882, 1898—continued.

THE MATTER OF THE PETITION OF HAVILDAR ROY.  
HAVILDAR ROY v. JAGU MEAN  
[I. L. R., 9 Calc., 98: 11 C. L. R., 423

53. — Decision of Bench of Magistrates with second class powers—*Contic.*  
*tion.*—An appeal lies under s. 407 of the Code of Criminal Procedure from a conviction by a Bench of Magistrates invested with second or third class powers. *QUEEN-EMPRESS v. NARAYANASAMI*  
[I. L. R., 9 Mad., 38

54. — Order for maintenance of illegitimate child—*Criminal Procedure Code, 1861, s. 316.*—*Held* (MAREBY, J., dissenting) that no appeal lay from the order of a Magistrate under s. 316 of Act XXV of 1861, directing a man to pay a monthly allowance for the support of his illegitimate child. *QUEEN v. GOLAM HOSSEIN CHOWDHURY*  
[2 Ind. Jur., N. S., 88: 7 W. R., Cr., 10

55. — Order for recognizance to keep peace—*Criminal Procedure Code, 1861, ss. 209, 250, 424.*—There was no appeal to the Sessions Court from an order made by a Magistrate under s. 409 of the Criminal Procedure Code, 1861, requiring a penal recognizance to keep the peace under s. 280. The Court of Session may, however, in such a case, under s. 434 of the Code, call for and examine the record of the Court below; and if it shall be of opinion that the order of the Magistrate is contrary to law, refer the proceedings for the orders of the High Court. *REG. v. BHASKAR K. KHARKAR*  
[3 Bom., Cr., 1

56. — Order of Magistrate levying penalty for forfeiture of recognizances to keep the peace—*Criminal Procedure Code, 1872, s. 502.*—A first class Deputy Magistrate decided that a bond for keeping the peace had been forfeited, and, proceeding under s. 502 of the Criminal Procedure Code, levied the penalty. An appeal was entered from this order by the Sessions Judge of South Arcot, and the order was reversed. A petition was then presented, under s. 294 of the Criminal Procedure Code, praying the High Court to reverse the order of the Sessions Judge. *Held* that the order of the first class Deputy Magistrate was not open to appeal. The effect of the penultimate clause of s. 502 considered. *ANANTHACHARI v. ANANTHACHARI*  
[I. L. R., 2 Mad., 169

57. — Order dismissing complaint—*Appeal by prosecutor from order of dismissal.*—In a case of dismissal of complaint by a Deputy Magistrate it was held that a prosecutor had no right of appeal, but ought to have moved the Magistrate to procure, under s. 434 of the Code of Criminal Procedure, a reversal by the High Court of the order of dismissal. *LYALL & Co. v. SAM MUNDIE*  
W. R., 1884, Cr., 23

58. — Order of Magistrate refusing to recall witness for prosecution.—No appeal lies to the Sessions Court from the order of the

# APPEAL IN CRIMINAL CASES

—continued.

3. CRIMINAL PROCEDURE CODES, 1861,  
1872, 1882, 1898—continued.

Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross-examination. IN THE MATTER OF THE PETITION OF BELLIOS.  
BELLIOS v. QUEEN . . . 19 W. R., Cr., 53

59. — Order of Sessions Judge imposing fine on witness under s. 228, Penal Code—*Insult to Judge.*—An appeal lay against an order of the Sessions Court imposing a fine upon a witness under s. 228 of the Penal Code for intentional insult to the Sessions Judge sitting in a stage of a judicial proceeding. Where the High Court on appeal were satisfied that the witness did not intend to insult the Judge, the order was set aside. *QUEEN v. CHAPPU MEXON* . . . 4 Mad., 148

60. — Order for imprisonment—*Consolidation of separate sentences—Criminal Procedure Code (Act XXV of 1861), s. 411 (Act X of 1872, s. 273).*—A was convicted of offences under ss. 143, 447, and 211 of the Penal Code, and sentenced by the Magistrate to one month's imprisonment for each offence. *Held* that, under s. 411 of Act XXV of 1861, there was no appeal. The separate sentences could not be taken together and combined into one sentence, so as to give a right of appeal. *QUEEN v. NAGARDI PARAMANIK*  
[I. B. L. R., A. Cr., 3: 10 W. R., Cr., 3

*QUEEN v. MORLY SHEIKH* . . . 6 W. R., Cr., 51

61. — Sentence of fine and imprisonment—*Criminal Procedure Code, 1861, s. 411.*—*Held* that no appeal lay where the sentence of imprisonment, and of further imprisonment in default of payment of a fine, does not in the aggregate exceed the term of one month. *REG. v. SHANKAR VENKAJI* . . . 3 Bom., Cr., 15

62. — Appeal from sentence of Presidency Magistrate—*Criminal Procedure Code (Act X of 1882), s. 411.*—No appeal lies from a sentence of six months' rigorous imprisonment and a fine of Rs 200 or a further period of three months' simple imprisonment passed by a Presidency Magistrate. *SCHIEIN v. THE QUEEN-EMPRESS*  
[I. L. R., 16 Calc., 799

63. — *Criminal Procedure Code (1882), s. 411—Appeal from a conviction by a Presidency Magistrate—Sentence.*—S. 411 of the Code of Criminal Procedure (Act X of 1882) does not allow an appeal in the case of a conviction by a Presidency Magistrate where the sentence inflicted is six months' rigorous imprisonment and a fine of Rs 125, or in default a further period of three months' rigorous imprisonment. *Schein v. Queen-Empress*  
I. L. R., 16 Calc., 799, followed. *QUEEN-EMPRESS v. HARI SAVBA* . . . I. L. R., 20 Bom., 145

64. — Appealable sentence—Costs of complaint in Criminal Court, order on accused to pay—*Criminal Procedure Code, s. 413—Fine—Court Fees Act (VII of 1870), s. 31.*—An

## APPEAL IN CRIMINAL CASES

—continued.

3. CRIMINAL PROCEDURE CODES, 1861,  
1872, 1882, 1898—continued.

order passed by a Magistrate under s. 31 of the Court Fees Act, directing an accused person to pay to the complainant the Court-fee paid on the petition of complaint, is no part of the sentence so as to make it a sentence of fine within the terms of s. 413 of the Code of Criminal Procedure, and an order, therefore, sentencing an accused person to 14 days' rigorous imprisonment and to pay the costs, is not appealable. *MADAN MANDUL v. HARAN GHOSH*

[L. L. R., 20 Calc., 687]

[L. L. R., 25 Calc., 630  
3 C. W. N., 225]

86. ——— Order for punishment for separate offences—*Criminal Procedure Code, 1872, s. 273*—*Addition of sentences*.—Where a person is charged with two separate offences in one trial, the amount of the whole punishment awarded for the two offences must be regarded as one sentence for the purpose of determining whether an appeal lies, under s. 273 of the Code of Criminal Procedure or not. *IN THE MATTER OF THE EMPRESS v. HARADHAN TAMULI*  
[3 C. L. R., 511]

87. ——— Cases tried together of which some are appealable and some not—*Criminal Procedure Code, 1861, s. 411*.—Where several persons were tried together and convicted under s. 147 of the Penal Code of rioting, and two of them were sentenced to pay each a fine of Rs50, or in default of payment to undergo rigorous imprisonment.

in the cases of those who had been more severely sentenced, and the High Court annulled the order of the Sessions Judge passed with reference to those of the accused who had been only fined Rs50, and restored the original sentences passed upon them. *REG. v. KALUNHAI MECHANNAI* . 7 Bom., Cr., 35

88. ——— Transfer of territory from one Presidency to another, Effect of, on right of appeal—*Criminal Procedure Code, 1861,*

## APPEAL IN CRIMINAL CASES

—continued.

3. CRIMINAL PROCEDURE CODES, 1861,  
1872, 1882, 1898—concluded.

s. 409—24 & 25 Vict., c. 104—*Letters Patent, 1862, cl. 26*—*Bom. Reg. II of 1827, s. 16, cl. 2*.—*Held* that there was nothing in the manner in which the

Code, and of 24 & 25 Vict., c. 104, and the Letters Patent (1862), cl. 26. Giving an appeal to the High Court from a district is not subjecting that district to the Regulations within the meaning of Regulation II of 1827 (Bom.), s. 16, cl. 2. *REG. v. VYANKATARAM* . 2 Bom., 112, 2nd Ed., 109

## 4. PRACTICE AND PROCEDURE.

70. ——— Computation of time for

[6 Mad., 349]

71. ——— Right to appear by mock-tear—*Criminal Procedure Code, Act X of 1872, s. 278*.—An appellant in a criminal case has a right to appear and be heard by a mock-tear. *EMPRESS v. SHIVRAM GUNDO* . I. L. R., 6 Bom., 14

72. ——— Presentation of petition of appeal.—A petition of appeal in a criminal case may be presented to the Appellate Court by any person authorized by the appellant to present it. *IN THE MATTER OF SUBBA AITALA*

[I. L. R., 1 Mad., 304]

box kept for the convenience of parties within the Court precincts and intended for the deposit of papers for the Court,—*Held* that it had not been presentational, and was rightly returned for legal presentation. *QUEEN-EMPRESS v. VASUDEVIYAR*

[I. L. R., 19 Mad., 354]

## APPEAL IN CRIMINAL CASES

—continued.

## 4. PRACTICE AND PROCEDURE—continued.

74. ——— Presentation of appeal petition by the clerk of the appellant's pleader—*Criminal Procedure Code (1872), s. 419.*—Presentation of an appeal petition by the clerk of the appellant's pleader is equivalent to a presentation by the pleader himself when it is signed by him and he is duly authorized. *QUEEN-EXPRESS v. KAREPPA UDAYAN*. I. L. R., 20 Mad., 87

75. ——— *Criminal Procedure Code (Act X of 1872), s. 419.*—Presentation of criminal appeal.—A petition of appeal under the Criminal Procedure Code is not duly presented when, having been signed by a pleader, it is handed in by a person who is not his clerk and over whose conduct and actions he has no control. *QUEEN-EXPRESS v. RAMASAMI*. I. L. R., 21 Mad., 114

76. ——— *Criminal Procedure Code, s. 419.*—Petition of appeal, Presentation of.—A petition of appeal sent by post is not presented to the Court within the meaning of Criminal Procedure Code, s. 419. *QUEEN-EXPRESS v. ANLAPPA* [I. L. R., 15 Mad., 137

77. ——— Notice of appeal—*Criminal Procedure Code, 1872, ss. 278, 279.*—Pleader, Notice to.—The fact that the pleader of the accused is present in Court when an order is made admitting an appeal does not relieve the Court from the necessity of giving notice to the appellant of the day fixed for the hearing of the appeal. *IN THE MATTER OF GORAL CHUNDER MESBIE*. 10 C. L. R., 67

78. ——— Power of Appellate Court to dispose of appeal in absence of the appellant—*Criminal Procedure Code, ss. 420, 421, 422, and 423.*—Appeal preferred by appellant in jail.—Where an appeal, preferred under s. 420 of the Criminal Procedure Code, has been admitted by the Appellate Court, and notice has been properly given under s. 422, and the record of the case has been sent for and perused under s. 423, the Appellate Court is competent, under the last-mentioned section, to dispose of the appeal, though the appellant is not present and is not represented by a pleader. The only limitation placed by s. 423 on the powers of the Appellate Court is that the Court, before disposing of the appeal, must peruse the record, and, if the appellant is present or is represented by a pleader, the appellant in person must be heard, or the pleader must be heard. So held by the Full Bench (MAHMOOD, J., dissenting). Held by MAHMOOD, J., contra, that the principles of *audi alteram partem* and *ubi jus ibi remedium*, and the provisions of s. 422 of the Code, as to notice of appeal, imply that, where an appeal is admitted and not summarily rejected under s. 421, the appellant must have a real opportunity of being heard; that in the passage in s. 423, "after perusing the record and hearing the appellant or his pleader if he appears," the word "he" refers to the pleader, and must not be read as "either of them"; that, in any case, the words "if he appears" make it a condition precedent to the disposal of an appeal

## APPEAL IN CRIMINAL CASES

—continued.

## 4. PRACTICE AND PROCEDURE—continued.

under the section that the appellant is heard, or at least has the choice of appearing; that the word "appears" refers to the personal appearance of the appellant; and that an appeal which has been admitted cannot be disposed of unless the appellant is before the Appellate Court, or can be heard within the meaning of s. 423. *Scoble, per MAHMOOD, J.*, but the High Court in appeal is competent to send for a criminal to appear before it to explain a difficulty in his case. *QUEEN-EXPRESS v. POUPI*. I. L. R., 13 All., 171

79. ——— Duty of Court to fix date of hearing—*Criminal Procedure Code, 1872, s. 278.*—A general notice posted in a Sessions Court-house that appeals will be heard for admission only on the first Court-day after the date of presentation of the appeal is not a compliance with the requirement of s. 278 of the Code of Criminal Procedure, viz., that a reasonable time shall be fixed within which the appellant, his counsel or agent, may appear and be heard in support of the appeal. *MALAN v. THE QUEEN*. I. L. R., 5 Mad., 11

80. ——— Rejection of appeal for non-appearance—*Criminal Procedure Code, 1872, s. 278.*—When a criminal appeal has been rejected without hearing the appellant's pleader, and it is afterwards proved to the satisfaction of the Appellate Court that an adequate excuse has been made for the pleader's non-appearance, it is open to the Appellate Court to re-hear the appeal on its merits. *ANONYMOUS*. 7 Mad., Ap., 29

81. ——— Omission to fix time for hearing—*Criminal Procedure Code, 1872, s. 278.*—When the Appellate Court did not fix a reasonable time for the appearance of the appellant or his counsel as required by s. 278, Act X of 1872, the error was held to invalidate the proceedings. *IN THE MATTER OF THE PETITION OF HUKI PERSHAD* [24 W. R., Cr., 60

82. ——— Power of Court on appeal—*Stolen property—Criminal Procedure Code, ss. 517, 520.*—An order passed under s. 517 of the Code of Criminal Procedure may be revised by a Court of Appeal, although no appeal has been preferred in the case in which such order was passed. *QUEEN-EXPRESS v. AHMED*

[I. L. R., 9 Mad., 448

83. ——— Powers of Appellate Court to alter finding of Court of first instance—*Criminal Procedure Code, s. 423.*—Where the Court of Session had tried, convicted, and sentenced an accused person under s. 409 of the Penal Code, and the High Court was of opinion that the conviction was not sustainable under that section, the Court refused to alter the finding, under s. 423 of the Criminal Procedure Code, to a conviction for some other offence for which the accused had not been charged or tried. *QUEEN-EXPRESS v. IMDAD KHAN* [I. L. R., 8 All., 120

84. ——— Alteration of conviction on appeal.—When on appeal against a

## APPEAL IN CRIMINAL CASES

—continued.

## 4. PRACTICE AND PROCEDURE—continued.

with a view to altering the conviction of the appellants. *Queen-Empress v. Parbati, Weekly Notes, 1887, p. 130*, referred to. *QUEEN-EMPRESS v. YUSUF* [1 L. R., 20 All., 107]

85. ——— Power of single Judge on Appellate Side—*Rule 30, Jan. 1865*.—A Judge of the High Court, sitting alone on the Appellate Side, has the power to hear and dispose of appeals in criminal cases. *QUEEN v. CHANDRA JUGI* [9 B. L. R., 8 : 17 W. R., Cr., 47]

86. ——— Power to hear appeals—

ing of s. 14 of the Criminal Procedure Code, the Magistrate of the district, may hear appeals from subordinate Magistrates under s. 412 of the Code. *REG. v. BHAI SHANKAR HARIBAM* 3 Bom., Cr., 18

87. ——— Concurrent jurisdiction of Magistrate.—Held that the power conferred upon the Magistrate, F.P., at Broach to hear appeals did not exclude the jurisdiction which the Magistrate of the district had by law, and that the proceedings in any case in which a prisoner has appealed from the decision of a subordinate Magistrate to the District Magistrate must be forwarded to the latter. *REG. v. UMTHA RAGNATH*

[5 Bom., Cr., 8]

88. ——— Powers of Appellate Court in disposing of appeal—Appellant bound to show ground for interference—*Criminal Procedure Code, ss. 421, 423*.—A convicted person appealing is not in the same position before the Appellate Court as he is before the Court trying him: he must satisfy the Appellate Court that there is sufficient ground for interfering with the order of conviction; and if no such ground is shown, it is the duty of the Appellate Court not to interfere. *EMPRESS v. SAJJWAN JAL* [1 L. R., 5 All., 388]

89. ——— Powers of Appellate Court

owing to misdirection by the Judge, the Appellate Court has no option but to set aside the verdict and direct a re-trial. Were the Appellate Court to go into the facts in such a case, it would be substituting the decision of the Judges of that Court for the

## APPEAL IN CRIMINAL CASES.

—continued.

## 4. PRACTICE AND PROCEDURE—continued.

verdict of the jury, who have the opportunity of seeing the demeanour of the witnesses and weighing the evidence with the assistance which this affords, whereas the Judges of the Appellate Court can only arrive at a decision on the perusal of the evidence. *Makin v. Attorney-General of New South Wales, L. R. (1894) A. C., 57*, referred to. S. 537 of the Code of Criminal Procedure does not warrant an Appellate Court, in a case where there has been misdirection in a charge to a jury, going into the evidence with a view to decide whether there is sufficient evidence to justify a conviction. Under s. 418, an appeal in a case tried by a jury lies on matters of law only, and the Appellate Court has no power to try the accused on matters of fact. The word "erroneous" in cl. (d) of s. 423 must not be read as "wrong on the facts," but must be read in connection with the words that follow as meaning that the verdict has been vitiated and rendered bad or defective by reason of a misdirection or a misunderstanding of the law. *WAYADAR KHAN v. QUEEN-EMPRESS* [1 L. R., 21 Cal., 955]

90. ——— Power of the Appellate Court to alter a finding of acquittal into one of conviction—*Criminal Procedure Code (1892), s. 423*.—The Appellate Court can, under the provisions of s. 423 of the Criminal Procedure Code, in an appeal from a conviction, alter the finding of the lower Court and find the appellant guilty of an offence of which he was acquitted by that Court. *QUEEN-EMPRESS v. JANABULLA*

[1 L. R., 23 Cal., 975]

in default two months' simple imprisonment to a sentence of six months' rigorous imprisonment was an enhancement of the sentence, and, as such, prohibited

*QUEEN-EMPRESS v. DARSANG DADA*

[1 L. R., 18 Bom., 761]

92. ——— Criminal Pro-

ing under s. 147, and theft under s. 379, of the Penal Code, and sentenced to four months for the first and two months for the latter offence, but on appeal the District Magistrate, considering the case to be one of theft rather than rioting, abandoned the sentence under s. 147, but upheld the conviction under s. 379, of the Penal Code, and sentenced them to six months' rigorous imprisonment.—Held that what the District Magistrate had in effect done was to enhance the sentence under s. 379 of the Penal Code, which he had no

# APPEAL IN CRIMINAL CASES

—continued.

4. PRACTICE AND PROCEDURE.—continued.  
power to do under s. 423, cl. (b), sub-s. (3), of the Code of Criminal Procedure. *RAMZAN KUNJRA v. RAM-KHILAWAN CHOWDE*. I. L. R., 24 Calc., 318

*ARPIN SHEIK v. ARODDI DATIA*  
[I. L. R., 24 Calc., 317 note]

93. ——— Criminal Procedure Code (1892), s. 423.—Conviction and sentence on two separate charges—Retention of sentence where conviction on one of the charges is reversed.—Where an accused person is convicted and sentenced on two separate charges, the Appellate Court has no power, in appeal, to maintain the whole sentence when it reverses the conviction on one of the charges, as to do so is in effect to enhance the sentence.  
*QUEEN-EMPRESS v. HANMA*  
[I. L. R., 23 Bom., 780]

94. ——— Power of Appellate Court to order a re-trial.—*Criminal Procedure Code (V of 1893)*, s. 423, cl. (b).—A conviction and sentence under s. 211 of the Penal Code by a Magistrate having jurisdiction to try the case was on appeal set aside, and a new trial under the same section was directed by the Sessions Judge. It was contended that the power to order a new trial under s. 423, cl. (b), of the Criminal Procedure Code could only be exercised when the conviction and sentence were set aside for want of jurisdiction in the trying Magistrate. Held that there is nothing in s. 423, cl. (b), of the Code to limit the power of an Appellate Court to order a re-trial. *Queen-Emress v. Maula Buksh, I. L. R., 15 All., 205*, and *Queen-Emress v. Jabanulla, I. L. R., 23 Calc., 975*, followed. *Queen-Emress v. Sukka, I. L. R., 8 All., 11*, disapproved of. *SATIS CHANDRA DAS BOSE v. QUEEN-EMPRESS*  
I. L. R., 27 Calc., 172  
[4 C. W. N., 166]

95. ——— Appellate Court, Duty of.—*Presumption*.—Per WHITE, J.—The sound rule to apply in trying a criminal appeal where questions of fact are in issue is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. In the latter case the Court must be convinced before reversing a finding of fact by a lower Court that the finding is wrong. *PROTAP CHUNDER MUKERJEE v. EMPRESS*. [1 C. L. R., 25]

96. ——— Duty of Appellate Court trying criminal appeal.—If the Judge of the Appellate Court has any doubt that the conviction is a right one, whatever the original Court has done, the Judge of the Appellate Court should discharge the accused. In this respect the duty of an Appellate Court in criminal cases is not similar to that of an Appellate Court in civil cases. In the latter case the Court must be satisfied before setting aside an order of the lower Court that the order is wrong. *Protap Chunder Mukerjee v. Empress, 11 C. L. R., 25*, followed. *MILAN KHAN v. SAGAI BEFARI*. I. L. R., 23 Calc., 347

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4. PRACTICE AND PROCEDURE.—continued.

97. ——— Evidence not given in lower Court.—Opinion of Judge as to credibility of witnesses.—The High Court declined on appeal to receive evidence which was available on the trial below when the prisoner deliberately elected not to give evidence in reply to the case made against him. Per MAJIKBY, J.—It is not the duty of the High Court in appeal to try a prisoner *de novo* upon the recorded depositions. The Court is bound, in forming its conclusions as to the credibility of the witnesses, to attach great weight to the opinion which the Judge who heard them has expressed upon that matter. *QUEEN v. MADHUN CHUNDER GUPTA*  
[21 W. R., Cr., 13]

98. ——— Jurisdiction of High Court to dispose of cases after holding jury have been misdirected.—*Criminal Procedure Code (Act V of 1893)*, ss. 298, 299, 423.—*Re-trial*.—*Quare*—Whether in setting aside a conviction on the ground of misdirection to the jury, the High Court has any power to re-try the case having regard to s. 423, Criminal Procedure Code. *SADHU SHEKHAR v. EMPRESS*. 4 C. W. N., 576

99. ——— Appeals from conviction on trials by jury.—Appeals from convictions on trials by jury, where illegal evidence has been admitted, should be dealt with on the same principles as appeals in which there has been a misdirection by the Judge, or an omission on his part to give the jury proper directions. *REG. v. RAMASWAMI MUDALIAR*. 6 Bom., Cr., 47

100. ——— Improper admission of evidence.—*Discharge of prisoner on appeal*.—Conviction set aside.—Where the High Court on appeal found the evidence against a prisoner insufficient to support the conviction, and would, if the case had been before them on the facts, have reversed the conviction if the case had been tried without a jury, they ordered the verdict to be set aside, and the prisoner to be discharged, though where a verdict is set aside on appeal they can order a new trial. *QUEEN v. MAHIMA CHANDRA DAS*  
[6 B. L. R., Ap., 108: 15 W. R., Cr., 37]

101. ——— Evidence.—*Procedure on appeal*.—Evidence taken before the Magistrate, but not used at the trial, cannot be referred to on appeal. *QUEEN v. WAZIRAH*  
[8 B. L. R., Ap., 63: 17 W. R., Cr., 5]

102. ——— Right of complainant to be heard as respondent on appeal.—In criminal cases a complainant cannot claim as of right to be heard as a respondent in appeal. The matter is in each case in the discretion of the Court. *ANONYMOUS*. 7 Mad., Ap., 42

103. ——— Difference of opinion between Judges of Division Bench.—*Letters Patent, cl. 36*.—*Criminal Procedure Code (Act XXV of 1861)*, s. 420.—When a criminal appeal is heard by two Judges, sitting as a Division Court, and they differ in opinion, the opinion of the senior Judge must prevail under s. 36 of the Letters Patent of the

## APPEAL IN CRIMINAL CASES

—continued.

## 4. PRACTICE AND PROCEDURE—continued.

High Court of 1865, notwithstanding s. 420 of the Criminal Procedure Code. *QUEEN v. KAZIM THAKOOR*. 2 B. L. R., F. R., 25; 10 W. R., Cr., 45

104. — Alteration of charge and conviction of graver offence.—It is not com-

DWARAKA MANJHEE . . . 6 C. L. R., 427

be stayed until the appeal shall have been heard and determined. IN THE MATTER OF THE PETITION OF RAMPRASAD HAZRA . . . B. L. R., Sup. Vol., 428

RAM PRASAD HAZRA v. SOOMATHIA DADA . . . 15 W. R., MIs., 24

appeal, or continue and prosecute an appeal already lodged. (*KEMBALL, J.*, dissenting).—The appeal lodged by a convict abates on his death. The High Court, nevertheless, may call for and examine the record of the case with a view to revision and rectification, and may make such order thereon as it may consider just. *EMPRASS v. DONGALI ANDALI*

[I. L. R., 3 Bom., 564]

of the deceased *N* applied to the High Court to set aside the conviction and sentence passed in his case and order the fine to be refunded. *Held* that on *N*'s death his appeal abated under s. 431 of the Code of Criminal Procedure (Act X of 1832). As the case turned on the appreciation of evidence, the High Court declined to interfere in the exercise of its revisional jurisdiction, referring the legal representatives of the deceased to the Governor in Council for redress. *IN RE NADISHAN* . . . I. L. R., 19 Bom., 714

109. — Rejection of appeal.—*Criminal Procedure Code, 1872, s. 278—Act XI of 1874, s. 26.*—When the Appellate Court rejects an appeal under Act X of 1872, s. 278, it is prohibited by Act

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—concluded.

## 4. PRACTICE AND PROCEDURE—concluded.

XI of 1874, s. 26, from enhancing the sentence. *AKOOL SIRCAR v. PARTAMA* . . . 24 W. R., Cr., 29

109. — Right to withdraw appeal.—A petition of appeal presented for admission may be withdrawn. IN THE MATTER OF CHUNDER NATH DEB . . . 5 C. L. R., 372

110. — *Quare*—Whether a petition of appeal against a conviction can be withdrawn after the Appellate Court has perused the evidence. IN THE MATTER OF DWARAKA MANJHEE . . . 6 C. L. R., 427

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## 1. CASES IN WHICH APPEAL LIES OR NOT.

## (a) APPEALABLE ORDERS.

1. — Order of High Court dismissing *Munsif—Beng. Reg. V of 1831, s. 26, cl. 2.*—An order of the High Court at Calcutta, under s. 26, cl. 2, of Bengal Regulation V of 1831, dismissing a *Munsif* for corruption in the exercise of his functions as Judge, is final, and there is no jurisdiction in the Judicial Committee to admit a special appeal therefrom. IN THE MATTER OF SHER MOHET GURUTUCK . . . 13 Moore's I. A., 343

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### 1. CASES IN WHICH APPEAL LIES OR NOT —continued.

2. ———— Decision as to admissibility of special appeal—*Act III of 1843*.—By Act III of 1843, the decision of a single Judge of the Sudder Court of Bombay as to the admissibility of a special appeal was final so far as the Sudder Court was concerned; but the Act did not extend to take away the right of appeal to the Privy Council. *MOORE KAIKHOOSROW HORMUZJEE v. COOVERBAEE*

[4 W. R., P. C., 94: 6 Moore's L. A., 448]

3. ———— Award under Act XVIII of 1848—*Administration of private estate of Nawab of Surat—Statutes 7 & 8 Vict., c. 69; 3 & 4 Will. IV, c. 41*.—An Act of the Legislature of India—(XVIII of 1848)—empowered the Governor in Council of Bombay to administer the private estate of the late Nawab of Surat, and it was by s. 2 enacted "that no Act of the said Governor of Bombay in Council in respect of the administration to, and distribution of, such property, from the date of the death of the said Nawab, should be liable to be questioned in any Court of law or equity." No provision was made for an appeal from the Governor's decision. In pursuance of the power conferred by this Act, the Government agent at Surat, to whom the matter was referred, made an award distributing the estate in certain shares among the heirs of the deceased, which award was confirmed by the Governor in Council. On an application by a claimant dissatisfied with the award to the Judicial Committee, for leave to appeal from the Governor in Council's confirmation of the award,—*Held* that the award was not such a judicial act as to come within the operation of s. 3 of the Statute 3 & 4 Will. IV, c. 41, or the 7 & 8 Vict., c. 69, and could not be entertained by the Judicial Committee without a special reference to them by the Crown under s. 4 of the Statute 3 & 4 Will. IV, c. 41. *IN RE NAWAB OF SURAT* . 5 Moore's L. A., 499

4. ———— Order under Act XL of 1858.—An Appeal from an order under Act XL of 1858, appointing a person to be guardian of a minor and manager of his property, bears no value and cannot be carried to Her Majesty in Council. *PEAREE DAYE v. HURBUNS KOER* . 14 W. R., 299

5. ———— Order rejecting application for review.—An appeal lies to the Privy Council, under s. 39 of the Charter of the High Court, from an order rejecting an application for a review of judgment. The petition of appeal must be presented within six months from the date of the said order. *NAZUR ALI KHAN v. OJODHYABAM KHAN*

[1 W. R., Mis., 13]

*AMEERONISSA BEGUM v. INDERJEET KOONWAR*

[5 W. R., Mis., 17]

6. ———— Order confirming sale in execution—*Order made on appeal—Letters Patent, cl. 39—24 & 25 Vict., c. 104, s. 15*.—Certain property having been sold in execution of a decree, the judgment-debtor applied to have the sale set aside. This application was rejected; but a review of the order rejecting it was subsequently granted,

## APPEAL TO PRIVY COUNCIL —continued.

### 1. CASES IN WHICH APPEAL LIES OR NOT —continued.

and the sale set aside, and an application by the auction-purchaser for the cancelment of the order setting aside the sale was refused. Thereupon the purchaser applied by petition to the High Court, praying that the order made on review might be reversed. In his petition he submitted that "the sale ought to have been confirmed" when the application of the judgment-debtor to have it set aside was first rejected, but the petition did not contain a formal prayer for confirmation of the sale. A rule, however, was granted, calling on the judgment-debtor to show cause why the order reversing the sale should not be set aside and the sale confirmed; which rule, after argument, was made absolute. The judgment-debtor having obtained leave to appeal to the Privy Council from the order making the rule absolute, the purchaser objected that such order was not appealable under cl. 39 of the Letters Patent, 1865, on the ground that it was not an order "made on appeal." *Held* that, as the purchaser had obtained a rule calling on the judgment-debtor to show cause why the sale should not be confirmed, and had allowed that rule to be made absolute, he could not contend that the order making the rule absolute was not an order made on appeal. *Semble*—Orders made by the High Court under s. 15 of 24 & 25 Vict., c. 104, are subject to appeal to the Privy Council. *HURDEO NARAIN SAHU v. GRIDHARI SINGH*

[3 B. L. R., 103]

*GRIDHARI SINGH v. HURDEO NARAIN SAHU*

[21 W. R., 263]

7. ———— Order rejecting review—*Order made on appeal—Letters Patent, cls. 39 and 42*.—An order rejecting a review of judgment is not an "order made on appeal" within the meaning of cl. 39 of the Letters Patent of the High Court. In cases of appeal made under cl. 42 of the Letters Patent, the Court ought not, in transmitting the proceedings connected therewith, also to send such proceedings as applications for review of the judgment of the High Court and the orders of the Court thereupon. *ENAYET HOSSEIN v. ROUSHAN JEHAN* . 1 B. L. R., F. B., 1: 10 W. R., F. B., 1

8. ———— Difference of opinion between Judges of Division Bench of High Court—*Letters Patent, 1865, ss. 15 and 39*.—An appeal lies directly to the Privy Council from the decree of a Division Bench of the High Court on an appeal from the *mofussil*, although the Judges differed, and upon the points of difference a further appeal to the High Court is given under cl. 15 of the Letters Patent. *IN THE MATTER OF THE PETITION OF THE COURT OF WARDS ON BEHALF OF THE RAJA OF DARBANGA*

[7 B. L. R., 730: 16 W. R., 191]

9. ———— Letters Patent, cl. 39—*Appeal from decision of High Court, Appellate Side*.—Cl. 39 of the Letters Patent of 1865 does not rest for its authority on the 24 & 25 Vict., c. 104, and was not inserted in pursuance of that Act;

## APPEAL TO PRIVY COUNCIL

—continued.

1. CASES IN WHICH APPEAL LIES OR NOT  
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consequently any power which it gives to admit an appeal to the Privy Council from a decision of the High Court on its Appellate Side is not one of the powers which the High Court is, by the first part of s. 9 of 24 & 25 Vict., c. 104, commanded to exercise. IN THE MATTER OF THE PETITION OF FEDA HOSSEIN I. L. R., 1 Calc., 431

10. — Interlocutory judgment—*Letters Patent, cl. 40—Question of practice—Order for inspection of documents.*—No appeal lies, under s. 40 of the amended Letters Patent of the High Court, to the Privy Council from an interlocutory judgment or order of a Judge of the High Court, until such judgment or order has been subjected to an appeal to the High Court under cl. 15 of the Letters Patent, except in those cases in which,

of practice, such as an order for the inspection of documents. SONBAI c. AHMEDBAI HABIBBAI [9 Bom., 398]

as such a decree of the High Court is not a final, but an interlocutory decree. In such a case a certificate should first be obtained under cl. (c) of the section that the case is a fit one for appeal to Her Majesty in Council. ISHYARGAR BUDHGAR c. CAUDABAMA AMARSANG I. L. R., 8 Bom., 548

[I C. L. R., 354]

disallowed an application for the execution of the decree which had been preferred to that Judge. The High Court, on appeal from an order of the District Judge, annulled his order as void for want of jurisdiction, and remitted the case in order that the application might be disposed of on its merits, directing that the

## APPEAL TO PRIVY COUNCIL

—continued.

1. CASES IN WHICH APPEAL LIES OR NOT  
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in the nature of an interlocutory order, and was not one from which the High Court could or ought to grant leave to appeal to Her Majesty in Council. PALAK DHARI RAI c. RADHA PRASAD SINGH [I L. R., 2 All., 65]

14. — Final decree or order—*Civil Procedure Code (Act X of 1877), s. 595, 600.*—An order in a partnership suit for account refusing to allow the plaintiffs to have their accounts taken in a particular manner suggested by themselves, unless they would consent to give certain credits in their accounts to the defendants, is not a final decree within the meaning of cl. (b) of s. 595 of the Civil Procedure Code, although the effect of such order

BABA SAHEB I. L. R., 6 Bom., 280

15. — *Civil Procedure Code, 1877, s. 595 (a)—“Final decree.”*—Certain persons interested in an award applied under s. 525 of the Civil Procedure Code to have it filed in Court. The Court made an order under s. 528 “that the claim of the plaintiffs be decreed.” The defendants ap-

an application to the lower Court of the nature sug-

to give judgment and decree in accordance with an award which had been filed in Court. The defendants applied for leave to appeal to Her Majesty in Council from the order of the High Court of the 23rd June 1880. *Held* that such order was not a “final decree” within the meaning of s. 595 (a) of the Civil Procedure Code, and therefore it was not appealable to Her Majesty in Council. RAMADHIN MANTIA c. GANESH I. L. R., 4 All., 238

16. — *Civil Procedure Code, s. 595—Application for leave to appeal to Privy Council—Order dismissing suit on preliminary issue.*—The plaintiff in a suit to recover certain  
On appeal by the plaintiff, the High Court passed

## APPEAL TO PRIVY COUNCIL

—continued.

1. CASES IN WHICH APPEAL LIES OR NOT  
—continued.

a decree setting aside the decree of the Court of first instance, declaring the alleged adoption to be established, and remanding the suit for the trial of the remaining issues. The defendants sought to appeal to Her Majesty in Council against the decree of the High Court. The defendants' application was refused on the ground that that decree was not a final decree, and no appeal lay. *TIRUNARAYANA v. GOPALASAMI*. I. L. R., 13 Mad., 349

17. ————— *Civil Procedure Code, 1882, s. 595—Order directing accounts to be taken—Decree not final—Application for leave to appeal.*—Where a decree has been made directing accounts to be taken, but there is nothing so special in the case as to bring it under cl. (c) of s. 595 of the Civil Procedure Code (Act XIV of 1882), leave to appeal to the Privy Council will not be given. *RAHIMBOY HADIMBOY v. TURNER*

[I. L. R., 14 Bom., 428]

18. ————— *Prerogative right of Crown to admit appeal where leave to appeal refused by High Court—Final decree—Meaning of "final" in s. 595 of Civil Procedure Code (XIV of 1882)—Civil Procedure Code, s. 601—Procedure.*—Where a decree directing the taking of accounts which the defendant contends ought not to be taken at all decides, in effect, that, if the result should be found to be against the defendant, he is liable to pay the amount, the decree is final within the meaning of s. 595 of the Civil Procedure Code (XIV of 1882) for the purpose of appeal. On the ground that a decree for an account was not final within that section, the High Court refused, under s. 601, to grant the defendant a certificate. On his application for special leave to appeal to Her Majesty in Council, not by way of an appeal from the local Court's refusal, but asking for the exercise of the prerogative right to admit an appeal:—*Held* that, as leave could be granted on any other ground, should any appear, besides the ground that the Court had refused the certificate without good cause, while leave could also be granted on the latter ground, if established, to make this application was, perhaps, more convenient than to appeal from the order of refusal. *Held*, also, that the real question in this suit having been the liability of the defendant to account to the plaintiff upon several claims, the decree had decided this against the defendant in such a way that, although the account had not been taken, the decree was final within s. 495. *RAHIMBOY HADIMBOY v. TURNER*. I. L. R., 15 Bom., 155

[L. R., 18 I. A., 6]

19. ————— *Order refusing to appoint receiver in a suit—Civil Procedure Code (1882), s. 595—Letters Patent of the High Court, ss. 39 and 40.*—There is no appeal to Her Majesty in Council against an order refusing the appointment of a receiver in a suit. Such order does not finally decide any matter which is directly in issue in the cause in respect to the right of the parties, and is not "final" within the meaning of cls. (a) and (b) of s. 595 of

## APPEAL TO PRIVY COUNCIL

—continued.

1. CASES IN WHICH APPEAL LIES OR NOT  
—continued.

the Civil Procedure Code and s. 39 of the Letters Patent; nor is the matter a special case falling within the terms of cl. (c) of s. 59 of the Code or s. 40 of the Letters Patent. *Justices of the Peace for Calcutta v. Oriental Gas Company*, 8 B. L. R., 433, *Lutf Ali Khan v. Asgur Reza*, I. L. R., 17 Cal., 456, *Kishen Persad Pandey v. Tiluckdhari Lall*, I. L. R., 18 Cal., 182, and *Rahimbhoy Habibbhoy v. Turner*, I. L. R., 15 Bom., 155: I. R., 18 I. A., 6, referred to. *CHUNDI DUTT JHA v. PUDMANUND SINGH RAHADUR*. I. L. R., 22 Cal., 928

20. ————— *Order of remand on issue finally deciding whole case—Refusal of certificate of leave to appeal to Her Majesty in Council—Civil Procedure Code (1882), ss. 562, 595, 600, and 601.*—An order comprising the decision of the Appellate High Court upon a cardinal issue in a suit, that issue being one that goes to the foundation of the suit, and that can never, while this decision stands, be disputed again, is a final decree for the purposes of appeal to the Queen in Council, notwithstanding that there may be subordinate inquiries yet to be made in disposing of the suit. *Rahimbhoy Habibbhoy v. Turner*, I. L. R., 15 Bom., 155: I. R., 18 I. A., 6, referred to and followed. The certificate of which the grant was part of the procedure in the admission of such an appeal was refused by the High Court on the ground that the proposed appeal was from an order remanding a suit under s. 562, Civil Procedure Code; and that orders of remand under that section were, by the practice of the Court, treated as not final within s. 595, cl. (a). That practice is probably correct; but here the order only purported to be under s. 562, which was not applicable. The first Court had not disposed of the suit upon a preliminary point, so as to have excluded evidence of facts appearing to the Appellate Court essential; and s. 565 appeared to be applicable rather than s. 562. The Appellate Court had reversed once for all the decision of the first Court upon an issue as to the making and validity of a will, which issue governed the whole case. *MUZHAR HOSSEIN v. BODHA BIRI*. I. L. R., 17 All., 112

[L. R., 22 I. A., 1]

21. ————— *Decree affirming the decision of the Court immediately below—Decree dismissing an appeal to the High Court for default of prosecution—Civil Procedure Code (Act XIV of 1882), s. 596.*—*Held* that a decree of the High Court dismissing an appeal for want of prosecution—the appellants not having supplied their counsel with materials upon which to argue the appeal when it was called on for hearing—was a decree affirming the decision of the Court immediately below, within the meaning of s. 596 of the Code of Civil Procedure. *BENI RAI v. RAM LAKHAN RAI*

[I. L. R., 20 All., 367]

22. ————— *Cancellation of notification on the ground of error—Pledership examination—Notification of a candidate having qualified—Civil Procedure Code, chap. XLV.—A*

## APPEAL TO PRIVY COUNCIL

—continued.

## 1. CASES IN WHICH APPEAL LIES OR NOT

—continued.

and was informed by it that his name must be

PETITION OF SAKHENDAN LAL

[L. L. R., 8 All., 183

23. ——— Order remanding suit for re-trial—*Privy Council's Appeals Act, VI of 1874—Letters Patent, N. W. P., s. 31—Interlocu-*

[L. L. R., 1 All., 726

general jurisdiction of the Courts, and not to the finality of their decisions in particular cases. A Court which, under the provisions of Act XXXII of 1871, is a subordinate Court, has no authority, under Act II of 1863, to admit an appeal to Her Majesty in Council even where its decision is final. *HARDON BUX v. JAWAHIR SINGH*. L. L. R., 3 Calc., 522

## (3) SUBSTANTIAL QUESTIONS OF LAW.

Courts by the Letters Patent, 1863, ch. 39. S. 22 of 24 & 25 Vict., c. 67, must be read with ss. 9 and 11 of 24 & 25 Vict., c. 104. By the express words of s. 9, all previously existing powers were reserved to the High Court, provided the Letters

## APPEAL TO PRIVY COUNCIL

—continued.

## 1. CASES IN WHICH APPEAL LIES OR NOT

—continued.

Patent did not interfere with them, and as to these powers the Governor General in Council is expressly empowered to legislate. Even if, therefore, the power to admit an appeal to the Privy Council were conferred by the Letters Patent under the authority of 24 & 25 Vict., c. 104, it was, not being a new power, subject to the legislative control of the Governor General in Council. The ratio decidendi in *The Queen v. Meares*, 24 B. L. R., 106, disented from. IN THE MATTER OF THE PETITION OF FADA HOSSAIN. L. L. R., 1 Calc., 431

28. ——— Question of law arising on evidence—*Act VI of 1874, s. 5—Substantial question of law*—The substantial question of law which, by s. 5, Act VI of 1874, the appeal to the Privy Council must involve, in order to give an appeal in a case where the decree appealed from affirms the decision of the Court below, is not limited to a question of law arising out of the facts

[L. L. R., 3 Calc., 228

27. ——— Form of judgment—*Substantial question of law—Civil Procedure Code, 1882, s. 574*—The judgment of the High Court in a first appeal was as follows:—"This appeal must, in my opinion, be dismissed with costs and the judgment

leave to appeal must, therefore, be rejected. *SUNDAR BHAI v. BISHANSHAR NATH*. L. L. R., 9 All., 93

28. ——— Concurrence of two Courts on facts—"Affirming" judgment of lower Court—*Civil Procedure Code (Act XIV of 1882), s. 556*

of fact sufficient for the disposal of the case, without trying the other issues, the High Court found on the two issues substantially in favour of the plaintiff, but raised a further question of fact on the evidence and decided that against him, coming finally to the same conclusion on the facts as the Subordinate Judge, though not agreeing with him in all his findings or in the reasons on which they were based.—*Held*, on an application for leave to appeal to the Privy Council, that the High Court did not "affirm" the judgment of the lower Court within the meaning of s. 556 of the Civil Procedure Code: *Held* also even assuming the judgment of the lower Court was affirmed by the High Court, that there were

## APPEAL TO PRIVY COUNCIL

—continued.

1. CASES IN WHICH APPEAL LIES OR NOT  
—continued.

a decree setting aside the decree of the Court of first instance, declaring the alleged adoption to be established, and remanding the suit for the trial of the remaining issues. The defendants sought to appeal to Her Majesty in Council against the decree of the High Court. The defendants' application was refused on the ground that that decree was not a final decree, and no appeal lay. *TIRUNARAYANA v. GOPALASAMI* . . . I. L. R., 13 Mad., 349

17. ————— *Civil Procedure Code, 1882, s. 595—Order directing accounts to be taken—Decree not final—Application for leave to appeal.*—Where a decree has been made directing accounts to be taken, but there is nothing so special in the case as to bring it under cl. (c) of s. 595 of the Civil Procedure Code (Act XIV of 1882), leave to appeal to the Privy Council will not be given. *RAHIMBOY HUBIBBOY v. TURNER*

[I. L. R., 14 Bom., 428]

18. ————— *Prerogative right of Crown to admit appeal where leave to appeal refused by High Court—Final decree—Meaning of "final" in s. 595 of Civil Procedure Code (XIV of 1882)—Civil Procedure Code, s. 601—Procedure.*—Where a decree directing the taking of accounts which the defendant contends ought not to be taken at all decides, in effect, that, if the result should be found to be against the defendant, he is liable to pay the amount, the decree is final within the meaning of s. 595 of the Civil Procedure Code (XIV of 1882) for the purpose of appeal. On the ground that a decree for an account was not final within that section, the High Court refused, under s. 601, to grant the defendant a certificate. On his application for special leave to appeal to Her Majesty in Council, not by way of an appeal from the local Court's refusal, but asking for the exercise of the prerogative right to admit an appeal:—*Held* that, as leave could be granted on any other ground, should any appear, besides the ground that the Court had refused the certificate without good cause, while leave could also be granted on the latter ground, if established, to make this application was, perhaps, more convenient than to appeal from the order of refusal. *Held*, also, that the real question in this suit having been the liability of the defendant to account to the plaintiff upon several claims, the decree had decided this against the defendant in such a way that, although the account had not been taken, the decree was final within s. 495. *RAHIMBOY HABIBBOY v. TURNER* . . . I. L. R., 15 Bom., 155

[I. R., 18 I. A., 6]

19. ————— *Order refusing to appoint receiver in a suit—Civil Procedure Code (1882), s. 595—Letters Patent of the High Court, ss. 39 and 40.*—There is no appeal to Her Majesty in Council against an order refusing the appointment of a receiver in a suit. Such order does not finally decide any matter which is directly in issue in the cause in respect to the right of the parties, and is not "final" within the meaning of cls. (a) and (b) of s. 595 of

## APPEAL TO PRIVY COUNCIL

—continued.

1. CASES IN WHICH APPEAL LIES OR NOT  
—continued.

the Civil Procedure Code and s. 39 of the Letters Patent; nor is the matter a special case falling within the terms of cl. (c) of s. 59 of the Code or s. 40 of the Letters Patent. *Justices of the Peace for Calcutta v. Oriental Gas Company*, 8 B. L. R., 433, *Lutf Ali Khan v. Asgur Reza*, I. L. R., 17 Calc., 455, *Kishen Persad Pandey v. Tiluckdhari Lall*, I. L. R., 18 Calc., 182, and *Rahimbhoy Habibbhoy v. Turner*, I. L. R., 15 Bom., 155: I. R., 18 I. A., 6, referred to. *CHUNDI DUTT JHA v. PUDMANUND SINGH BAHADUR* . . . I. L. R., 22 Calc., 928

20. ————— *Order of remand on issue finally deciding whole case—Refusal of certificate of leave to appeal to Her Majesty in Council—Civil Procedure Code (1882), ss. 562, 565, 595, 600, and 601.*—An order comprising the decision of the Appellate High Court upon a cardinal issue in a suit, that issue being one that goes to the foundation of the suit, and that can never, while this decision stands, be disputed again, is a final decree for the purposes of appeal to the Queen in Council, notwithstanding that there may be subordinate inquiries yet to be made in disposing of the suit. *Rahimbhoy Habibbhoy v. Turner*, I. L. R., 15 Bom., 155: I. R., 18 I. A., 6, referred to and followed. The certificate of which the grant was part of the procedure in the admission of such an appeal was refused by the High Court on the ground that the proposed appeal was from an order remanding a suit under s. 562, Civil Procedure Code; and that orders of remand under that section were, by the practice of the Court, treated as not final within s. 595, cl. (a). That practice is probably correct; but here the order only purported to be under s. 562, which was not applicable. The first Court had not disposed of the suit upon a preliminary point, so as to have excluded evidence of facts appearing to the Appellate Court essential; and s. 565 appeared to be applicable rather than s. 562. The Appellate Court had reversed once for all the decision of the first Court upon an issue as to the making and validity of a will, which issue governed the whole case. *MUZHAR HOSSEIN v. BODHA BIBI* . . . I. L. R., 17 All., 112

[I. R., 22 I. A., 1]

21. ————— *Decree affirming the decision of the Court immediately below—Decree dismissing an appeal to the High Court for default of prosecution—Civil Procedure Code (Act XIV of 1882), s. 596.*—*Held* that a decree of the High Court dismissing an appeal for want of prosecution—the appellants not having supplied their counsel with materials upon which to argue the appeal when it was called on for hearing—was a decree affirming the decision of the Court immediately below, within the meaning of s. 596 of the Code of Civil Procedure. *BENI RAI v. RAM LAKHAN RAI* [I. L. R., 20 All., 367]

22. ————— *Cancellation of notification on the ground of error—Pledership examination—Notification of a candidate having qualified—Civil Procedure Code, chap. XLV.—A*

# APPEAL TO PRIVY COUNCIL

—continued.

## 1. CASES IN WHICH APPEAL LIES OR NOT

—continued.

notification. The mistake having been discovered, such notification was, so far as he was concerned, cancelled. He then petitioned the High Court in the matter, as informed by it that his name must be

was concerned to grant or refuse leave to appeal to Her Majesty in Council. *IN THE MATTER OF THE PETITION OF SAKHENDAN LAL*

[I. L. R., 8 All., 163]

[I. L. R., 1 All., 726]

general jurisdiction of the Courts, and not to the finality of their decisions in particular cases. A Court which, under the provisions of Act XXXII of 1871, is a subordinate Court, has no authority, under Act II of 1863, to admit an appeal to Her Majesty in Council even where its decision is final. *HARDON BUX v. JAWAHIR SINGH*. I. L. R., 3 Calc., 523

### (b) SUBSTANTIAL QUESTIONS OF LAW.

Courts by the Letters Patent, 1865, cl. 39. S. 22 of 24 & 25 Vict., c. 67, must be read with ss. 2 and 11 of 24 & 25 Vict., c. 104. By the express words of s. 2, all previously existing powers were reserved to the High Court, provided the Letters

# APPEAL TO PRIVY COUNCIL

—continued.

## 1. CASES IN WHICH APPEAL LIES OR NOT

—continued.

HOSSEIN

I. L. R., 1 Calc., 431

ree appealed below, is not of the facts decisions it is rising on the evidence taken in the case is, without reference to the findings of the lower Courts, sufficient to found an appeal. *MORAN v. MITTU BIBEE*

[I. L. R., 2 Calc., 228]

### 27. ————— Form of judgment—Sub-

of the first Court affirmed; and I do not think it

28. ————— Concurrence of two Courts on facts—“Affirming” judgment of lower Court—Civil Procedure Code (Act XIV of 1882), s. 596—Substantial question of law—Case disposed of on facts.—Where the issues in a case involved questions both of law and fact, and the Subordinate Judge had decided against the plaintiff on two issues of fact sufficient for the disposal of the case, without trying the other issues, the High Court found on those two issues substantially in favour of the plaintiff, but raised a further question of fact on the evidence and decided that against him, coming finally to the same conclusion on the facts as the Subordinate Judge, though not agreeing with him in all his findings or in the reasons on which they were based:—*Held*, on an application for leave to appeal to the Privy Council, that the High Court did not “affirm” the judgment of the lower Court within the meaning of s. 596 of the Civil Procedure Code: *Held* also even assuming the judgment of the lower Court was affirmed by the High Court, that there were

# APPEAL TO PRIVY COUNCIL

—continued.

## 1. CASES IN WHICH APPEAL LIES OR NOT —continued.

substantial questions of law in the case which entitled the plaintiff to appeal, notwithstanding that such questions might be immaterial to the decision of the case. IN THE MATTER OF THE PETITION OF ASHGHAH REZA. ASHGHAH REZA v. HYDER REZA

[I. L. R., 16 Cal., 287

GOPINATH BIEBAR v. GOLUCK CHUNDER BOSE

[I. L. R., 16 Cal., 292 note

29. — Confirmation of decree of lower Court—*Civil Procedure Code* (1882), s. 596—*Substantial question of law*.—*Per JARDINE, J.*—Where the High Court in appeal has confirmed the decree of the lower Court and has taken substantially the same view of the facts, and where, upon the facts as found by both Courts, no question of law arises, leave to appeal to the Privy Council should be refused. *Per RANADE, J.*—There is a distinction between the confirmation of a decree and the affirmation of the decision and findings of the Courts of first instance by the High Court. The substantial question of law referred to in s. 596 of the Code of Civil Procedure (Act XIV of 1882) need not directly arise out of the concurrent findings of fact, but it is enough if it is involved in those findings, and can, if the appeal is allowed, be raised in the course of the argument. IN RE VISHWAMBHAR PANDIT . . . I. L. R., 20 Bom., 699

30. — Rejection of application to take additional evidence on appeal—*Civil Procedure Code*, ss. 568, 596.—The rejection of an application under s. 568 to an Appellate Court to take additional evidence on appeal cannot be said to involve any "substantial question of law" within the meaning of s. 596 of the Code so as to give the right to an appeal to the Privy Council. IN THE GOODS OF PREM CHAND MOONSHEE. UPENDRA MOHAN GHOSE v. GOPAL CHANDRA GHOSE

[I. L. R., 21 Cal., 484

31. — Non-production of succession certificate at the proper time—*Succession Certificate Act* (VII of 1889), s. 4—*Order granting application for execution of decree*.—The representative of a decree-holder applied for execution of a decree without producing before the Court a certificate of succession as required by Act No. VII of 1889, s. 4. The Court to which the application was made granted execution. The judgment-debtor appealed to the High Court, by which the order of the lower Court was sustained upon production before it (the High Court) of the necessary certificate of succession. *Held* that an objection that the said application for execution was improperly granted by reason of the non-production of the succession certificate before the lower Court did not raise a "substantial question of law" within the meaning of s. 596 of the Code of Civil Procedure, so as to warn the High Court in granting leave to appeal to Her Majesty in Council. SHUJA ALI KHAN v. RAM KUR . . . I. L. R., 20 All., 118

32. — Malicious prosecution, Suit for—*Difference between trial in England by jury*

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—continued.

## 1. CASES IN WHICH APPEAL LIES OR NOT —continued.

and in India without one—*Concurrent judgments on facts*.—The only question involved in a case for malicious prosecution is a question of fact. In England the jury would find the facts and the Judge would draw the inference from the findings of the jury, but where, as in India, the case is tried without a jury, there is only a question of fact to be determined by one and the same person. There was accordingly no substantial question of law in the case, and the High Court granted the certificate allowing the appeal under a misapprehension. MODY v. QUEEN INSURANCE CO. . . 4 C. W. N., 781

### (c) CONCURRENT JUDGMENTS ON FACTS.

33. — Finding of facts not concurrent but in effect the same—*Case in which no question of law is involved*—*Civil Procedure Code*, 1882, ss. 596, 600.—Where there is no point of law involved in a case, the mere fact that the finding of the Appellate Court does not in terms coincide with the finding of the Original Court is not sufficient, where the findings of fact of the two Courts are in effect the same, to give a right of appeal to the Privy Council, notwithstanding that the value of the suit is more than Rs10,000. In the matter of the petition of Ashghar Reza, I. L. R., 16 Cal., 287, distinguished. THOMPSON v. CALCUTTA TRAMWAYS COMPANY

[I. L. R., 21 Cal., 523

34. — Concurrence of two Courts in deciding fact—*Civil Procedure Code* (1882), s. 596—*Restriction of power in India to grant leave to appeal to Her Majesty in Council*.—Where the decree of an Appellate Court has affirmed the decision of the Court immediately below it upon an issue of fact, and no substantial question of law is involved, no appeal is open under s. 596 of the Code of Civil Procedure, and leave to appeal should not be granted by the High Court in such a case. NIRBHAI DAS v. RANI KUAR . . . I. L. R., 16 All., 274

35. — Original Court's decision on fact, affirmed by the first Appellate Court—*Question of fact*—*Question of law not arising*—*Civil Procedure Code* (1882), s. 596.—The Appellate High Court had, by the decree now appealed from, affirmed upon the evidence the decision of the High Court in the original jurisdiction as to the fact on which the judgment depended, viz., whether the defendant had attained full age at the time when he had executed the first of two mortgages, for the foreclosure whereof the suit was brought. No question of law, either as to the construction of documents or any other point, was raised. *Held* that the present appeal could not be entertained. See *Nirbhai Das v. Rani Kuar*, I. L. R., 16 All., 274. TELSI PERSHAD BHART v. BENAYEK MISSEER . . . I. L. R., 23 Cal., 918 [I. L. R., 23 I. A., 102

### (d) VALUATION OF APPEAL.

36. — Suit for possession and mesne profits.—Where a plaintiff sued for possession of property with wasilat, and did not (it being

## APPEAL TO PRIVY COUNCIL

—continued.

## 1. CASES IN WHICH APPEAL LIES OR NOT

—continued.

under the rules unnecessary for him to do so) include the wasilat in the valuation of the suit; and the suit was valued at Rs. 5,815, but with the wasilat would

GOOROO-DASS ROY v. GHOLAM MOWLAH

[Marsh., 24; 1 Hay, 103

rtion of  
appeal to  
of demand  
is of the  
although  
appeal re-

lates is below that value. ONOOROO CHUNDER  
MUKERJEE v. PENTAB CHUNDER PAUL

[O W. R., 4

made no objection to the plaintiff's under-valua-

39. ——— Decision to govern other  
similar suits by same party—*Subject-matter*  
*of suit below appealable value—Practice—Leave*

in other suits which the plaintiff intended to bring  
on precisely the same grounds, and in respect of  
which precisely the same questions would arise as had  
arisen in the suit sought to be appealed. ANANDA  
CHANDRA ROSE v. BROUGHTON . 8 B. L. R., 423

40. ——— Conflicting claims to wa-  
ters of flowing stream—*Court Fees Act, 1870,*  
*s. 7.*—In ascertaining whether or not there ought to  
be an appeal to the Privy Council, the High Court  
has only to look at the value of the question at issue  
in the litigation. In a case of conflicting claims with  
regard to the waters of a flowing stream, the matter  
at issue, so far as regarded the applicant, having been  
to have her lands irrigated in the way she claimed,  
the value of that matter, according to s. 7 of the  
*Court Fees Act, VII of 1870*, was held to be the ex-  
tent to which her interests would be deteriorated if  
that right could not be established. AJNAK KOOER v.  
LUTKHA . 18 W. R., 21

41. ——— Appeal as to portion of  
property—*Letters Patent, cl. 39.*—The High  
Court refused, under a 39 of the Charter, to open so  
wide a door to appeal as to allow it in a case in-

## APPEAL TO PRIVY COUNCIL

—continued.

## 1. CASES IN WHICH APPEAL LIES OR NOT

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volving less than Rs. 10,000, only because the whole  
property which would be reduced in value in the event  
of the appeal proving successful was worth not less  
than Rs. 10,000. IN THE MATTER OF THE PETITION OF  
HEERNATH SAHOO. HEERNATH SAHOO v. GORFE  
SAHOO . 19 W. R., 191

upon the strength of a former decision in the Privy  
Council Department, refused the application for  
leave to appeal to Her Majesty in Council. *Quare*—  
Can the mere payment of a stamp calculated on an  
undervaluation with reference to the rule in Act  
XXVI of 1867, schedule, art. 11, note (a), be treated  
as of itself a fraud which, *ipso facto*, deprives a party  
of his right of appeal? LEKHRAJ ROY v. KANHTA  
SINGH . 18 W. R., 494

stamp duty upon a sum lower than the appealable  
amount, is not thereby precluded from obtaining leave  
from the Courts of that country to appeal to Her  
Majesty in Council, if he can show that the value of  
the property in dispute does reach the appealable  
amount. LEKHRAJ ROY v. KANHTA SINGH

[L. R., 11 A., 317

being that in both the lower Courts and in the High  
Court the plaintiffs obtained a decree for their claims.  
The aggregate value of the three suits amounted to  
more than Rs. 10,000, though the value of each suit  
was under that sum. The defendant applied to be  
allowed to appeal in each case to Her Majesty in  
Council. *Held* that he was entitled to have each of

c. KISHAN GOBIND DAS . 4 C. L. R., 125

44. ——— Concurrent decisions on  
facts—*Grounds of appeal—Act VI of 1874, s. 5.*—  
Where there were two concurrent decisions on facts,  
an application to appeal to the Privy Council was  
refused; the right of appeal from a decision of the

## APPEAL TO PRIVY COUNCIL

—continued.

1. CASES IN WHICH APPEAL LIES OR NOT  
—continued.

High Court on its Appellate Side, simply on the ground that the subject-matter of the suit was above R10,000, having been taken away by Act VI of 1874, s. 5. *IN THE MATTER OF THE PETITION OF FEDA HOSSEIN* . . . I. L. R., 1 Calc., 431

45. ——— Appeal in two suits together over appealable value—*Civil Procedure Code (Act X of 1877), s. 596.*—A and B purchased the same properties deriving title through different persons. The value of the properties with mesne profits was over R10,000. B granted two patni leases of the properties to different persons. A was therefore obliged to bring two suits for the recovery of the properties, and the value of the subject-matter in each suit was less than R10,000. *Held* that an appeal would lie to the Privy Council. *JOOGULKISHORE v. JOTENDRO MOHUN TAGORE*

[I. L. R., 8 Calc., 210]

46. ——— Question of law in suit under appealable value—*Amount under R10,000—Civil Procedure Code (Act XIV of 1882), ss. 595, 596, 600.*—Leave to appeal to Her Majesty in Council granted in one of six suits directed to be heard together, although the amount involved in such suit was under the appealable value; there being an important question of law, which did not arise in the five other suits, the suit, however, involving other questions of law common to all the six suits; such suits having been, by agreement of counsel, heard upon the same evidence, and concluded by the same judgment; five of such suits being appealable as of right, and the aggregate amount in the six suits being considerably more than the appealable value. *BYRNATH v. GRAHAM*

[I. L. R., 11 Calc., 740]

47. ——— Appealable value—Suit for restitution of conjugal rights—*Valuation of Suit—Suit conducted up to appeal as if properly valued—Jurisdiction—Consent of parties.*—A suit for restitution of conjugal rights is not one to which any special money value can be attached for the purposes of jurisdiction. *Golam Rahman v. Fatima Bibi*, I. L. R., 13 Calc., 232, followed. *Held*, therefore, that no appeal lay as of right to Her Majesty in Council in such a suit, although the suit had been valued at R25,000, and that valuation had been relied on by the defendant, who had appealed to the High Court from the decision of the first Court which had gone against him. *MOWLA NEWAZ v. SAJIDUN-NISSA BIBI* . . . I. L. R., 18 Calc., 378

48. ——— Value of the subject-matter of the suit—*Civil Procedure Code, s. 569—Madras Civil Courts Act (Madras Act III of 1873), s. 14.*—The Civil Courts Act (Madras Act III of 1873) does not control the construction of Civil Procedure Code, s. 596, and under that section the real market-value of the matter in dispute is the test as to whether or not an appeal lies to the Privy Council. *PICHAYEE v. SRIVAGAMI*

[I. L. R., 15 Mad., 237]

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1. CASES IN WHICH APPEAL LIES OR NOT  
—continued.

49. ——— Value of property affected by decree—*Civil Procedure Code (1882), s. 596.*—In an application for leave to appeal to Her Majesty in Council the value of the property ostensibly affected by the decree sought to be appealed was below R10,000; but it appeared that the suit in appeal in which the said decree had been passed was connected with another suit relating to the same property in which a decree had been passed which was the subject of another similar application, and that the aggregate value of the two decrees was much above R10,000, and that it could not be known which of such decrees would affect which specific portion of the property in question. *Held* that under the above circumstances the application under consideration should be granted under the last paragraph of s. 596 of the Code of Civil Procedure. *IN THE MATTER OF THE PETITION OF KHWAJA MUHAMMAD YUSUF* . . . I. L. R., 18 All., 196

50. ——— Burma Courts Act (XI of 1889), s. 40—*Burma Civil Courts Act (XVII of 1875), s. 49—Probate and Administration Act (V of 1881), ss. 3 and 86—Code of Civil Procedure (1882), ss. 595 and 614.*—No appeal lies to the High Court from a final decree passed by the Recorder of Rangoon in the exercise of Original Civil Jurisdiction, where the value of the subject-matter of the suit is above ten thousand rupees, but an appeal lies to Her Majesty in Council. A decree passed by the Recorder of Rangoon, in a suit for grant of probate of a will, is a final decree passed by him in the exercise of Original Civil Jurisdiction. *ESSOF HASSIM DOORLY v. FATIMA BIBI alias MAH POH*

[I. L. R., 24 Calc., 30  
1 C. W. N., 8]

51. ——— Order in execution of decree.—An appeal lies to Her Majesty in Council from an order passed by the High Court in a case of execution of decree in which the amount involved exceeds R10,000. *VELAETTY BEGUM v. RUGHONATH PERSAD*

[2 Ind. Jur., N. S., 263; 8 W. R., 147]

52. ——— Execution of decree of Privy Council.—An appeal will lie as of right from the order of a single Judge of the High Court as to execution of a decree of the Privy Council, where the property is over R10,000. *LEELANAND SING v. LUCKIMPUR SINGH BAHADUR*

[5 B. L. R., 605]

*LEELANUND SING v. LUCKMESSUR SINGH*

[14 W. R., P. C., 23]

53. ——— Final order passed on appeal by the High Court—*Civil Procedure Code, 1877, ss. 244, 595.*—An order passed on appeal by the High Court determining a question mentioned in s. 244 of Act X of 1887 is a final "decree" within the meaning of s. 595 of that Act. *Held*, therefore, where such an order involved a claim or question relating to property of the value

## APPEAL TO PRIVY COUNCIL

—continued.

1. CASES IN WHICH APPEAL LIES OR NOT  
—concluded.

of upwards of ten thousand rupees, and reversed the decisions of the lower Courts, that, notwithstanding the value of the subject-matter of the suit in which the decree was made in the Court of first instance was less than that amount, such order was appealable to Her Majesty in Council. *RAM KIRPAL SHUKLA v. RIT KUMAR* . . . 1 L. R., 3 All., 633

## 2. PRACTICE AND PROCEDURE.

## (a) LEAVE TO APPEAL.

the Appellate Side by counsel or a pleader. *ALI AKBAR v. ABDUL LATIF SHUSBU* . . . 13 Bom., 8

55. ——— Appeal presented without security bond.—*Rule of 7th December 1853*.—The High Court has no authority to receive a petition of appeal to England tendered without the usual security bond duly registered, as provided by the 8th Rule of the 7th December 1853. *PERSHAD DEVI v. RAJENDRA KISHORE* . . . 7 W. R., 338

56. ——— Appeal in forma pauperis.—An application to appeal to the Privy Council in *forma pauperis* may be made to the High Court on unstamped paper, and accompanied by a certificate of counsel that there is a reasonable ground of appeal; the usual security for costs being given, and the costs of translation deposited. IN THE MATTER OF THE PETITION OF JOWAD ALI . . . 8 W. R., 4

57. ——— Effect of, on right to appeal to Privy Council without leave.—*Quare*.—Whether the leave given by the Courts in India to a party to sue in *forma pauperis* would enable him to prosecute the appeal to the Privy Council without obtaining the leave of the Privy Council. *MUNNI RAM AWASTHY v. SHEO CHURN AWASTHY* . . . [7 W. R., P. C., 29; 4 Moore's L. A., 114]

58. ——— Ground for delay in apply-

of oversight was not sufficient to excuse him for non-compliance with the rules of Court or to admit his application beyond the prescribed time. IN THE MATTER OF THE PETITION OF GOUD SUNDH DAS . . . [19 W. R., 305]

## APPEAL TO PRIVY COUNCIL

—continued.

## 2. PRACTICE AND PROCEDURE—continued.

## (b) TIME FOR APPEALING.

be excluded. IN THE MATTER OF THE PETITION OF RAMANOOOHA NARAIN . . . 13 W. R., P. C., 17

FROM AN ORIGINAL DECREE. AFTER THAT THE COURT WAS not authorized to grant such leave to appeal by the Madras Charter of 1800. *EAST INDIA COMPANY v. SYED ALLY* . . . 7 Moore's L. A., 555

61. ——— Closing of Court for vacation.—*Privy Council Rules*.—The High Court has no power to allow an appeal to Her Majesty in Council when the petition is not presented within six calendar months from the date of the decree complained of. When the six months expired during the Durga Pooja vacation, and the petition of appeal was presented on the first day the Court resumed its sittings, —Held that the petition was too late, and leave could not be given to appeal. *TAMVACO v. SEIXNER* . . . 1 B. L. R., O. C., 39

62. ——— If the period

*CHUNDER SINGH v. KALEECHURN SINGH*

[13 W. R., 293]

63. ——— Time for appealing.—*Civil Procedure Code, s. 559—Limitation Act, s. 12, sch. II, art. 177—Period of limitation for admission of an appeal to Privy Council*.—On

not refer to the circumstances referred to in the second paragraph of that section, viz. when the last day happens to be one on which the Court is closed. *LAKSHMANAN v. PERSASANI*

[1 L. R., 10 Mad., 373]

64. ——— Review, Pendency of application for.—When an application to review a

[B. L. R., Sup. Vol., 685; 6 W. R., Mm., 102]

65. ——— Date of decree.—*Appeal from Vice-Admiralty Court of Bengal—Rule 33 of 1860*

# APPEAL TO PRIVY COUNCIL

—continued.

## 2. PRACTICE AND PROCEDURE—continued.

*Admiralty Rules.*—By rule 35 of the rules respecting appeals from the Vice-Admiralty Courts abroad, made and ordained by King William IV in Council, in pursuance of the Statute 2 Will. IV, in c. 51, all appeals from the decrees of Vice-Admiralty Courts are to be asserted within fifteen days after the date of the decree. *Held* that the words “after the date of the decree” mean after the date when the decree is pronounced by the Admiralty or Vice-Admiralty Court, as the case may be, not the date when the decree is reduced to writing and signed. On the 23rd July 1880, the High Court in its Appellate Jurisdiction, modifying a decree of the High Court as a Court of Vice-Admiralty in a cause of damage by collision, referred it to the Registrar to assess the damages that had been incurred in reference to one of the ships, both of which were held to be in fault. The parties went, without protest, before the Registrar for that purpose, the impugnants also having taken out process to compel the appearance of the promovents before him, and the damages were assessed with the consent of both parties at a certain amount. On the 2nd September 1880, a notice of appeal was given on behalf of the impugnants, and was recorded as asserted pursuant to rule 35 above referred to. *Held* that the appeal was not within time, more than fifteen days having elapsed after the decree before the appeal was asserted. According to the law laid down in the Vice-Admiralty Courts, the proceedings taken before the Registrar were themselves sufficient also to prevent an appeal as of right. *THE OWNERS OF THE SHIP “BRENNHILDA” v. THE BRITISH INDIA STEAM NAVIGATION COMPANY*. I. L. R.; 7 Calc., 547

66. —Deposit of costs of appeal—*Act VI of 1874, ss. 8 and 11, cl. b—Limitation Act, 1871, s. 5—Closing of the Court—Deposit of money for expenses of appeal—Power of High Court to enlarge time.*—The petitioners had obtained a certificate on the 1st of September to appeal to Her Majesty in Council from a decision passed against them by the High Court on the 4th of May. Accordingly the period during which they were required to deposit the amount for the translation of the record, under s. 11, cl. (b), of Act VI of 1874, expired on the 4th of November. The offices of the Court on the Benches did not begin to sit till the 16th November. On the last-mentioned date, the petitioner brought in the money, and it was refused by the officer of the Court as being too late. *Held* that it was rightly refused, and that the Court had no power to grant permission to deposit it after the prescribed time. *IN THE MATTER OF THE PETITION OF LALLA GOPAL CHUND*. I. L. R., 2 Calc., 128

67. —*Act VI of 1874, s. 11—Power to enlarge time—Practice.*—The requirements of s. 11, Act VI of 1874, as to the deposit of costs, are not absolutely imperative. The Court has power in its discretion to modify them, and when the period for making the deposit expires on a day when the offices of the Court are closed, it is a reasonable exercise of that discretion to allow the deposit to

# APPEAL TO PRIVY COUNCIL

—continued.

## 2. PRACTICE AND PROCEDURE—continued.

be made on the day they re-open. *IN THE MATTER OF THE PETITION OF SOORJMUKH KOER*

[I. L. R., 2 Calc., 272]

68. —Dismissal of appeal for default in deposit of security and in transcribing record—*Act VI of 1874, ss. 11, 14, and 15.*—On an application to stay proceedings in an appeal to the Privy Council, which had been presented on 2nd July 1874 from a decision of the High Court on its Original Side, it appeared that no deposit had been made by the appellant to defray the costs of transcribing, etc., as provided by s. 11, Act VI of 1874; and that no security had been deposited for the costs of the respondent since the petition of appeal was presented. The Court granted a rule calling on the appellant to show cause why the proceedings on the appeal should not be stayed, and, on his not appearing to show cause, ordered that the appeal should be struck off the file. *THAKOOR KAPILNATH SAHAI v. THE GOVERNMENT*. I. L. R., 1 Calc., 142

69. —*Failure to give security—Power to enlarge time—Act VI of 1874, ss. 5 and 11.*—An intending appellant to the Privy Council, who held a certificate under Act VI of 1874, s. 5, having failed to give the requisite security and deposit within the six weeks prescribed by s. 11, an order was passed to strike off his application to appeal. As, however, the defendant in the Court below, who would have been respondent in the appeal, had filed an appeal under the Letters Patent, s. 15, against the grant of the certificate, the applicant contended that the six weeks would not begin to run until such appeal was finally disposed of. *Held* that there was no ground for this contention, as the appeal did not operate as a stay of proceedings, nor remove the record to any other Court. *Held* that the Court had no jurisdiction to enlarge the time specified in s. 11. *FUNEENDRO DEB ROY KUT v. JOGENDRO DEB*. 23 W. R., 220

70. —Deposit of security—*Civil Procedure Code, 1882, s. 602—Extension of time for giving security.*—The time allowed by s. 602 of the Civil Procedure Code for giving the security, and making the deposit required by that section may be extended. *FAZUL-UN-NISSA BEGUM v. MUZO*

[I. L. R., 6 All., 250]

71. —*Extension of time for security in appeal—Civil Procedure Code (Act X of 1877), s. 602.*—The words in s. 602 of Act X of 1877, relating to the time within which security is to be given, are directory only; and although they are not to be departed from without cogent reason, the Court from which the appeal is preferred has the right of extending the time. In this case, a satisfactory explanation having been given of delay in giving security until after the time limited by the above section had expired,—*Held* that the Court had rightly exercised discretion in extending the time. *In the matter of the petition*

## APPEAL TO PRIVY COUNCIL

—continued.

2. PRACTICE AND PROCEDURE—continued.  
*of Soorjunukhi Koer, I. L. R., 2 Calc., 272, approved.*  
**BURJOHN v. BHAGANA**  
 [I. L. R., 10 Calc., 557; I. R., 11 I. A., 7

prepared to lodge the deposit within the limited period, and that he was prevented from doing so not owing to absence and the difficulty of getting funds, but owing to some circumstances accidental or otherwise over which he had no control, or owing to

Code of Civil Procedure, a surety is not precluded from questioning the validity of the security bond in execution proceedings, inasmuch as he was not a party to the order of the High Court. **GIRINDRA NATH MUKERJEE v. BHOOT GOPAL MUKERJEE**

[I. L. R., 28 Calc., 248  
 3 C. W. N., 84

74. ——— Appeal struck off for want of prosecution—*Civil Procedure Code (Act XIV of 1852), ss. 538, 539, 600.*—A on the 6th September 1885 filed his petition of appeal to Her Majesty in

notice was never returned as approved or otherwise to the Registrar, and no further steps were taken to prosecute the appeal. On the 1st April 1886 B applied to have the appeal struck off for want of prosecution. *Held* that he was entitled to the order. **MOORAJEE POONJA v. VISWANATH VISWANATH**

[I. L. R., 12 Calc., 658

Court, and is not prosecuted within a reasonable

## APPEAL TO PRIVY COUNCIL

—continued.

2. PRACTICE AND PROCEDURE—continued.  
 time, the Court has power to order its removal from the file. **GOWARDHAN BARMONDO v. MASO BIRI**  
 [3 B. I. R., O. C., 128; S. C. on appeal,  
 5 B. I. R., 76; 14 W. R., O. C., 34

*See* **MAHOMED MUJIB v. RAM LAL ROY**

[8 W. R., MIA., 50

appeal after the period of six months allowed for preferring such appeals has expired. IN THE MATTER OF THE PETITION OF **RADHA BINODE MISSE**  
 [B. I. R., Sup. Vol., 730

**RADHA BINODE MISSE v. KRIPANMOYEE DEBIA**

[7 W. R., 531

*Contra*, IN RE **DOLAKUN** 6 W. R., MIA., 121

79. ——— Appeals struck off for default in making deposit.—The High Court has no authority to restore appeals to Her Majesty in Council, dismissed or struck off the file for default in making deposit. IN THE MATTER OF THE PETITION OF **SUREKANT ROY** 7 W. R., 74

(c) MISCELLANEOUS CASES.

[2 B. I. R., A. C., 264; 11 W. R., 145

## APPEAL TO PRIVY COUNCIL

—continued.

## 2. PRACTICE AND PROCEDURE—concluded.

81. ——— Translation of account-books and papers—Costs.—Where it was impossible to say whether certain account-books and papers were material or relevant, or even were part of the evidence in the case, the High Court declined to put the appellant in an appeal to England to the expense of translating and transcribing them, but gave the respondent the option of translating them at his own expense, with a view to their being sent to England as an appendix to the record, leaving it to the Privy Council, in the event of the respondent being successful, to make any order they pleased as to the costs of translation. IN THE MATTER OF THE PETITION OF RAJ COOMAR BABOO DEO NUND SINGH

[7 W. R., 80

82. ——— Evidence—Exhibits marked for identification afterwards marked as "admitted on both sides" by Bench Clerk—Certificate by Court as to the endorsement on exhibits—Record of appeal to the Privy Council.—In an application for a certificate that a limited meaning should be placed upon endorsements made by the Bench Clerk on certain exhibits printed in the paper-book in a suit, which had gone on appeal to the Privy Council, the Court, considering the reasons for the application to have arisen from the nature of the case and from the contentions on either side, left the matter to be dealt with by their Lordships of the Judicial Committee, at the same time directing its order to be forwarded to the Privy Council. RATTAN KOER v. CHOTAY NARAIN SINGH

[I. L. R., 21 Cal., 476

83. ——— Translation of deeds.—Razeenamas and safeenamas, as well as security bonds, connected with appeals to England, need not be in English. MAHOMED TUKEE CHOWDHRY v. LUCHMEPUT SINGH DOOGUR . . . 7 W. R., 291

84. ——— Appeal, Pendency of effect of—Legal disability—Right to sue.—The pendency of an appeal to England does not put the party who, subject to that appeal, is the owner of an estate under a legal disability to bring a suit in that character against third parties. PRAHLAD SEN v. RAJENDRA KISHORE SINGH

[2 B. L. R., P. C., 111; 12 W. R., P. C., 8

85. ——— Agreement not to appeal—Application to stay proceedings.—Where an appeal is preferred contrary to an agreement not to appeal, application to stay the proceedings should be made before the case is prepared for hearing. AMIR ALI v.INDERJIT KOER . . . 9 B. L. R., 480

## 3. STAY OF EXECUTION PENDING APPEAL.

86. ——— Stay of execution before appeal admitted—Practice—Civil Procedure Code (1882), ss. 603 and 608.—Where a petition for leave to appeal to the Privy Council from a decree of the High Court has been presented, the High Court may grant a stay of execution of its decree, although the appeal has not yet been admitted

## APPEAL TO PRIVY COUNCIL

—continued.

## 3. STAY OF EXECUTION PENDING APPEAL

—continued.

under s. 603 of the Civil Procedure Code (Act XIV of 1882). JANBAI v. SALE MAHOMED JAFFERBOY

[I. L. R., 19 Bom., 10

87. ——— Security against party in possession—Beng. Reg. XVI of 1797, s. 4.—Within six months after decree and prior to the admission of an appeal therefrom to England, the Sudder Court, on an *ex-parte* application without notice, issued an execution order putting the decree-holder in possession. This was done without calling for security as provided by s. 4, Bengal Regulation XVI of 1797. The appellant, on the admission of the appeal, applied to the Sudder Court for security from the party in possession pending the appeal, but that Court held that, as the decree-holder was in possession under an execution order which could not be appealed from, they had no power to interfere. On petition the Judicial Committee, under the circumstances and on affidavit of waste, made an order declaring that it was competent to the Sudder Court to require security to be given for protection of the property pending the appeal, notwithstanding execution of the decree had issued, and gave permission to the appellant to apply to the Sudder Court with an intimation of that opinion. JARIUTOOL BUTOOL v. HOSEINEE BEGUM . . . 10 Moore's I. A., 196

88. ——— Beng. Reg. XVI of 1797, s. 4.—The plaintiff obtained a decree for possession of a zamindari, which was reversed on appeal by the High Court. The plaintiff then appealed to the Privy Council. Under such circumstances, the High Court has no power, under s. 4, Regulation XVI of 1897, to order security to be taken from the defendant (respondent) in the appeal to the Privy Council for the due performance of such orders as the Privy Council may pass in the appeal, or to suspend the decree reversing the decision of the first Court. NILKISEN THAKOOR v. BEERCHUNDER THAKOOR GOSSAIN . . . 2 W. R., Mis., 23

89. ——— The High Court cannot interfere to require security from a party who has formally been put in possession of the property in dispute in execution of a decree, where execution was taken out before an appeal to the Privy Council was preferred and admitted. HURO SOONDUREE DEBIA v. STEVENSON . . . 5 W. R., Mis., 13

90. ——— Security—Failure to furnish security—Beng. Reg. XVI of 1797, s. 4.—In the case of an appeal to the Privy Council, the Court has no power, on failure of both parties to furnish security as required by s. 4, Regulation XVI of 1797, to attach any property held by the appellant beyond that decree. KHOROO LALL v. KANT LALL [5 W. R., Mis., 37

91. ——— Beng. Reg. XVI of 1797, s. 4.—When an appeal to the Privy Council has been admitted, all that the High Court can do is to proceed, under s. 4, Regulation XVI of 1797, to stay the execution of the decree, on the appellant giving security for the due performance

# APPEAL TO PRIVY COUNCIL

—continued.

## 3. STAY OF EXECUTION PENDING APPEAL

—continued.

[8 W. R., *Mis.*, 11

92. — In the case of an appeal to the Privy Council, security to the extent of the whole sum decreed need not always be taken from the decree-holder. When security is taken for less than the full amount decreed, the decree-holder should be restrained from issuing process of execution with a view to realizing any sum in excess of the amount for which security is given. *MOLKA v. SUB-PUT KOONWAN* 8 W. R., *Mis.*, 62

93. — The Zillah Court decreed a suit in plaintiff's favour. On appeal the High Court reversed the judgment, and remanded the case, making no order as to the costs of the

of security. IN THE MATTER OF THE PETITION OF ONOOROO CHUNDLE MOOKERJEE

[8 W. R., *Mis.*, 45

[9 W. R., 276

95. — *Power of High Court.*—The High Court can, on cause shown, require security from a decree-holder who has been put in possession in execution of decree against which

96. — *Widow's interest.*—A judgment-debtor who had been permitted to retain possession of disputed property pending an appeal to England, on furnishing security for none

# APPEAL TO PRIVY COUNCIL

—continued

## 3. STAY OF EXECUTION PENDING APPEAL

—continued

profits and costs, deceased, and the widow offered her life-interest in his estate as security. *Held* that, as her interest was only temporary, it could not be accepted as competent security. *PHOOL KOEN alias KANARA KOER v. DABEE PERSAUD*

[12 W. R., 187

to be three years. *AMEERONISSA KHATOON v. DUNNE* 14 W. R., 391

cation premature, because merely put on the file of the High Court without the appeal being submitted. *BURRA LALL v. THE COURT OF WARDS*

[16 W. R., 289

ness and sufficiency or otherwise of the property tendered. *DUNNE v. AMEERONISSA KHATOON*

[13 W. R., 41

giving the like security. A party, who has offered security after the decree has been executed, must show special circumstances (e.g., waste or improper dealing with the property) before the Court can grant such an order. *SITABSOO LALL OOPADHYA v. JANKER BIDER* 17 W. R., 521

101 of 17. Privy been since final jurisdiction which made the decree first appeal

## APPEAL TO PRIVY COUNCIL

—continued.

## 3. STAY OF EXECUTION PENDING APPEAL

—continued.

from has jurisdiction to issue execution. Although, as a general rule, the High Court will take security, under s. 4, Regulation XVI of 1797, before allowing execution of a decree while there is an appeal to the Privy Council pending, yet the Court may, under certain circumstances, allow execution without taking security. Where the lower Court is informed that there has been an appeal to Her Majesty in Council from the decree which it is asked to execute, the lower Court should, in the exercise of its discretion, allow time to the parties to apply to the High Court to stay execution or to require security from the party left in possession, before issuing execution, unless it should see danger of the property being made away with in the interval. *LOCH, J.*, differed. *WISE v. RAJAKISHNA ROX*. B. L. R., Sup. Vol., 541 6 W. R., Mis., 84

102. ———— *Beng. Reg. XVI of 1797, s. 4.*—The plaintiff obtained a decree for possession of part of a zamindari in the Court below, and in execution obtained possession on giving security. On appeal by the defendants to the High Court, the decree was reversed and restitution ordered. Plaintiff then appealed to the Privy Council, and applied to the High Court to be left in possession upon his former security. *Held* that s. 4, Regulation XVI of 1797, did not apply, and the plaintiff was not entitled either to keep possession or to require the defendants to give security; but the defendants were entitled to restitution of the property without security, whether the judgment of the High Court ordered restitution or not: but that it was within the discretion of the Court to call upon the defendants to give security for costs, if any, awarded by the decree of reversal. *IN THE MATTER OF THE PETITION OF RAJKISEN SINGH* [B. L. R., Sup. Vol., 605: 6 W. R., Mis., 111]

103. ———— *Beng. Reg. XVI of 1797, s. 4.*—The plaintiffs, in execution of a decree, which had been affirmed by the High Court on appeal, obtained possession of the land decreed, and realized their costs. The defendant afterwards filed an appeal to the Privy Council against the decree of the High Court. After admission of the appeal, he applied that the plaintiffs might be called upon to furnish security. *Held* that under s. 4, Regulation XVI of 1797, the application could not be entertained. *JOYNARAIN PATTUR v. RUSSICK MOHUN BANERJEE* [B. L. R., Sup. Vol., 744: 8 W. R., 144]

104. ———— Order for security to be furnished by respondent in Privy Council—Order made after decree appealed against—Liability for mesne profits of persons giving security—Civil Procedure Code, s. 603—Revocation of surety—Contract Act (IX of 1872), s. 130—Construction of security bond.—The present plaintiff purchased land brought to sale in execution of a decree, and was put in possession. The sale was set aside by the High Court, and the purchaser was ousted. He preferred an appeal to the Privy Council, and the High Court directed

## APPEAL TO PRIVY COUNCIL

—continued.

## 3. STAY OF EXECUTION PENDING APPEAL

—continued.

that security be given for the mesne profits and the due delivery of the property without waste in the event of the appeal being successful. The present defendants furnished security, and executed a document under which the plaintiff, who had succeeded in the Privy Council, now sued to enforce his rights. It appeared that after the date of the instrument abovementioned a payment was made from the income of the property in satisfaction of a decree obtained by the zamindar against the present plaintiff for arrears of poruppu previously accrued due. *Held* (1) that the order of the High Court requiring security to be furnished was not *ultra vires*, and that the instrument abovementioned was enforceable; (2) that the defendants, who had given no personal guarantee, were not competent to put an end to the security under the provisions of the Contract Act relating to revocation of a surety; (3) that on the right construction of the instrument the period for the profits of which the defendants were chargeable was that between the date of the instrument and the date of the decision of the Privy Council; (4) that the defendants should be credited with the amount paid in satisfaction of the decree for poruppu. *NARAYANAN CHETTI v. ARUNACHELLAM CHETTI* I. L. R., 19 Mad., 140

105. ———— Security by party in possession—*Mad. Reg. VIII of 1818.*—After an appeal had been asserted from a decree of the Sudder Court at Madras, the appellant applied to that Court, under s. 4, Regulation VIII of 1818, and the Circular Order of the 21st September 1826, for an order calling on the respondents, who had been in possession of the estates in dispute before the institution of the suit, to give security as prescribed by that Regulation. The Sudder Court refused the application as not being within the provisions of the Regulation. On petition the Judicial Committee declined to interfere, as there was no allegation of waste by the respondents in the petition. *Quære*—Whether there was any jurisdiction in the Judicial Committee, under s. 4 of Madras Regulation VIII of 1818, to call for security from the respondent when put in possession. *NAGAI-UTCHMEE UMMAL v. GOPPOO NADARAJA CHETTY* [6 Moore's I. A., 309]

106. ———— Procedure where decree-holder attempts to execute it.—Procedure where there is an order of Court to stay the execution of a decree obtained by a party who has appealed to the Privy Council from another decree against himself, if the holder of the decree which is appealed against attempts to execute it. *DWARKANATH ROY v. WOOMASOONDURIE DASSEE*. 14 W. R., 329

107. ———— Power of Civil Court in mofussil.—A Civil Court in the mofussil has no power to stay execution in cases where an appeal has been made to the Privy Council against a decree of the High Court. *MUTTEALU MMAL v. CHELLAYAMMAL*. 5 Mad., 98

## APPEAL TO PRIVY COUNCIL

—continued.

## 3. STAY OF EXECUTION PENDING APPEAL

—concluded.

[4 C. L. R., 125]

## 4. EFFECT OF PRIVY COUNCIL DECREE OR ORDER.

109. ——— Effect of order of Privy Council dismissing suit on power of High Court to make orders in suit—*Petition for*

the suit by the High Court in such a case may permit parties interested to intervene on questions as to the accounts, and may deal with costs and other matters. In a suit by a plaintiff interested in the estate, wholly based on the alleged illegality of its transfer by the executors named in the will of a Hindu, to the Administrator-General (Act II of 1874, s. 31), decrees were made by the High Court, Original and Appellate, in the plaintiff's favour. The Judicial Committee,

L. R., 23 L. A., 203

## APPEAL TO PRIVY COUNCIL

—concluded.

## 5. CRIMINAL CASES.

110. ——— Right of appeal.—No right of appeal to the Privy Council exists in any matter of criminal jurisdiction, and the High Court has no power to grant leave in such a case. *IN THE MATTER OF GEORGE DASS ROY* 18 W. R., 407

*IN THE MATTER OF AMBER KHAN*  
[18 W. R., 407 note]

111. ——— Case referred under s. 404, Criminal Procedure Code, 1869—*Letters Patent, 1865, s. 41*.—The High Court has no power, under cl. 41 of the amended Letters Patent of

[7 Bom., Cr., 77]

112. ——— Question of law or prac-

such leave has been granted, mentioned. *REG. v. PESTANJI DINGHA* 10 Bom., 75

113. ——— *Penal Code (Act XLV of 1860), s. 121A*.—The accused, who was the editor, proprietor, and publisher of the *Kesari*,

s. 434 of the Criminal Procedure Code (Act X of 1882), viz.—(1) Whether the order for the prosecution was sufficient under s. 196 of the Criminal Procedure Code. (2) Whether the High Court had power, in the absence of a sufficient order, to accept the commitment of the accused under s. 532 of the Criminal Procedure Code and to proceed with the trial. (3) Whether the meaning given to the term "disaffection" by the Judge in his charge to the jury was correct. The Judge declined to reserve the above

grant the certificate. *QUEEN-EMPEROR v. BAL GANGADHAR TIWAK* L. R., 23 Bom., 112

## APPEARANCE.

——— Default in—

See CASES UNDER APPEAL—DEFAULT IN APPEARANCE.

**APPEARANCE—continued.**

See CIVIL PROCEDURE CODE, 1882, ss. 98, 99 (1859, s. 110).

See CASES UNDER CIVIL PROCEDURE CODE, ss. 102 AND 103.

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE.

[I. L. R., 1 Calc., 476

— sufficient to prevent ex-parte decree.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 108 (1859, s. 119).

**APPELLANT.**

— Death of—

See CASES UNDER ABATEMENT OF SUIT—APPEALS.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R., 2 Bom., 564

I. L. R., 19 Bom., 714

See LIMITATION ACT, 1877, ART. 171.

[3 C. L. R., 440

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.

[I. L. R., 21 Bom., 102

I. L. R., 20 Mad., 51

See CASES UNDER REPRESENTATIVE OF DECEASED PERSONS.

See RIGHT OF APPEAL.

[I. L. R., 12 All., 200

I. L. R., 22 Bom., 718

— in jail—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R., 13 All., 171

— Poverty of—

See SECURITY FOR COSTS—APPEALS.

[18 W. R., 102

I. L. R., 7 All., 542

I. L. R., 8 All., 203

I. L. R., 13 Bom., 458

I. L. R., 21 Calc., 526

— Substitution of—

See PRIVY COUNCIL, PRACTICE OF—SUBSTITUTION OF APPELLANT.

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**1. GENERAL DUTY OF APPELLATE COURTS.**

1. — High Court, Practice of—  
*Appeal on questions of fact—Credibility of witnesses.*—The High Court, sitting in appeal on questions of fact, was guided by the same rules as those of the Privy Council when they sat upon motions for a rule for new trials from the old Supreme Court. The High Court, sitting in appeal, will not disturb a judgment upon a question as to the credibility of witnesses, unless it be manifestly clear, from the probabilities attached to certain circumstances in the case, that the Court was wrong in the conclusion drawn from such evidence. The High Court, sitting in appeal, will look upon the decree of a Judge as to facts in the same light as the verdict of a jury; and, though some of the reasons given for the conclusion arrived at be erroneous, the High Court in appeal will not say that the decree is against the weight of evidence, if sufficient reason for such decree still remain. *HEERALALL CHUCKERBUTTY v. MOHESU CHUNDER GHOSAL* . . . . . 1 Hyde, 105

2. — Privy Council, Practice of—  
*Appeal on questions of fact.*—The rule of the Privy Council not to disturb a judgment of a Court in India upon a question of fact, unless it is clear from the probabilities of the case that the judgment is wrong, however necessary as regards a Court of Appeal far removed from India, would hardly be extended as one equally necessary and applicable with the same strictness to a Court of Appeal in India. *SARODA SOONDERY v. TINCOWRY NUNDY* . . . . . [1 Hyde, 223

3. — Question of fact, Ground for disturbing finding on.—*Held*, on examination of the evidence, that the lower Appellate Court ought not to have disturbed the distinct finding of the

## APPELLATE COURT—continued.

1. GENERAL DUTY OF APPELLATE COURTS  
—continued.

lower Court, as it had, upon what appeared to be mere conjecture. *LAL MAHOMED BIPARI v. SUGOLA BWA*. 11 C. L. R., 104

jurisdiction. *KURUM CHAND KOLERAH v. HUREE MOHUN GHOSH*. 2 W. R., 45

5. ——— Presumption of correctness of judgment appealed from—*Duty of Judge*—A Judge of appeal is not in the position of an arbitrator who has to look at the evidence on both sides and determine which is preferable. He has to deal with the decision of a properly constituted Court, which, if not shown to be erroneous, ought to be affirmed. *SHETABDEE BISWAS v. MOLAKDER MUNDUL*. 25 W. R., 30

6. ——— Presumption as to facts

Court of first instance as incontestably proved, merely because the respondent has not filed any cross-objections to the decree under s. 561 of the Code of Civil Procedure (Act XIV of 1882). *BHAGGI v. BAPUJI*. I. L. R., 13 Bom., 75

7. ——— Credibility of witnesses—In cases turning on the credibility of witnesses, the Appellate Court gives great weight to the decision of the Courts below. *WOMESH CHUNDER ROY v. DEENDAYAL PORAMANICK*. 2 Hay, 12

8. ——— Where credit has

9. ——— Dealing with documentary evidence.—Where a Munsif pronounces an opinion as to the authenticity of certain documents, the lower Appellate Court must assume that he did his duty and looked into each and every one of them before pronouncing such opinion. On a question of simple credit to be given to a witness, an Appellate Court, having before it merely written depositions, is not authorized to set aside the opinion of the Court of first instance which heard the witness and recorded that his demeanour was not satisfactory. *GURPR NATH MOOKERJEE v. BODDHUMANT MAL*. [25 W. R., 20]

See *NODIN CHUNDER POOSHALL v. RUNGGO CHUNDER CHATTERJEE*. 25 W. R., 303

10. ——— questions of fact given on the to consider same conclusion as that to which it should have

## APPELLATE COURT—continued.

1. GENERAL DUTY OF APPELLATE COURTS  
—continued.

come if it had originally heard the witnesses, but, before reversing the decision, it ought to be satisfied that the Court was clearly wrong. *OOTEM v. MULLICK GHOLAM HOSSEIN*. 2 Hay, 359

in open Court, and to make upon the evidence so submitted every comment, and found upon it every argument they may think necessary. *LALLA JAGGESHUR SANYAL v. GOPAL LALL*. 15 W. R., 54

13. ——— Duty of Appellate Court to direct examination of witnesses before reversing decree—*Dismissal of suit by first Court without examining defendant's witnesses—Reversal of decree on appeal*.—Where a Court of first in-

menting the evidence which they had given in the first Court by the testimony of those witnesses whom that Court had declared it unnecessary to hear, and that the case must be regarded as one in which the first Court had refused to examine the witnesses tendered by the defendants. The Court directed the first Court to examine the defendant's witnesses, and, having done so, to return their depositions to the lower Appellate Court, which was to replace the appeal upon its file and dispose of it. *KURBA BAKSH v. IMAM ALI SHAH*. I. L. R., 9 All., 339

14. ——— Duty of Appellate Court to call the remaining witnesses before reversing the decree of first Court—*Dismissal of case in first Court without hearing all the witnesses*.—The Subordinate Judge, having heard all the witnesses for the plaintiff and some of the witnesses for the defendant, intimated that he did not consider it necessary for the defendant to call any more evidence. He then dismissed the suit. On appeal by the plaintiff, the Judge, upon the recorded evidence, reversed the decree, and allowed the plaintiff's claim. The

ing the defendant to give the evidence which the

## APPELLATE COURT—continued.

1. GENERAL DUTY OF APPELLATE COURTS  
—concluded.

first Court declined to take. *ARJUN RAMCHANDRA SHETKARPE v. SHANKAR VISHRAM SHENVI GHURAYE*  
[I. L. R., 22 Bom., 253]

2. EXERCISE OF POWERS IN VARIOUS  
CASES.

## (a) GENERAL CASES.

15. ——— Discretion, Exercise of—  
*Discretion capriciously exercised—Error of law.*—When an appeal against an order based on facts is given from a subordinate to a superior Court, the discretion vested in the former is absorbed in the latter, and it is the duty of the superior Court to weigh the facts which form the basis upon which the subordinate Court proceeds and arrive at its own independent conclusion: and this is so notwithstanding that the subordinate Court exercised its discretion after a proper enquiry and due consideration of the facts put before it, and not capriciously or with prejudice. *PENDSE v. MAISE* . . . 3 Bom., A. C., 94

16. ——— *Appellate Court's power to interfere with exercise of discretion.*—When an appeal against an order based on facts is given from a subordinate to a superior Court, the discretion vested in the former is absorbed in the latter, and it is the duty of the superior Court to weigh the facts which form the basis upon which the subordinate Court proceeds and arrive at its own independent conclusion: and this is so notwithstanding that the subordinate Court exercised its discretion after a proper enquiry and due consideration of the facts put before it, and not capriciously or with prejudice. *KIRANI AHMEDULA v. SUBADHAT*  
[I. L. R., 8 Bom., 28]

17. ——— *Costs — Miscarriage or mistake.*—An Appellate Court will not interfere with the discretion of a lower Court as to costs, unless satisfied that there has been some miscarriage or mistake. *LUCHMUN RAM UNOOR v. WATSON* . . . W. R., 1864, 146

*DESAJI LAKHMAJI v. BHAVANDAS NOROTAMDAS*  
[8 Bom., A. C., 100]

*KESHAYRAM KRISHNA JOSHI v. BHAVANJI BIN BABAJI* . . . 8 Bom., A. C., 142

*KAPPUSVAMIAXXAN v. NANNUVAXYUN*  
[1 Mad., 74]

18. ——— *Costs — Action on contract—Verdict for less than Rs. 1,000—Certificate under Act XXVI of 1864, s. 9.*—Where, in an action in the High Court founded on contract, a verdict was found for the plaintiff for a sum less than Rs. 1,000, and the Judge who tried the case awarded costs without certifying under s. 9, Act XXVI of 1864, that the action was fit to be brought in the High Court,—*Held* that the Court might supply the omission on appeal. *NOBOCOOMAR DASS v. KEWATA MUG* . . . 10 B. L. R., 358

*KEWATA MUG v. NOBOCOOMAR DASS*  
[19 W. R., 207]

19. ——— *Discretion of Judge—Refusal to admit appeal—Limitation.*—Where the law leaves a matter within the discretion of a Court, and the Court, after proper enquiry and

## APPELLATE COURT—continued.

2. EXERCISE OF POWERS IN VARIOUS  
CASES—continued.

due consideration; has exercised the discretion in a sound and reasonable manner, the High Court will not interfere with the conclusion arrived at, even though it would itself have arrived at a different conclusion. Consequently, where a District Judge, after due enquiry, refused to admit an appeal presented after the time prescribed by the Statute of Limitations, the High Court would not interfere with his order. *RANCHODJI v. LALLU*  
[I. L. R., 6 Bom., 304]

20. ——— *Question of limitation—Appeal.*—*B* sued *M* and *T* for money due on a bond, and on the 27th April 1877 obtained a decree against *T*, the suit against *M* being dismissed. *T* applied for a review of judgment, and *B* also made a similar application. On the 25th May 1877 *T*'s application was granted, and on the 16th July 1877 *B*'s was rejected. On the 29th June 1878, the Court re-heard the suit against *T*, and dismissed it. *B* appealed, making *T* and *M* respondents, and impugning in his memorandum of appeal the decree of the 27th April 1877 as well as that of the 29th June 1878. The Appellate Court, assuming that the appeal was one from the decree of the 27th April 1877, preferred beyond time, admitted it after time, and after hearing the case on its merits, gave a decree against *M*, and dismissed the suit as regards *T*. *Held* that the Appellate Court erred in assuming that the appeal was from the decree of the 27th April 1877, and that it was at liberty to admit it beyond time, the appeal being from the decree of the 29th June 1878, that decree being the one which had brought *B* before that Court as an appellant; and that the Appellate Court was not competent, on an appeal from the decree of the 29th June 1878, to reconsider the merits of the case against *M*, the appeal from the decree of the 27th April 1877 being barred by limitation, and that decree and the decree of the 29th June 1878 being separate and distinct, and not appealable in one memorandum of appeal from the latter decree. *MORI BIBI v. BIKANU* . . . I. L. R., 2 All., 772

21. ——— An Appellate Court can *ipso motu* raise the question of limitation for the first time, where it appears on the face of the plaint that the suit is barred. *MOZAFFUR ALLY v. GIRISH CHANDRA DAS*  
[1 B. L. R., A. C., 25; 10 W. R., 71]

## (b) SPECIAL CASES.

22. ——— *Analogous cases—Joinder of causes—Cases in which evidence is similar.*—A number of cases having been instituted against the same defendant, and relating to the same matter, the plaintiff in one of them applied to both the lower Courts to have them all tried together, pointing out particularly that the documentary evidence in one of the other cases was necessary, and should be made use of in the trial of his case. This application was refused by the first Court, and the lower Appellate Court decided the case of the applicant upon evidence recorded with it, and disposed of the others as governed

## APPELLATE COURT—continued.

## 2. EXERCISE OF POWERS IN VARIOUS CASES—continued.

tried each case separately on its merits. *NEHAL SINGH v. ALI AHMED* . . . 15 W. R., 110

23. ——— Cases in which evidence is similar.—A Judge should not, without the consent of the parties, allow his judgment in one case to govern his decision in another, even if the subject of dispute is of a similar nature and the evidence similar in character, when the parties are not the same and the subject-matter of the suit is different. *SOORENDRANATH ROY v. PURMANUND GHOSH* . . . 15 W. R., 342

24. ——— Appeal — Civil Procedure Code, 1877-1882, s. 582 (Act XXIII of 1861, s. 37)—“Powers”—“Jurisdiction.”—S. 37 of Act XXIII of 1861 did not apply to cases where the subject

same section had not the effect of making s. 7 of the same Act applicable to cases where the Appellate Court had passed an order under ss. 5 and 6 dismissing the appeal. *Seemle*—The word “powers” in s. 37 of Act XXIII of 1861 was not synonymous with, and did not comprehend, “jurisdiction.” *KALIKRISHNA CHANDRA v. HARINAR CHUCKERBUTTY* [1 B. L. R., A. C., 155; 10 W. R., 160

*Sum of*  
*Recently*  
*stamp-*  
*insuffi-*  
ciently stamped, the deficient stamp-duty should be levied by the Appellate Court. *CHENNAPPA v. RAGHUNATHA* . . . 1 I. L. R., 15 Mad., 29

28. ——— Civil Procedure Code (1882), s. 543—Memorandum of appeal containing scandalous matter—Duty of the Appellate Court.—A memorandum of appeal presented to a District Court alleged, *inter alia*, actual partiality against the Judge whose decree was in question. The

objected to, and asking that the Court would, if necessary, strike them out. The District Judge thereupon rejected the memorandum of appeal under

admitted the appeal. *Per MOORE, J.*—(Holding that the statement which accompanied the memorandum of

## APPELLATE COURT—continued.

## 2. EXERCISE OF POWERS IN VARIOUS CASES—continued.

appeal on its re-presentation contained expressions amounting to contempt of Court.) the District Judge should have returned the appeal memorandum and have refused to receive it until the objectionable remarks had been expunged. *ZAMINDAR OF TUNI v. BENNATTA* . . . 1 I. L. R., 23 Mad., 155

27. ——— Power to separate suits misjoined.—An Appellate Court has jurisdiction under s. 37, Act XXIII of 1861, to separate misjoined suits, and to try them separately. *SHOROOF CHUNDER PAUL v. MOHNOOR MOHUN PAUL CHOWDHURY* . . . 4 W. R., 109

28. ——— Withdrawal of suit on appeal.—An Appellate Court has under this section power to allow a suit to be withdrawn. *GREGORY v. DOOLEY CHAND* . . . 14 W. R., O. C., 17

[13 B. L. R., F. B., 266  
21 W. R., 210

*Contra*, *RUSSOOL BIKER v. JAN ALI CHOWDHURY*  
[13 B. L. R., 287 note  
17 W. R., 31

*CHITRAJI LAL v. JAMNA DAS* . . . 7 N. W., 243

*Quere*—Whether it can. *HACHUN BANO v. ABDEL HAKIM* . . . 19 W. R., 321

tration matters in dispute in an appeal. *Juggessur Dey v. Krutarthomoyee Dossee*, 12 B. L. R., F. B., 266; 21 W. R., 210, dissented from. IN THE MATTER OF SANGARALINGAM PILLAI

[1 I. L. R., 3 Mad., 78

31. ——— *Seemle*.—An Appellate Court has the power to refer a case to arbitration at the instance of the parties under s. 582 of the Code of Civil Procedure, 1882. *In re Sangaralingam Pillai*, 1 I. L. R., 3 Mad., 78, cited. *Juggessur Dey v. Krutarthomoyee Dossee*, 12 B. L. R., 266, cited and distinguished. *BHOGWAN DASS MARWARI v. NEND LALL SEIN*

[1 I. L. R., 13 Calc., 173

32. ——— *Powers to refer to arbitration a case on appeal*—Civil Procedure Code, 1882, s. 582.—Under s. 582 of the Civil Procedure Code, an Appellate Court has power to refer a case before it to arbitration if the parties wish it to be referred. *In re the petition of Sangaralingam Pillai*, 1 I. L. R., 3 Mad., 78, and *Bhogwan Dass Marwari v. Nend Lal Sein*, 1 I. L. R., 13 Calc., 173, *followed*.

## APPELLATE COURT—continued.

## 2. EXERCISE OF POWERS IN VARIOUS CASES—continued.

SURESH CHUNDER BANERJEE v. AMBICA CHURN MOOKERJEE . . . I. L. R., 18 Cal., 507

33. ——— Attachment, Order of—*Setting aside order of attachment made by another Court.*—No Court other than a Court of Appeal or a High Court acting under s. 622 of the Civil Procedure Code can discharge an order of attachment issued by another Court. KOLASHERRI ILLATH NARAINAN v. KOLASHERRI ILLATH NILAKANDAN NAMUDURI [I. L. R., 4 Mad., 131]

34. ——— Award of Amoen—*Power of Appellate Court as to Ameen's award of wasilat where it has been confirmed by lower Court.*—After obtaining a judgment for possession, the judgment-creditor sued for wasilat. After decree, an enquiry was made into the amount of wasilat, and on the report of an Ameen, the decree-holder being present and the opposite party not appearing, the Court made an order for the payment of the sum therein mentioned. Subsequently the judgment-debtor appeared and petitioned that the award might be corrected by deductions to which he was entitled. On his application being refused, he appealed to the Judge, who remanded the case with a view to its being ascertained whether any and what amount should be deducted. *Held* that the Judge should not have interfered with the award of wasilat, which was a final award so far as the Appellate Court was concerned. PUNCHANUN BOSE v. OOMANATH ROY CHOWDHRY [14 W. R., 160]

35. ——— Caste, Question of, Evidence on.—On questions of caste a lower Appellate Court has a right to come to a finding based on history or the custom of the country. ROGHUNATH DASS MOHAPATTUR v. BYDONATH DASS MAHARATHA [14 W. R., 364]

36. ——— Decree—*Error in decree of lower Court—Power to make decree which lower Court ought to have made—Madras Rent Recovery Act, ss. 9, 10, 11.*—A summary suit by a landlord to enforce the acceptance of a pottah under the Madras Rent Recovery Act should not be dismissed on a finding by the Appellate Court that the pottah tendered was not a proper pottah. The Appellate Court ought to pass the decree which the Court of first instance should have passed. NAGARAJA v. KASIMSA . . . I. L. R., 11 Mad., 23

37. ——— Issues—*Reference of issues for determination—Civil Procedure Code, ss. 566, 567—Transfer of case to another Court.*—Where an Appellate Court has made an order of reference under s. 566 of the Code of Civil Procedure, the return to such order must be made to the same Court, and such Court is not competent to transfer the appeal for disposal elsewhere. UDIR NARAIN SINGH v. JHANDA [I. L. R., 15 All., 315]

38. ——— Jurisdiction—*Subordinate Court acting without jurisdiction—Erroneous exercise of jurisdiction by subordinate Court—Appeal, Ground of.*—Where the High Court is the Court of Appeal from any particular subordinate Court, and

## APPELLATE COURT—continued.

## 2. EXERCISE OF POWERS IN VARIOUS CASES—continued.

that Court acts without jurisdiction in the trial of a suit or an appeal before it, the High Court has power as an Appellate Court to set right the proceedings of such subordinate Court. KISHNA RAM v. HINGU LAL, I. L. R., 2 All., 237, and Tota Ram v. Issur Das, Weekly Notes, 1887, p. 76, overruled. JWALA PRASAD v. SALIG RAM . . . I. L. R., 13 All., 575

39. ——— Local investigation, Interference with result of.—An Appellate Court should not interfere with the result of a local investigation or enquiry except upon very clearly defined and sufficient grounds. SARAT SUNDARI DEBI v. PROSONNO COOMAR TAGORE . . . 6 B. L. R., 677  
15 W. R., P. C., 20

MONKEE DUMBER SAHEB v. MONKEE BRULLUN-  
DER SAHEB. . . . . 15 W. R., 423

40. ——— Decree after—*Ground for reversal by Appeal Court.*—An Appellate Court ought not to reverse the decision of a first Court based upon very careful inspection of the laud in dispute, except upon a very clear and strong opinion upon the evidence, and upon recording sufficient and satisfactory reasons for such opinion. BRINDABUN BILAROTEE v. DHUNUNJOY NARAIN BHUNJO DEO . . . . . 18 W. R., 452

41. ——— Complaint—*Order to file new plaint—Withdrawal of suit.*—An Appellate Court, having set aside the whole of the proceedings, including the plaint, directed that a new plaint be presented in a proper Court. *Held* that this order, equivalent to directing the plaintiff to institute a new suit, was wrong; and that, with only the alternative of having leave to withdraw the suit and bring a new one, his suit should have been dismissed. LEDGARD v. BULL [I. L. R., 9 All., 191; I. R., 13 I. A., 134]

42. ——— Civil Procedure Code, s. 57—*Return of plaint when Court has no jurisdiction.*—An Appellate Court is not bound to return the plaint under all circumstances where defect of jurisdiction appears. YACOOB v. MOHAN SINGH [I. L. R., 11 Mad., 482]

43. ——— Plaint, Amendment of.—*Semle.*—A plaint cannot be amended in an Appellate Court. ABDUL GAFOOR v. NUR BANU [I. B. L. R., A. C., 78; 10 W. R., 111]

44. ——— Appellate Court's power to amend plaint—*Suit for rent converted into one for ejectment—Variance between pleading and proof—Civil Procedure Code (1882), ss. 53 and 582.*—An amendment of a plaint, which materially transforms the nature of the claim, cannot be made under s. 53 of the Code, and certainly not in appeal. S. 53 permits amendment of the plaint before judgment, and not after. The larger powers conferred on Appellate Courts by s. 582 do not authorize such a material transformation of a suit in appeal. BAI SHRI MAJIRAJBA v. MAGANLAL BHAI SHANKAR . . . . . I. L. R., 19 Bom., 303

## APPELLATE COURT—continued.

## 2. EXERCISE OF POWERS IN VARIOUS CASES—continued.

45. ————— *Objection for defect in plaint*—An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint. *COLVIN COWIE v. ELIAS* 2 B. L. R., A. C., 212; 11 W. R., 40

46. ————— *Striking names out of plaint and amending issues*—*Merits of case, Error not affecting*—Act VIII of 1859, s. 350—Four plaintiffs sued as partners, but it was found during the trial that they were not all partners at the time the cause of action accrued; and the Judge thereupon amended the issue which had been raised

gave a decree in favour of the other plaintiffs. *Held* that the Judge acted rightly in amending the issue, but that he should have done so without striking the names of the plaintiffs out of the plaint. Such an error is "an error in an interlocutory order not affecting the merits of the case," and therefore, under s. 350, Act VIII of 1859, not a ground for reversing the decree on appeal. *EAST INDIAN RAILWAY COMPANY v. JORDAN*

[4 B. L. R., O. C., 97; 14 W. R., O. C., 11

47. ————— *Remand—Civil Procedure Code, 1877, s. 562*—An Appellate Court is not empowered by Act X of 1877 to order or allow a plaint to be amended, or to remand a case under s. 562 of that Act for the purpose of such amendment. *FARZAND ALI v. YUSUF ALI* 1 L. R., 2 All., 669

CHOWDHRY 24 W. R., 242

48. ————— *Amendment of record on appeal*—A second plaintiff was added in the Court below, but no amendment was made in the record, and the suit was dismissed with costs. An

being no appellant in the record; but the Court allowed the appeal to proceed, and the amendment order by the Court below to be effected. *KEDARNATH DOSS v. PROTAP CHUNDER DOSS*

[1 L. R., 8 Calc., 628; 8 C. L. R., 238

50. ————— *Dismissal or withdrawal of case*—Where the Court of Appeal sets aside the whole of the previous proceedings in a suit, it cannot direct a new and amended plaint

## APPELLATE COURT—continued.

## 2. EXERCISE OF POWERS IN VARIOUS CASES—continued.

to be filed, but must give the plaintiff the alternative of having his suit dismissed or of withdrawing it with leave to bring a new action. *LEDGARD v. BULL*

[L. R., 13 L. A., 134  
1 L. R., 9 All., 191

51. ————— An amendment of a plaint ought not to be allowed on appeal, if by so doing the defendant is likely to be precluded from pleading limitation, and where no leave to amend was asked for in the Court of first instance. *MALLIKARJUNA v. PALLAYA* 1 L. R., 16 Mad., 319

52. ————— *Objection not taken to plaint—Ground for dismissal of suit—Suit for declaratory decree without asking consequential relief*—A suit should not be dismissed by an Appellate Court on the ground of its being one asking merely for a declaratory decree, and no consequential relief, where that objection has never been taken by the defendants to the suit. The plaintiffs should in such a case be allowed an opportunity of amending their plaint. *LIMBA BAY KUSHINA v. RAMA BAY PIMPLU* 1 L. R., 13 Bom., 548

53. ————— *Suit for declaratory*

[1 L. R., 20 Calc., 846  
4 C. W. N., 182

## 3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

54. ————— Evidence Act, 1855, s. 57—*Re-hearing of ex-parte case on fresh evidence*—Where a Court of first instance acts aside its own ex-parte judgment, and after a new trial, in which it takes fresh evidence, as well as admits that original

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55. ————— Evidence sufficient for judgment—*Civil Procedure Code, 1859, s. 353*—When parties have had an opportunity of putting in such evidence as they consider sufficient to entitle them to a judgment upon the material issues of the case, the evidence ought to be held sufficient under s. 353, Civil Procedure Code, to enable the Appellate Court to pronounce a satisfactory judgment. *ZARRAH v. BHOGWAT DISS*

[10 W. R., 211

56. ————— Consideration of evidence in ex-parte case.—Where a party fails to file a

## APPELLATE COURT—continued.

### EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—continued.

admission of objections under s. 354, Act 1859, the Appellate Court is not at liberty in the case *ex-parte* without considering the evidence. **WOOMESH CHUNDER ROY v. JONARDUN** . . . 15 W. R., 235

**Appeal against part of Duty of Judge.**—Where a plaintiff, dissatisfied with so much of the decision of the first court is adverse to him, appeals, making the party in favour of the decree the sole respondent. The Judge of the Appellate Court has only to decide whether, as between the appellant and respondent, the order of the first Court is correct. **SINGH v. POOKHUN SINGH** . . . [10 W. R., 432]

**Adjudication on evidence for contribution where shares were not paid.**—In a suit for contribution on account of unpaid revenue, which was decreed by the first court, but dismissed by the lower Appellate Court because the plaint did not specify the shares of different shareholders. *Held* that the lower court was bound to adjudicate upon the evidence. **BHONO BIBEE v. PALLAN GAZEE** . . . [11 W. R., 131]

**Evidence improperly admitted in lower Court.**—The lower Appellate Court is not competent to reject the documentary evidence which had been admitted by the Court of first instance merely because it had been admitted at the first hearing of the case, or after the case which it had been ordered to be produced. **GAN SINGH v. FELL** . . . 3 Agra, 148

**Decision in lower Court on Rent Act, 1881, s. 207.**—In a suit instituted in the Court of an Assistant Collector under s. 93 of the N.W. P. Rent Act, an appeal was taken that, the plaintiffs not being recorded shareholders, the suit was not maintainable in the Revenue Court. The objection was rejected by the Court, at the same time, disposed of the case on the merits, and dismissed the suit. *Held*, the lower Appellate Court affirmed the decision on the ground that the Revenue Court had no jurisdiction in the matter. *Held* that, as there were no materials on the record for the determination of the suit, the Judge should, with reference to the Rent Act, have disposed of the appeal on merits. **Debi Saran Lal v. Debi Saran** . . . 1, I. L. R., 6 All., 278, referred to. **SUBHO v. ANEUDH SINGH** . . . [I. L. R., 6 All., 440]

**Additional evidence on appeal.**—**Evidence excluded by lower Court if it had sufficient evidence.**—A Court of first instance ought not, because it is satisfied upon the evidence which one of the parties has given, to allow an appeal from putting upon the proceedings additional evidence that he wishes to give, so that he may have his case brought fairly before the Appellate Court. Where a party has thus been

## APPELLATE COURT—continued.

### EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—continued.

prevented in the first Court, and the evidence on the record is not deemed sufficient by the Appellate Court, the latter Court does wrong if it refuses to receive the evidence which has been excluded in the way indicated. **BAIR SOONDAR ROY v. KALMOONNISSA** . . . 23 W. R., 63

**62. Civil Procedure Code, 1859, s. 355, Court taking evidence under.**—A lower Court, in taking evidence ordered under s. 355, Act VIII of 1859, acts in a ministerial capacity. **RAM JOY SURMAH v. PRANKISHEN SINGH. BURODA DEBIA v. PRANKISHEN SINGH. PRONNODA DEBIA v. PRANKISHEN SINGH** . . . [2 W. R., 80]

**63. Time for making application.**—An application to give additional evidence should be made when the case first comes before the Appellate Court. It is too late to make such an application when the case has been remanded and has come back for final disposal *per* ARNOULD, C.J. **ARDESHIR DHANJIBHAI v. COLLECTOR OF SURAT** . . . [3 Bom., A. C., 116, at p. 123]

**64. Power of Appellate Court—Discretion of Court.**—It is within the discretion of a lower Appellate Court to allow the parties an opportunity to adduce fresh evidence, if it is satisfied that the interests of justice require that course. **DAMOODUR DASS v. RITOO SINGH** . . . [24 W. R., 325]

**65. Evidence insufficient.**—Where the evidence upon the record is not sufficient to enable the Appellate Court to pronounce a judgment upon regular appeal, it may require the Court against whose decree the appeal is made to take additional evidence, defining the points to which such evidence is to be confined, in order to enable the Appellate Court finally to determine the case. **NARASIMHARAY KRISHNARAY v. ANTARI VIRUPAKSH** . . . 2 Bom., 64, 2nd Ed., 61

**66. Civil Procedure Code, s. 355—Evidence taken in lower Court insufficient.**—Where a Munsif, without framing issues or examining the plaintiff, passed a decree in his favour upon an admission made by the defendant, and upon inspection of a document that was upon the record of a former suit; but the Judge, on appeal, reversed the decree of the Munsif on account of the insufficiency of evidence, the document, in his opinion, not being admissible. *Held* that the Judge ought not to have reversed the Munsif's decree without first exercising his power of taking fresh evidence under s. 355 of the Code of Civil Procedure. **APPA VALAD KASHINATH v. VITHOBA VALAD TUKARAM** . . . 6 Bom., A. C., 88

**67. Civil Procedure Code, 1859, ss. 356, 357.**—Where defendant appealed in a suit to recover arrears of rent in which the genuineness of the *kabuliat* was in issue, and the defendant asked the Deputy Collector to summon certain

## APPELLATE COURT—continued.

3. EVIDENCE AND ADDITIONAL EVIDENCE  
ON APPEAL—continued.

the rate and time of payment, and the rent to which the payment had been appropriated. **MUNDEY v. BALI BROOKUN SINGH** 9 W. R., 127

98. — *Omission to call evidence in lower Court.*—A suit to recover money having been commenced against P and others, an attachment was applied for, and certain goods, supposed to be the defendants', were attached by order of the Court. Two other persons coming forward and claiming the attached goods as their property, plaintiffs concluded them to be partners with the

[10 W. R., 403]

have given below. **RAM DAS CHAKRABARTY v. OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY**. I. L. R., 9 All., 366

account of the defendants. The defendants resisted

the books which they had refused to produce.—*Held* that the evidence could not be admitted. **MOSOHUTS GANESH TAMBEKAR v. LAKHMEERAM GOVINDARAM**

[I. L. R., 12 Bom., 247]

71. — *Reversing decision without fresh evidence.*—Defendant, having purchased a decree, claimed the judgment-debtor's (B's) rights and interest in certain property to be sold in execution, and bought them himself. Plaintiff, who had purchased one B's rights and interest in a 4-anna share of the property, intervened; but his intervention having been rejected in the summary department, he sued to set aside the summary order, and to establish his vendor's right in the property. The vendor having admitted the sale to the plaintiff, the first Court thought it unnecessary to examine the witnesses to, and the writer of, the deed of sale, and finding the plaintiff in possession, decreed the suit

## APPELLATE COURT—continued.

3. EVIDENCE AND ADDITIONAL EVIDENCE  
ON APPEAL—continued.

This decision was reversed on appeal. *Held* that the lower Appellate Court did wrong in presuming collusion between B and his vendor (the plaintiff), and ought not to have rejected the deed without examining it should possession at 4 ALL JHA r. 0 W. R., 461

72. — *Admission of fresh documentary evidence.*—The Appellate Court should not send for and admit fresh documentary evidence which has not been put in by either party in the lower Court. **DWARANATH SHARMA v. RAM LOCHUN BISWAS** 10 W. R., 93

73. — *Code, 1859, review.*—When review with a material issue. the trial.—*Held* that, having admitted the review on grounds independent of fresh evidence, it was competent for the Court, under s. 355, Act VIII of 1859, to admit fresh evidence, if required, to enable it to pronounce a satisfactory judgment, or for any substantial cause. **BENARES LALL NYDER v. TROYLUCKHO MOYER BURMONEE** 13 W. R., 223

74. — *Civil Procedure Code, 1859, s. 355.*—The true interpretation of s. 355, Act VIII of 1859, is that, when a Court

allow such further evidence to be taken. **GOWHUR ALI KHAN v. SAKHNELSA KHANUM** 15 W. R., 507

75. — *Civil Procedure Code, 1859, s. 355.*—*Appeal from ex-parte decree.*—The Court declined on appeal from an order rejecting an application under s. 119, Act VIII of 1859, to set aside an ex-parte decree, to receive an affidavit which had not been previously tendered, and held that s. 355 was not meant to have application to such a case as this, but to empower the Court of Appeal, at its discretion, to receive evidence upon issues of facts which had been tried in the Court of first instance. **LESLIE v. ALLENDEY** [17 W. R., 390]

76. — *Civil Procedure Code, 1859, s. 355.*—*Error in law.*—In a suit for ejectment on the ground that defendant was holding over after the expiration of his lease, the defendant's vakil deposed on oath in the first Court that

destruction. *Held* that the admission of the plea on the mere ipsi dixit of the defendant was a substantial error in law, even though plaintiff tendered

**APPELLATE COURT—continued.****3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—continued.**

admitted nor denied the document; that the Subordinate Judge had no right to admit the pottah under the circumstances; and that, if he had, he was wrong in deciding the case upon it without taking evidence as to its genuineness. **SERAJOOL HUQ v. KERAMAT-OLLAH** . . . . . **19 W. R., 88**

**77. Civil Procedure Code, 1859, s. 355—Evidence excluded by first Court.**—When the first Court was satisfied with the evidence produced, and therefore did not allow the plaintiff to produce all his evidence, and the Appellate Court does not think the evidence sufficient, it ought to allow the plaintiff on appeal to call the evidence excluded by the first Court. **BRIJO SOONDAR ROY v. KAMROONNISSA** . . . . . **23 W. R., 63**

**78. Improper reception of evidence—Remand.**—When a lower Court disposes of a case upon the merits as proved by evidence not legally admissible against the defendants, and the Appellate Court considers it proper to allow the plaintiff to adduce further evidence, it may either take such further evidence itself or send the case back to the lower Court to take such evidence. **RAMJOY SUBMAH MOOONDAR v. PURAN KISHEN SINGH** . . . . . **[W. R., F. B., 124]**

**79. Discovery of fresh evidence—Application for review.**—The High Court decided a case irrespective of certain documents brought forward by a party at the hearing of the appeal, and afterwards rejected an application for a review of that judgment. In an application to the Privy Council for special leave to bring in those documents,—*Held* that further evidence ought not to be admitted under s. 355, Act VIII of 1859; that there was great danger in the Court of ultimate appeal lightly introducing evidence which had not been under the consideration of the Courts below, and which the parties had had no means of testing. **GOBIND SUNDARI DEBIA v. JAGADAMBA DEBIA** . . . . . **3 B. L. R., P. C., 25**

**80. Civil Procedure Code, s. 568.**—The test as to whether additional evidence should be received in an Appellate Court under s. 568 of the Code of Civil Procedure depends upon the question whether or no the Appellate Court requires the evidence "to enable it to pronounce judgment or for any other substantial cause"; as to this, the Appellate Court is to be the sole judge. In **THE GOODS OF PREM CHAND MOONSHEE. UPENDRA MOHAN GHOSE v. GOPAL CHUNDRA GHOSE** . . . . . **[I. L. R., 21 Calc., 484]**

**81. Reasons, Record of—Power to take fresh evidence—Discretion of Court.**—The power given to the High Court by the Code of Civil Procedure, of taking, of its own motion, original evidence anew, should be exercised very sparingly; and, when exercised, it is desirable that the reasons for exercising it should always be recorded or minuted by the Court in the proceedings.

**APPELLATE COURT—continued.****3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—continued.**

**SREEMANOHUNDER DEY v. GOPAL CHUNDER CHUCKERBUTTY**

**[7 W. R., P. C., 10: 11 Moore's I. A., 29]**

**GUNGA GOBIND MUNDUL v. COLLECTOR OF 24-PERGUNNAHS** . . . . . **7 W. R., P. C., 21**  
**[11 Moore's I. A., 345]**

**JUGGOBUNDHOO DEB v. GOLUCK CHUNDER HALDAR** . . . . . **10 W. R., 228**

**JOOG MAYA DEBIA v. RAM CHUNDER CHATTERJEE** . . . . . **10 W. R., 378**

**82. Reasons for taking fresh evidence.**—*Held* that the lower Appellate Court should state most fully and clearly its reasons for calling for fresh evidence; but that in point of law it was sufficient if that Court considered the matter and stated that such reasons existed without mentioning what they were. **SHIB CHUNDER MAHTOON v. KASHEENATH KURMOKAR** . . . . . **12 W. R., 245**

**83. Sufficiency of reasons for taking fresh evidence.**—Where an Appellate Court received additional evidence, recording only that the papers were material and important, there was held to be no sufficient compliance with the proviso of s. 355, Civil Procedure Code, which requires the reasons for admitting additional evidence to be stated. **JUGGUT INDUR BUNWAREE v. BHUBO TARINEE DASSEE** . . . . . **14 W. R., 19**

**84. Reasons for taking fresh evidence.**—Additional evidence cannot be admitted in appeal without some substantial reason being recorded in the proceedings. **SNADDEN v. TODD, FINLAY & Co.** . . . . . **7 W. R., 313**

**85. Reasons for taking fresh evidence.**—The provision in the Code of Civil Procedure which requires Judges who admit fresh evidence on an appeal to record their reasons, though not a condition precedent to the reception of the evidence, is yet one that ought at all times to be strictly complied with. **GUNGA GOBIND MUNDUL v. THE COLLECTOR OF THE 24-PERGUNNAHS**

**[7 W. R., P. C., 21: 11 Moore's I. A., 345]**

**SREEMAN CHUNDER DEY v. GOPAL CHUNDER CHUCKERBUTTY**

**[7 W. R., P. C., 10: 11 Moore's I. A., 28]**

**HURPERSHAD v. SHERO DYAL**

**[I. R., 3 I. A., 259: 26 W. R., 55]**

**LOWA JHA v. BISSESHUR SINGH** . . . . . **11 W. R., 6**

**CHARDON v. AJEET SINGH** . . . . . **12 W. R., 52**

**BANEE PERSHAD v. LALLA JOGGESSUR DASS**  
**[11 W. R., 47]**

**86.** Where the evidence of a defendant has been taken by the Court of first instance so imperfectly that the lower Appellate Court cannot pass a satisfactory judgment between the parties, it is competent to the Judge of that Court, under the provisions of s. 355, Civil Procedure Code, to have the defendant fully examined

## APPELLATE COURT—continued.

## 3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—continued.

taken and received by him in the presence of the parties in open Court and afterwards kept on the record. It is not competent to him under s. 355 merely of his own discretion to send for a document for personal inspection irrespective of the parties to the suit. **GUNPAT ROY v. RAM DEOBI ROY**

[31 W. R., 416]

88. ——— *Civil Procedure Code, 1859, s. 355—Suit for arrears of rent.*—Where, in a suit for arrears of rent, tenancy was acknowledged, but the rate of rent questioned by tenant, and the Subordinate Judge, not feeling satisfied with the documents purporting to show the rents during three years, called for the documents

its reasons for the course which it pursued. **SHOOKRAH SAKTHI v. NUND COOMAR BANERJEE**

[25 W. R., 246]

[I. L. R., 11 Cal., 139]

90. ——— *Civil Procedure Code, 1859, s. 568.*—The provision in s. 568 of Act XIV of 1859 as to an Appellate Court recording its reasons for admitting additional evidence is directory merely, and not imperative. **GORAL SINGH v. JHAKSI RAI**

[I. L. R., 13 Cal., 37]

91. ——— *Civil Procedure Code, 1859, s. 355—Reasons for taking fresh evidence.*—Where the first Court refused the plaintiff's application to summon five of his witnesses, notwithstanding that it postponed the case for ten days, although fifteen other of the witnesses were present, the High Court held that the first Court's omission to summon the witnesses was, under the circumstances,

## APPELLATE COURT—continued.

## 3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—continued.

a sufficient reason within Act VIII of 1859, s. 355, for the lower Appellate Court to send for them and take their evidence. **ABELAKH ROY v. GROOTY BURGUT**

[23 W. R., 260]

92. ——— *Record of reasons.*—In a suit for possession of certain lands under a howla tenure, khas possession of which for

dants were the zamindars of the talukh in which the howla tenure was said to exist, and had transferred their proprietary right to the other two defendants. The zamindars did not defend the suit, and were not

**RADHANATH DHOOPER v. LUCKHES KANT PAL**

[13 W. R., 224 note]

93. ——— *Reasons for taking fresh evidence.*—Where the plaintiff himself is present, the lower Appellate Court may in its discretion examine him if it considers his evidence material. The requirements of the law are sufficiently fulfilled if the Court records that it considers his examination necessary. **HAFIZA v. AZHUR HOSSEIN**

[13 W. R., 328]

been produced in the first Court, without substantial reason for its non-production. The High Court refused to reverse a decision on the ground of the improper admission of evidence. **JOGADINDRA BAY-WARI GOSWAMI v. BHOGOTARINI DAS**

[5 B. L. R., Ap., 54]

95. ——— *Omission to give reasons for admitting it.*—Where evidence has been taken by an Appellate Court in the presence of parties or their agents, it should not be rejected on appeal merely because the Court omitted to record its reasons for admitting it. **BHUTANAN CHANDER GHOSH v. RAJCOOMAR GONO**

[13 W. R., 303]

96. ——— *Rejection of document in first Court on the ground of want of registration—Subsequent registration and presentation*

**APPELLATE COURT—continued.****3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—continued.**

*to Appellate Court.*—The plaintiff, as purchaser at a Court's sale, sued in 1871 for possession of certain immovable property, and tendered in evidence a sale certificate, dated 20th September 1865. The first Court decided against the plaintiff on the ground, among others, that the certificate was not registered, though registration of it was compulsory. On the 9th February 1875 the plaintiff filed an appeal in the High Court against that decree, and on the 26th July 1875 applied to that Court for permission to give in evidence a new certificate of sale, issued on the 1st February 1875, regarding the same property as that to which the certificate of the 20th September 1865 related. *Held* by the High Court that, as the new certificate was issued after the first Court had made its decree, the High Court ought not to receive it or to suggest or facilitate any application to the lower Court for a review of its decree on documentary evidence which had no existence when that Court made such decree. **LALBHAI LAKHMIDAS v. KAMALUDIN HUSEN KHAN** . . . . . 12 Bom., 247

**97.** ————— *Civil Procedure Code, 1882, s. 568—Production of additional evidence in Appellate Court.*—Circumstances under which an Appellate Court will not allow additional evidence to be produced at the hearing of an appeal under s. 568 of the Civil Procedure Code. **NADIAH CHAND SINGH v. CHUNDER SIKHUR SADHU** [I. L. R., 15 Cal., 765]

**98.** ————— *Evidence on appeal—Civil Procedure Code, s. 142A—Document rejected as inadmissible, but allowed to remain on the record.*—Where a document tendered in evidence in a Court of first instance was rejected as inadmissible, but was nevertheless allowed to remain on the record of the case:—*Held* that the mere fact of the document remaining on the record did not make it evidence in the Appellate Court, but it must be tendered as evidence in the Appellate Court and accepted thereby. **HAR GOBIND v. NONT BAHU** [I. L. R., 14 All., 356]

**99.** ————— *Civil Procedure Code (1882), s. 568.*—The test as to whether additional evidence should be received in an Appellate Court under s. 568 of the Code of Civil Procedure depends upon the question whether or not the Appellate Court requires the evidence "to enable it to pronounce judgment or for any other substantial cause"; as to this, the Appellate Court is to be the sole judge. **IN THE GOODS OF PREM CHAND MOONSHEE. UPENDRA MOHAN GHOSE v. GOPAL CHANDRA GHOSE** [I. L. R., 21 Cal., 484]

**100.** ————— *Civil Procedure Code (1882), s. 568—Remand—Direction by Appellate Court to take further evidence.*—In a suit on a hypothecation bond the plaintiff relied in bar of limitation on endorsements of part-payments appearing on the bond. The Court of first instance held that the endorsements were genuine. The Court of first appeal remanded the suit for further evidence to be taken with regard to the endorsements, and directed

**APPELLATE COURT—continued.****3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—concluded.**

the Court to record an opinion on the question of the handwriting of the endorsements, and held upon the return of the evidence that the endorsements were forgeries, and dismissed the suit. *Held* that the additional evidence was legally taken and admitted under s. 568. **SHRINIVASACHARIAR v. RANGANNAL** [I. L. R., 18 Mad., 94]

**101.** ————— *Remand to the Appellate Court—Additional evidence in Appellate Court—Finding of fact upon evidence taken after remand—Civil Procedure Code (1882), s. 568.*—In a second appeal, the High Court set aside the decrees of the lower Courts on the ground that certain issues raised in the suit were not considered by those Courts, and remanded the case to the lower Appellate Court for a proper decision of the case. The lower Appellate Court took evidence on the issues not tried before, and came to findings of fact on that evidence. *Held* that the lower Appellate Court tried the case, not as an original case, but as an appeal, and acting under the powers given to it took fresh evidence. **BENI PERSHAD KUARI v. NAND LAL SAHU** [I. L. R., 24 Cal., 98]

**102.** ————— *Civil Procedure Code (1882), ss. 562, 568, 569—Additional evidence by Appellate Court—Invalidity of order reversing decree of lower Court on account of exclusion of evidence.*—A trial took place in the Court of a District Munsif, who heard evidence, decided issues, and passed a decree. On an appeal being preferred, the Subordinate Judge reversed the decree, and remanded the suit for re-trial on the ground that certain documentary evidence which had been tendered by a defendant had been excluded, and plaintiffs' witnesses, who had been cited in the list, had not been wholly examined. On an appeal being preferred against that order,—*Held* that s. 562 of the Code of Civil Procedure was inapplicable to such a case; and that the proper and only legal course for the Subordinate Judge to take under the Code of Civil Procedure was to act either under s. 568 or s. 569, by himself taking the evidence which he considered to have been wrongly excluded, or to direct the District Munsif to take it. **Perumbra Nayar v. Subrahmanian Pattar**, I. L. R., 23 Mad., 445, distinguished. **SESHAN PATTAR v. SESHAN PATTAR** [I. L. R., 23 Mad., 447]

**4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.****(a) UNSTAMPED DOCUMENTS.**

**103.** ————— *Unstamped documents—Admission of unstamped document in evidence—Act X of 1862, ss. 15 and 17—Objection made on appeal—Act VIII of 1859, s. 350.*—When the Court of first instance admitted, without objection, unstamped receipts in evidence, but the Judge on appeal rejected the documents, and reversed the decision of the lower Court,—*Held* that the documents, once received

## APPELLATE COURT—continued.

## 4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—continued.

without objection, were wrongly rejected, and the decision below wrongly reversed on appeal, as the irregularity was not one affecting the merits of the case under s. 359, Act VIII of 1859; and that the Court had no power to receive the documents on payment of the stamp duty and penalty under s. 17, Act X of 1862. *LALJI SINGH v. ASHAM SINGH*

[3 B. L. R., A. C., 235; 12 W. R., 47

CUNNESS v. SHEOCHURN SAROO

[W. R., 1864, 184

104. —Document admitted in Court below.—An Appellate Court has no right to refuse to admit on technical grounds a document which has been received and read in the Court below without objection. *AKSHAY ALI v. BHAYA LAL JHA*

[I. L. R., 8 Cal., 886; 7 C. L. R., 497

MOHABEER DOSS v. LALLA ROY . . . 1 W. R., 12

GOUD SUREN DAS v. KANHY SINGH . . . [3 W. R., 237

CRAWLEY v. MALING . . . 1 Agra, 63

HIND CHUNDER GHOSH v. WOONA SOONDURGH DOSSEE . . . 23 W. R., 170

ROY LUCHMEERUT SINGH v. MOSHERUFF ALI . . . [25 W. R., 80

KASHER NATH MOOKERJEE v. MOHESH CHUNDER GOPTA . . . 25 W. R., 169

NEM ROY v. LALMUN ROY . . . 25 W. R., 378

105. —Document admitted in Court below.—Where a document was admitted in evidence by the Court of first instance without

objection, and the same was not objected to in the Court below, the Appellate Court cannot question its admissibility.

*THE EAST INDIA COY. v. THE GOVT. OF INDIA*

[11 B. L. R., 100; 11 W. R., 100

106. —Document admitted or rejected in Court below.—The decision of the

Court below is final, and the Appellate Court cannot question its admissibility.

*THE EAST INDIA COY. v. THE GOVT. OF INDIA*

[3 Mad., 321

107. —Document not sufficiently stamped admitted in evidence by lower Court.—A Court of first instance having admitted in evidence a document improperly stamped, the Appellate Court cannot question its admissibility.

*SHIBDATT v. INAYA*

[I. L. R., 18 Bom., 737

108. —Question of liability to stamp.—It is open to an Appellate Court to consider the question whether a document which the Court of first instance has declared liable to be stamped under Act X of 1862 is properly so liable.

*SURESH PILLAI v. SURESH PILLAI*

[11 B. L. R., 100; 11 W. R., 100

109. —Document not sufficiently stamped admitted in evidence by lower Court.—A Court of first instance having admitted in evidence a document improperly stamped, the Appellate Court cannot question its admissibility.

*SHIBDATT v. INAYA*

[I. L. R., 18 Bom., 737

110. —Document not sufficiently stamped admitted in evidence by lower Court.—A Court of first instance having admitted in evidence a document improperly stamped, the Appellate Court cannot question its admissibility.

*SHIBDATT v. INAYA*

[I. L. R., 18 Bom., 737

111. —Document not sufficiently stamped admitted in evidence by lower Court.—A Court of first instance having admitted in evidence a document improperly stamped, the Appellate Court cannot question its admissibility.

*SHIBDATT v. INAYA*

[I. L. R., 18 Bom., 737

## APPELLATE COURT—continued.

## 4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—continued.

*PILLAI v. SURESH PILLAI* . . . 3 Mad., 71

109. —The fact that the document was received in evidence without a stamp is no reason for reversing the decision in appeal.

*CURRIE v. METU RAMES CHETTER*

[3 B. L. R., A. C., 128; 11 W. R., 520

110. —Where title-deeds

the document relied on was one requiring a stamp, as being a matter not affecting the merits of the case or the jurisdiction of the Court. *INRAHIM ALI v. CHACKSHAK*

[7 B. L. R., 653; 19 W. R., 203

111. —Ground for reversal of decision.—An Appellate Court has no

right to refuse to admit on technical grounds a document which has been received and read in the Court below without objection.

*AKSHAY ALI v. BHAYA LAL JHA*

[I. L. R., 8 Cal., 886; 7 C. L. R., 497

112. —Improper admission in evidence of unstamped document.—Irre-

versible error.

*THE EAST INDIA COY. v. THE GOVT. OF INDIA*

[11 B. L. R., 100; 11 W. R., 100

113. —Admission by first Court of document unstamped.—The provisions of the Stamp Law, by which unstamped or insufficiently stamped documents are excluded, were framed primarily in the interests of the Government revenue, but were never intended to create or put an end to the

admission of such documents in evidence.

*THE EAST INDIA COY. v. THE GOVT. OF INDIA*

[11 B. L. R., 100; 11 W. R., 100

114. —Admission of unstamped document on payment of penalty.—A plea that a deed of sale filed had been originally unstamped, and that the lower Court was incompetent to supply the deficiency of the stamp by paying the penalty in the appellate stage of the case, was overruled. *RAM SARTY SARKOO v. VERTAG MANTON*

[25 W. R., 554

115. —Stamp Act, s. 62.—Document admitted as duly stamped.—Where a

document is admitted in evidence without a stamp, and the Court below has declared it to be duly stamped, the Appellate Court cannot question its admissibility.

*THE EAST INDIA COY. v. THE GOVT. OF INDIA*

[11 B. L. R., 100; 11 W. R., 100

**APPELLATE COURT—continued.****4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—continued.**

document has been admitted in evidence as duly stamped, such admission can only be called in question by the Appellate Court under s. 50 of the Indian Stamp Act. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 8 Mad., 584

**118.** ————— *Civil Procedure Code, 1877, s. 578—Unstamped hundi admitted in lower Court.*—Suit by payee against drawer upon a hundi drawn in British India upon a person at Colombo. The hundi was not stamped when drawn. Objection taken to its admission in evidence by defendant was allowed by the Munsif, but plaintiff was permitted to sue for the amount due upon the original consideration. The suit was dismissed on the ground that no consideration was proved. Upon appeal the District Judge held that the hundi did not require a stamp, as it was not intended to operate in British India, and admitted the hundi in evidence as a business letter admitting responsibility, and found that there was consideration. Held, upon second appeal, that the hundi having been admitted in evidence, though contrary to law, by the District Judge, no objection could be taken to the decree in second appeal upon that account. **RAMASAMI v. RAMASAMI** . I. L. R., 5 Mad., 220

**117.** ————— *Question of stamp duty.*—Where the objection is taken for the first time in special appeal that a document which, according to Act X of 1862, ought to have been stamped has been admitted by both the lower Courts unstamped, the High Court is bound to take notice of the objection (although not one of the grounds set forth in the petition of appeal), and to require payment of the stamp duty and penalty, or to reject the document. **ADINABAYANA SETTI v. MINOHIN** . 3 Mad., 297

**118.** ————— *Court Fees Act, s. 28.*—If a document which ought to bear a stamp under the Court Fees Act has been used in the High Court, and the mistake or inadvertence which permitted its reception in a lower Court, without being properly stamped, comes to light in the High Court, any Judge of that Court may, under s. 28 of the Court Fees Act, direct that it should be properly stamped. **CHEDI LAL v. KIBATH CHAND**

[I. L. R., 2 All., 682

**119.** ————— *Application insufficiently stamped—Court Fees Act (VII of 1870), ss. 6, 28—Application for review.*—On the 26th January 1889, an application was presented to the Munsarim of the District Judge's Court for review of a judgment passed on the 19th December 1888. The application was insufficiently stamped, and the Munsarim endorsed on it "stamp insufficient." On this a dispute ensued between the pleader for the applicant and the Munsarim as to the sufficiency of the stamp. On the 25th April 1889, the deficiency pointed out by the Munsarim was made good. On the 26th May the Judge admitted the application, on the applicant paying the Court-fee payable on an application presented on or after ninety days from the date of the decree.

**APPELLATE COURT—continued.****4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—continued.**

Held that s. 6 and the first paragraph of s. 28 of the Court Fees Act (VII of 1870) were applicable; that there was no mistake or inadvertence within the meaning of the second paragraph of s. 28; that the Judge had no power under the circumstances to admit the application as one presented after ninety days from the date of the decree; and that there was no presentation within ninety days of an application which could have been received. **MUNRO v. CAWNPORE MUNICIPAL BOARD** . I. L. R., 12 All., 57

**120.** ————— *Penalty.*—Held that an objection may properly be taken in a Court of first appeal to an unstamped document, and such Court is bound to entertain the objection and may direct that the document be stamped and the penalty imposed. **SATDAR ALI KHAN v. LAOHMAN DASS**

[I. L. R., 2 All., 554

**121.** ————— *Stamp Act, 1869, s. 20, and sch. II, arts. 5 and 11—Stamp duty—Penalty, tender of.*—An Appellate Court has no authority to direct the reception of an unstamped document to which the provisions of s. 20 of the Stamp Act (XVIII of 1869) apply, unless the amount of stamp duty and prescribed penalty was tendered when the document was first offered in evidence and rejected. **CHAMPABATY v. BIBI JIBUN**

[I. L. R., 4 Calc., 213

**GOVE PERSHAD LAL v. LALLA NUND LAL**

[7 W. R., 439

**122.** ————— *Stamp Act, 1879, s. 34, proviso III—Admission of documents in evidence—Unstamped promissory note admitted as a bond on payment of stamp duty and penalty.*—The plaintiff sued to recover the amount due on three khatas. The defendant objected that the khatas were not duly stamped. The Subordinate Judge held that the instruments were bonds, and as such admitted them in evidence on payment of the proper stamp duty and penalty under s. 34, proviso I, of the Stamp Act (I of 1879). At a subsequent stage of the same suit, his successor in office was of opinion that the khatas in question were promissory notes; that as such they could be stamped only at the date of their execution, and that they had been illegally admitted in evidence under s. 34, proviso I. He accordingly dismissed the

District Judge agreed with the Subordinate Judge that the instruments sued on were promissory notes, but held that, after they had once been admitted in evidence on payment of the stamp duty and penalty, the question of their admissibility could not be subsequently raised in the suit under proviso III to s. 34 of the Stamp Act (I of 1879). He therefore reversed the decree of the Subordinate Judge, and remanded the case for trial on the merits. Against this order of remand defendants appealed to the High Court. Held that the promissory notes, having been once admitted in evidence, could not afterwards be rejected on the ground of their not being duly stamped. **DEVA CHAND v. HIRA CHAND KAMARAT**

I. L. R., 13 Bom., 449



## APPELLATE COURT—continued.

## 4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—continued.

his jurisdiction; but the plaintiff was entitled to have the plaint returned to him, that he might present it with the proper additional stamp before the proper Court. *JADU v. HIPAZAT HOSSEIN*

[5 B. L. R., Ap., 15

EDOO v. HIPAZAT HOSSEIN . 13 W. R., 358

134. ————— *Undervaluation—Civil Procedure Code, 1859, s. 31.*—Where a petition of appeal had been filed, time allowed for the issue of notice, and a day fixed for hearing, it was held to be the duty of the Judge, under s. 31, Act VIII of 1859, on finding that the petition was inadequately stamped, to give the appellant an opportunity of filing the proper stamp. *NUSSERUT ALY CHOWDHURY v. MAHOMED KANOO SIBDAR* . . . . . 11 W. R., 145

135. ————— *Court Fees Act, 1870, s. 12—Erroneous decision of Munsif as to valuation of suit.*—Where a Munsif ruled erroneously that a suit instituted in his Court had been correctly valued, and it appeared that, if the suit had been correctly valued, the Munsif would not have had jurisdiction to entertain it, the lower Appellate Court, having regard to cl. 2, s. 12 of the Court Fees Act, VII of 1870, ordered that the appeal should be decreed and the plaint retained until the plaintiff should pay the additional stamp duty, when the suit would be made over to the Subordinate Judge for re-trial. *Held* that the order was a proper one. *BROJO COOMAR SEN v. ESHAN CHUNDER DAS*

[3 C. L. R., 79

136. ————— *Civil Procedure Code, 1877, s. 578—Error or irregularity—Court-fees—Appeal.*—The refusal of a plaintiff-respondent to make good a deficiency in Court-fees in respect of his plaint when called upon to do so by the Appellate Court is not a ground upon which the Appellate Court should reverse the decree of the Court of first instance and dismiss the suit. *MEHDI HUSAIN v. MADAR BAKHSI* . . . . . I. L. R., 2 All., 889.

137. ————— *Plaint insufficiently stamped—Court Fees Act (VII of 1870), s. 12—Civil Procedure Code (Act X of 1877), s. 578.*—A suit was instituted and tried on the merits in the Court of a Subordinate Judge without any objection being taken, either by the defendants or by the Court, that the plaint was insufficiently stamped. The defendants appealed on the merits, and the District Judge, being of opinion that the stamp on the plaint was inadequate, called upon the plaintiff to pay the additional fee which would have been payable had the objection been taken and the question rightly decided in the Court of first instance. *Held*, on second appeal, that the order of the Judge was properly made under s. 12, cl. 2, of the Court Fees Act, VII of 1870. *Kala Chand Sen v. Anund-Kristo Bose*, 22 W. R., 433, dissented from. S. 578

## APPELLATE COURT—continued.

## 4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—continued.

of the Civil Procedure Code explained. *SHAMA SOONDARY v. HURRO SOONDARY*

[I. L. R., 7 Calc., 348

8 C. L. R., 528

138. ————— *Court Fees Act, 1870, s. 12—Memorandum of appeal—Stamp—Suit for recovery of land and money.*—In deciding the amount of stamps to be borne by the memorandum of appeal, the High Court is not bound by the decision of the Court of first instance as to the stamp on the plaint. *MOTIGAVRI v. PRANJIVANDAS*

[I. L. R., 6 Bom., 302

139. ————— *Court Fees Act, VII of 1870, s. 12—Stamp—Plaint—Undervaluation—Rejection—Finality of decision.*—The decision of the Court of first instance, that a plaint is undervalued, is binding upon the Court of appeal, reference, or revision; but the Court of first instance is not justified in rejecting the plaint without giving to the plaintiff an opportunity of affixing the proper stamp. *BAI ANOPE v. MULCHAND GIRDHAR*

[I. L. R., 9 Bom., 355

140. ————— *ss. 10, 12, 28—Order requiring additional Court-fee on claim, passed subsequent to decree—Decree prepared so as to give effect to subsequent order—Civil Procedure Code, ss. 54, 55, 584.*—A Judge, after disposing of an appeal on the 1st March 1883, again took it up, and on the 21st March 1883 directed the appellant to pay additional Court-fees on her memorandum of appeal. On the 2nd May 1883 the appellant paid the additional Court-fees under protest, and a decree was then prepared, bearing date the 1st March 1883, but it referred to and carried into effect the subsequent order of the 21st March and the 2nd May. *Per MAHMOOD, J.*—That as soon as the Judge had passed the decree of the 1st March 1883, he ceased to have any power over it, and was not competent to introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May, whether right or wrong, were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883; and that the decree was *ultra vires* to that extent, and was therefore liable to correction in second appeal under s. 584 of the Civil Procedure Code. The powers conferred by ss. 54 (a) and (c) and 55, read with s. 582 of the Civil Procedure Code, or by s. 12 of the Court Fees Act (VII of 1870), read with cl. (ii) of s. 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as the Court is concerned. The powers conferred by s. 28 of the Court Fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of Court-fees relates, and, even assuming that they can be so exercised, such an order, though it may be subject to such rules as to appeal or revision as the law may provide, cannot be given effect to by making insertions in an antecedent decree. *Per OLDFIELD, J.*—That the Court had power

## APPELLATE COURT—continued.

## 4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—continued.

aiding Judge could exercise his power of ordering documents to be stamped, and sealed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt, filing, or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped. *MAHADEVI v. RAM KISHAN DAS* . . . I L. R., 7 All, 523

## 5. ERRORS AFFECTING OR NOT MERITS OF CASE.

Court did not constitute error under s. 350, Act VIII of 1859, and was no ground of appeal. *NILMONEY SINGH DEO v. BHONAY CHURY PANDA* [Marsh., 327: 3 Hay, 305]

142. ——— Omission to decide limitation—Error or defect in decision of case.—An omission to decide a question of limitation, though not raised in the grounds of appeal, is an error or defect in the decision of the case on the merits. *SABUJI KESBAJI v. RAJESANJOJI JALMBANJOJI* [3 Bom., 169: 2nd Ed., 163]

143. ——— Admission of invalid document.—*Civil Procedure Code, 1859, s. 350*—Bom. Reg. XVIII of 1827, s. 10—Objection to validity of document unstamped.—An objection to the validity of a document under Bombay Regulation XVIII of 1827, s. 10, as distinguished from its inadmissibility in evidence, or from a prohibition to Courts of Justice or public officers to act upon it, is an objection on the merits under Act VIII of 1859. *GIRDHAR NAGJISHET v. GANPAT MURORA* [11 Bom., 129]

of s. 353. Such an order is not necessarily an error affecting the decision on the merits. *JOWAN ALI v. HOSAIN BIKER* . . . 8 W. R., 207

## APPELLATE COURT—continued.

## 5. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.

145. ——— Decree passed without jurisdiction—Reversal or modification of decree.—*Civil Procedure Code, 1859, s. 350*—Where the proceedings and the decree passed by a lower Court were without jurisdiction.—*Held* (SPARKES, J., dissenting) that s. 350 of the Code of Civil Procedure did not apply, as the judgment of the High Court could not be for reversing or modifying the decree of the lower Court, there being no decree to reverse or modify. *BHUE KOOER v. DAMODHAR DASS* . . . 5 N. W., 55

146. ——— Trial on different issues and reversal in Appellate Court.—A suit having been decreed in favour of plaintiff in the Court of

proceedings of the lower Appellate Court. *BAHAN CHUNDRA SEIN v. DHONAY* . . . 11 W. R., 61

147. ——— Irregular verification of plaint.—*Civil Procedure Code, 1859, ss. 51, 578*—A defect in signature of the plaint, or the absence of signature where it appears that the suit was in fact filed with the knowledge and by the authority of the plaintiff named therein, may be waived by the defendant, or, if necessary, cured by amendment at any stage of the suit, and, having regard to s. 578 of the Civil Procedure Code, is not a ground for interference in appeal. *MADEO v. SMIDT* . . . I L. R., 23 All, 55

148. ——— Admission of illegal evidence.—*Civil Procedure Code, 1859, s. 350*—The objection that papers were admitted as evidence which were not legally admissible, is not ground sufficient, under s. 350 of the Code of Civil Procedure, to warrant a decree being reversed or modified, or a case being remanded, when it is admitted that there was other evidence to support the lower Court's finding, and the insufficiency of such other evidence is not alleged in the grounds of appeal. *KESARAM SHAMUNT v. GOPKESATH GERRER* . . . 10 W. R., 130

149. ——— Splitting cause of action.—Where the lower Courts allowed a plaintiff erroneously to bring separate suits where he ought to have brought only one.—*Held* that, as the separate suits against the co-proprietor were instituted simultaneously, the error in splitting up the claim against him did not affect the merits; and accordingly the decree was affirmed. *VITHU v. NARAYAN DABHUL HAN* [5 Bom., A. C., 30]

150. ——— Multifariousness.—Cause of action over some of which lower Court had jurisdiction.—*Duty of Judge to try them*—A suit was brought against six defendants, the cause of action against five of them being unconnected with the

**APPELLATE COURT—continued.****5. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.**

cause of action against the sixth. The Assistant Judge, in whose Court the suit was brought, tried one of the causes of action, over which he had jurisdiction, but refused to try the other, over which he had no jurisdiction. In appeal, the District Judge refused to enter into the merits of either on the ground of the misjoinder of the causes of action. *Held* that the District Judge was bound to enter into the merits of the claim over which the Court of first instance had jurisdiction, it not being affected by the error in the misjoinder of the two claims. **SAMSUDDIN PIRJADE v. GUNPATRA JAGANNATH**

[7 Bom., A. C., 19

*See* **RUKMINI BURMONIA v. FOODUN KOOMAREE BURMONIA** . . . . . 23 W. R., 408

**151.** ——— **Misjoinder of causes of action—Property wrongly attached—Joint suit by holders of two shares to have their shares declared not liable to attachment—Civil Procedure Code, s. 578—Amendment of plaint.**—A decree-holder, in execution of a decree against one *G L*, attached a house as belonging to *G L* and his two sons forming a joint Hindu family. The sons objected that the house had previously been partitioned, and was held by them and their father in separate shares, but their objection was disallowed. They then brought a joint suit for a declaration that their respective portions of the house were not liable to attachment in execution of a decree against their father. No objection was taken to the frame of that suit, and the Court of first instance gave the plaintiffs a decree on the finding that partition had in fact taken place prior to the suit in which the defendant, judgment-creditor, had obtained his decree. On appeal by the judgment-creditor, the lower Appellate Court dismissed the suit entirely on the grounds of misjoinder of causes of action. The plaintiff appealed to the High Court. *Held*, on these facts, that the plaintiffs should have been allowed to amend their plaint by striking out the name of one of them, and that, though there was irregularity in the procedure, such irregularity did not affect the merits of the case or the jurisdiction of the Court within the meaning of s. 578 of the Code of Civil Procedure. **BEHARI LAL v. KODU RAM**

[I. L. R., 15 All., 380

**152.** ——— **Misjoinder of parties and causes of action—Error not affecting merits—Civil Procedure Code, 1882, s. 578—Held, per MITTER, J. (PRIGOT, J., dissenting), that, as regards the objection to the suit for misjoinder and under s. 44 of the Code of Civil Procedure, the Appeal Court was precluded by s. 578 of the Code from reversing the decree of the lower Court, as the error (if an error at all) could not affect the merits of the decision.** **MOKUND LALL v. CHOBAY LALL**

[I. L. R., 10 Cal., 1061

**153.** ——— **Misjoinder of parties—Irregularity affecting merits—Civil Procedure Code (1882), s. 578.**—In appeal it was contended by the respondents, in support of the decree made by the Court below, dismissing the claim of the plaintiff No. 2, that

**APPELLATE COURT—continued.****5. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.**

the claim was liable to dismissal by reason of its involving the misjoinder of plaintiffs with different causes of action. This objection had been raised in the written statement, and the Court was asked to raise an issue on the point. In answer to this contention, it was urged by the appellants that, as the respondents went to trial upon the merits, it was not open to them to urge any objection like this to the frame of the suit on appeal. *Held* that it was open to the respondents to raise the objection as to misjoinder in appeal. *Tarinee Churan Ghose v. Hunsman Jha*, 20 W. R., 240, distinguished. *Smurthwaite v. Hannay*, L. R. (1894), A. C., 494, referred to. **MOHIMA CHANDRA ROY CHOWDHRY v. ATUL CHANDRA CHAKRAVARTI CHOWDHRY** . . . . . I. L. R., 24 Calc., 540

**154.** ——— **Misjoinder of plaintiffs—Error of procedure.**—The misjoinder of plaintiffs which does not produce error in the decision of the case on its merits is not a ground for the reversal of a decree on special appeal. *Semble*—That such misjoinder is not a ground for the reversal of a decree in regular appeal. Where the widow of *H*, a Mahomedan, and his two daughters brought a joint suit for their respective shares of the estate of *H*, which were awarded to them jointly,—*Held* that this was an error of procedure which did not affect the merits of the case. **MIYA GULAM NABI v. KHARANBIBI**

[6 Bom., A. C., 177

**155.** ——— **Misjoinder—Objection to declaratory decree—Civil Procedure Code, 1859, s. 350.**—A lower Appellate Court has no power to reverse the decree of a Court of first instance on the ground of misjoinder of parties. After a Court of competent jurisdiction has exercised its discretion under s. 15, Act VIII of 1859, and passed a declaratory decree, it does not lie within the power of a Court of Appeal, under s. 350 of that Act, to set aside the decree upon an objection which does not affect the merits, and which was not taken at the time when the decree of the first Court was passed. **RAM KANAYE CHUCKERBUTTY v. PROSSUNO COOMAR SEIN**

[13 W. R., 178

**156.** ——— **Non-joinder of plaintiff's undivided brother—Suit by mortgagee against sons of a deceased judgment-debtor—Decree against members of joint family—Parties, Non-joinder of—Civil Procedure Code (1882), s. 578.**—A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on 19th October 1877. The decree provided for payment of the secured debt in various instalments by May 1895. The mortgagor died in 1883, having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons.

## APPELLATE COURT—continued.

## 5. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.

error, and was not fatal to the suit. *RAMAYIA v. VENKATARAM*. 1 L. R., 17 Mad., 123

157. — Order adding party to suit—*Civil Procedure Code, 1859, s. 363*.—An order adding a party to a case is not one affecting the merits in the sense of s. 363; but where such order is made without postponing the case (s. 73) for a reasonable time, it is a very important matter. *KOOMARA OORENDEA KRISHNA DEB v. NOBIN KRISHNA BOSE*. 17 W. R., 370 note

*UPENDRA KRISHNA DEB v. NOBIN KRISHNA BOSE*. 3 B. L. R., O. C., 113

*BISHEN PERKASH SINGH v. RUTUN GREK CHHA*. [20 W. R., 3

159. — Decree against agent instead of principal—*Suit brought in name of agent instead of corporate body—Civil Procedure Code, 1859, s. 350*.—Where a decree makes a party liable who is not liable (e.g., an agent instead of the corporate body whose agent he is), the error is one affecting the merits within the meaning of s. 350, *Civil Procedure Code*. *NUBEE CHUNDER PAUL v. STEPHENSON*. 15 W. R., 534

the merits is to see whether the Court would have come to the same decision had the erroneous order not been passed. *PRAN NATH BRADDOCK v. SEEN KANT LAROKA*. 3 C. L. R., 257

101. — Filing appeal without copy of decree—*Case of irregularity*.—The ap-

## APPELLATE COURT—continued.

## 5. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.

162. — Improper exercise of discretion in granting declaratory decrees—*Civil Procedure Code, 1859, s. 578*.—The awarding of declaratory relief as regulated by s. 42 of the Specific Relief Act is a discretionary power which Courts of equity are empowered to exercise with reference to the circumstances of each case and the nature of the facts stated in the plaint, and the prayer of the plaintiff; that so long as a Court of first instance possesses jurisdiction to entertain a declaratory suit, and, entering into the merits of the case, arrives at right conclusions and awards a declaratory decree, such a decree cannot be reversed in appeal simply because the discretion has been improperly exercised; and that such improper exercise of discretion under s. 42 of the Specific Relief Act has no higher footing than that of an error, defect, or irregularity, not affecting the merits of the case or the jurisdiction of the Court, within the meaning of s. 578 of the Civil Procedure Code. This does not imply that, even in cases where the discretionary power to award declaratory relief has been exercised wholly arbitrarily, and in a manner grossly inconsistent with judicial principles, the Court of Appeal would have no power to interfere. *Ram Kanoye Chuckerluty v. Prosnno Coomar Sen*, 13 W. R., 175, *Sadul Ali Khan v. Khajek Abdool Gwanee*, 11 B. L. R., 203, *Sheo Singh Rai v. Dalka*, 1 L. R., 1 All., 688, and *Damoodar Surmah v. Mohee Kant Surmah*, 21 W. R., 54, referred to. *SATT KUMAR v. DEO SARAN*. 1 L. R., 8 All., 365

bond, but denied that they had received, as the bond recited they had done at the time of execution, the consideration for it. The Court of first instance irregularly allowed the plaintiff to call witnesses to prove that the consideration had been paid at the time of the execution of the bond. They proved, however, that it had not been paid at the time of the execution, but, if paid at all, at some subsequent time. The plaintiff gave no further evidence of payment, and the Court of first instance, without calling on the defendants, dismissed the suit. The Lower Appellate Court held that the defendants should have been re-

late Court to reverse the decision of the Court of first instance; but even if it were, the Lower Appellate

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**APPELLATE COURT—continued.**  
**5. ERRORS AFFECTING OR NOT MERITS**  
**OF CASE—continued.**

cause of action against the sixth. The Assistant Judge, in whose Court the suit was brought, tried one of the causes of action, over which he had jurisdiction, but refused to try the other, over which he had no jurisdiction. In appeal, the District Judge refused to enter into the merits of either on the ground of the misjoinder of the causes of action. *Held* that the District Judge was bound to enter into the merits of the claim over which the Court of first instance had jurisdiction, it not being affected by the error in the misjoinder of the two claims. **SAMSUDDIN PIRJADE v. GUNPATRA JAGANNATH** [7 Bom., A. C., 19]

*See* **RUKMINI BURMONIA v. FOODUN KOOMAREE BURMONIA** 23 W. R., 408

**151. Misjoinder of causes of action—Property wrongly attached—Joint suit by holders of two shares to have their shares declared not liable to attachment—Civil Procedure Code, s. 578—Amendment of plaint.**—A decree-holder, in execution of a decree against one G L, attached a house as belonging to G L and his two sons forming a joint Hindu family. The sons objected that the house had previously been partitioned, and was held by them and their father in separate shares, but their objection was disallowed. They then brought a joint suit for a declaration that their respective portions of a decree against their father. No objection was taken to the frame of that suit, and the Court of first instance gave the plaintiffs a decree on the finding that partition had in fact taken place prior to the suit in which the defendant, judgment-creditor, had obtained his decree. On appeal by the judgment-creditor, the lower Appellate Court dismissed the suit entirely on the grounds of misjoinder of causes of action. The plaintiff appealed to the High Court. *Held*, on these facts, that the plaintiffs should have been allowed to amend their plaint by striking out the name of one of them, and that, though there was irregularity in the procedure, such irregularity did not affect the merits of the case or the jurisdiction of the Court within the meaning of s. 578 of the Code of Civil Procedure. **BEHARI LAL v. KODU RAM** [I. L. R., 15 All., 380]

**152. Misjoinder of parties and causes of action—Error not affecting merits—Civil Procedure Code, 1882, s. 578—Held, per MITTER, J. (PIGOT, J., dissenting), that, as regards the objection to the suit for misjoinder and under s. 44 of the Code of Civil Procedure, the Appeal Court was precluded by s. 578 of the Code from reversing the decree of the lower Court, as the error (if an error at all) could not affect the merits of the decision.** **MOKUND LALL v. CHOBAY LALL** [I. L. R., 10 Cal., 1061]

**153. Misjoinder of parties—Irregularity affecting merits—Civil Procedure Code (1882), s. 578.**—In appeal it was contended by the respondents, in support of the decree made by the Court below, dismissing the claim of the plaintiff No. 2, that

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**APPELLATE COURT—continued.**  
**5. ERRORS AFFECTING OR NOT MERITS**  
**OF CASE—continued.**

the claim was liable to dismissal by reason of its involving the misjoinder of plaintiffs with different causes of action. This objection had been raised in the written statement, and the Court was asked to raise an issue on the point. In answer to this contention, it was urged by the appellants that, as the respondents went to trial upon the merits, it was not open to them to urge any objection like this to the frame of the suit on appeal. *Held* that it was open to the respondents to raise the objection as to misjoinder in appeal. **Tarinee Churan Ghose v. Hunsman Jha**, 20 W. R., 240, distinguished. **Smurthwaite v. Hannay, L. R. (1894), A. C., 494**, referred to. **MOHIMA CHANDRA ROY CHOWDHRY v. ATUL CHANDRA CHAKRAVARTI CHOWDHRY** . . . I. L. R., 24 Cal., 540

**154. Misjoinder of plaintiffs—Error of procedure.**—The misjoinder of plaintiffs which does not produce error in the decision of the case on its merits is not a ground for the reversal of a decree on special appeal. *Semble*—That such misjoinder is not a ground for the reversal of a decree in regular appeal. Where the widow of H, a Mahomedan, and his two daughters brought a joint suit for their respective shares of the estate of H, which were awarded to them jointly, *Held* that this was an error of procedure which did not affect the merits of the case. **MIYA GULAM NABI v. KHARANDIBI** [6 Bom., A. C., 177]

**155. Misjoinder—Objection to declaratory decree—Civil Procedure Code, 1859, s. 350.**—A lower Appellate Court has no power to reverse the decree of a Court of first instance on the ground of misjoinder of parties. After a Court of competent jurisdiction has exercised its discretion under s. 15, Act VIII of 1859, and passed a declaratory decree, it does not lie within the power of a Court of Appeal, under s. 350 of that Act, to set aside the decree upon an objection which does not affect the merits, and which was not taken at the time when the decree of the first Court was passed. **RAM KANAYE CHUCKERBUTTY v. PROSSUNO COOMAR SEIN** [13 W. R., 176]

**156. Non-joinder of plaintiff's undivided brother—Suit by mortgagee against sons of a deceased judgment-debtor—Decree against members of joint family—Parties, Non-joinder of—Civil Procedure Code (1882), s. 578.**—A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on 19th October 1877. The decree provided for payment of the secured debt in various instalments by May 1895. The mortgagor died in 1883, having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons.

## APPELLATE COURT—continued.

## 6. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.

The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews in 1891, describing himself, being allowed to amend his plaint, as managing coparcener and representative of the joint family. A plea of

157. ——— Order adding party to suit—*Civil Procedure Code, 1859, s. 363*.—An order adding a party to a case is not one affecting the merits in the sense of s. 363; but where such order is made without postponing the case (s. 73) for a reasonable time, it is a very important matter. *KOOMABA OOFENDRA KRISHNA DEB v. NORN KRISHNA BOSH* 17 W. R., 370 note

*UPENDRA KRISHNA DEB v. NORN KRISHNA BOSH* 3 B. L. R., O. C., 113

158. ——— Rescission of order on same day as made without notice to one of the parties—*Adjournment—Civil Procedure Code, 1859, s. 146*.—Where an order was regularly made by a Munsif under Act VIII of 1859, s. 146,

it was not shown that the rescinding order was regularly and properly made, there was a defect in the procedure and a defect in law, which might most materially have affected the decision on the merits. *BISHEN PERKASH SINGH v. RUTYAN GHER CHELA* [20 W. R., 3

*STRENGTHSON* 15 W. R., 534

160. ——— Technical error—*Ground for reversing judgment*.—The lower Appellate Court is not justified in reversing a decision of the Court of first instance for a technical error, unless that error has affected the decision of the case on the merits. The best test to ascertain whether an erroneous interlocutory order has affected the ultimate decision on the merits is to see whether the Court would have come to the same decision had the erroneous order not been passed. *PRAN NATH BHADOOBY v. SEEN KANT LAHORIA* 3 C. L. R., 257

161. ——— Filing appeal without copy of decree—*Care of irregularity*.—The ap-

## APPELLATE COURT—continued.

## 5. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.

pellant filed an appeal against the judgment of the Court of first instance without a copy of the decree. Subsequently the decree of the Court of first instance was filed within the time allowed for appeal and accepted by the Judge. *Held* that the irregularity was cured, and the appeal should not have been dismissed on the ground of such irregularity. *LULLER v. RAM PERSHAD* 2 Agr., 34

162. ——— Improper exercise of discretion in granting declaratory decrees—*Civil Procedure Code, 1859, s. 578*.—The awarding of declaratory relief as regulated by s. 43 of the Specific Relief Act is a discretionary power which Courts of equity are empowered to exercise with reference to the circumstances of each case and the nature of the facts stated in the plaint, and the prayer of the plaintiff; that so long as a Court of first instance possesses jurisdiction to entertain a declaratory suit, and, entering into the merits of the case, arrives at right conclusions and awards a declara-

s. 578 of the Civil Procedure Code. This does not imply that, even in cases where the discretionary power to award declaratory relief has been exercised wholly arbitrarily, and in a manner grossly inconsistent with judicial principles, the Court of Appeal would have no power to interfere. *Ram Kanayo Chuckerbutty v. Porunno Coomar Sen, 13 W. R., 178*, *Sadat Ali Khan v. Khajeh Abdoel Gunnee, 11 B. L. R., 203*, *Sheo Singh Rai v. Dakho, 1. L. R., 1 All., 688*, and *Damoodar Surmah v. Mohree Kant Surmah, 21 W. R., 64*, referred to. *SANT KUMAR v. DEO SARAN* 1 L. R., 8 All., 365

163. ——— Error in allowing wrong party to begin—*Suit on bond—Right to begin—Civil Procedure Code, 1877, s. 578*.—The defendants in a suit on a bond admitted the execution of the bond, but denied that they had received, as the bond recited they had done at the time of execution, the consideration for it. The Court of first instance irregularly allowed the plaintiff to call witnesses to prove that the consideration had been paid at the time of the execution of the bond. They proved, however, that it had not been paid at the time of the execution, but, if paid at all, at some subsequent time. The plaintiff gave no further evidence of payment, and the Court of first instance, without calling on the defendants, dismissed the suit. The lower Appellate Court held that the defendants should have been required to begin under the circumstances, and reversed the decree of the Court of first instance, and gave the plaintiff a decree. *Held* that it was doubtful, having regard to the provisions of s. 578 of Act X of 1877, whether it was competent for the lower Appellate Court to reverse the decision of the Court of first instance; but even if it were, the lower Appellate

**APPELLATE COURT—continued.****5. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.**

Court should have not ignored what had taken place, but should have dealt with the case on appeal in the shape it came before it. **MAKUND C. BAHORI LAL** [I. L. R., 3 All., 824]

**164. ——— Omission to state reasons for decision—Civil Procedure Code, 1877, s. 578.**—In a suit to recover possession of certain immovable property alleged to have been purchased by the plaintiff from a Hindu widow who claimed to have held the same as heir of her husband, the defendant, who was the father of the husband, contended, *inter alia*, that the alleged purchase and sale were invalid by reason that she herself was entitled to maintenance out of the property. The first Court gave the plaintiff a decree, and this decree was affirmed on appeal by the District Judge, who, however, gave no reasons of his own for his judgment, but merely adapted those of the lower Court. *Held* that, having regard to the nature of the case and the simplicity of the point for determination, the fact of the District Judge having omitted to state his reasons did not amount to such an error of law within the meaning of s. 578 of the Code of Civil Procedure as affected the merits of the case or the jurisdiction of the Court. **ROHIMONT DASI C. ZAMIRUDDIN** 8 C. L. R., 597

**165. ——— Objection by one of several parties—Civil Procedure Code, 1877, s. 578—Irregularity not affecting the merits or jurisdiction—Misjoinder.**—Where one party alone objected to the frame of the suit and the defect (of misjoinder and multifariousness) did not affect the merits of the case or the jurisdiction of the Court, the lower Appellate Court ought not, regard being had to s. 578 of Act X of 1877, to have reversed the decree of the Court of first instance by reason of such defect. **KARLIAN SINGH C. GUR DAYAL** I. L. R., 4 All., 163

**166. ——— Error in frame and valuation of suit—Civil Procedure Code, 1877, s. 578—Co-sharers, Suit by some of several—Error not affecting jurisdiction or merits.**—The plaintiffs in this suit, alleging that they were co-sharers of a certain village, that certain land situate in such village was the property of the co-sharers, and that such land had been improperly sold by the persons occupying it to one of the co-sharers, sued the vendors and the purchaser and the other co-sharers for possession of their share of such land and the setting aside of the sale so far as their share was concerned, and valued the suit according to their share. *Held* that the error in the frame and valuation of the suit, inasmuch as it did not affect the jurisdiction of the Court in which the suit was instituted or the merits of the case, was not, under s. 578 of the Civil Procedure Code, a ground on which the Appellate Court should have reversed the decree of the Court of first instance. *See Perpetual Day v. Krishna, 14 B. L. R., 379, distinguished.* **PANAY C. A. DAS** I. L. R., 4 All., 280

**167. ——— Dismissal of suit for undervaluation—Civil Procedure Code, 1877, s. 578—Irregularity affecting merits—A Munsif, after**

**APPELLATE COURT—continued.****5. ERRORS AFFECTING OR NOT MERIT OF CASE—continued.**

hearing the evidence on both sides, found that the suit had been undervalued, but, instead of returning the plaint under s. 57, he dismissed the suit. *Held* that such dismissal was a matter affecting the merits of the case and which the Appellate Court could deal with under s. 578. **BRUDESWARI CHOWDHURY C. GABRI KANT NATH** I. L. R., 8 Cal., 831

**168. ——— Institution of suit in wrong Court—Civil Procedure Code, 1882, s. 578.—Per MAHMOOD, J.**—The institution of a suit in a Court of higher grade than the Court which is competent to try it is not a question either as to the jurisdiction or affecting the merits of the case. It is a question of the kind provided for by s. 578 of the Civil Procedure Code, and the irregularity is not one which affects "the merits of the case or the jurisdiction of the Court" within the meaning of that section. **NIDHI LAL C. MAZHAR HUSAIN** [I. L. R., 7 All., 230]

**169. ——— Institution of suit in Subordinate Judge's Court instead of Munsif's Court—Civil Procedure Code, 1882, s. 578.**—The words "not affecting the jurisdiction of the Court" in s. 578 of the same Code mean "not affecting the competency of the Court to try." The error in instituting a suit in a Subordinate Judge's Court instead of in that of the Munsif is not an error which affects the jurisdiction of the former Court within the meaning of s. 578. **MATRA MONDAL C. HARI MOHUN MULLICK alias MORNHERA MOHAN MULLICK** [I. L. R., 17 Cal., 155]

**170. ——— Suit brought on behalf of minor without authority—Civil Procedure Code, 1882, s. 37—Minor's Act, Bombay Act XX of 1861.**—In a suit brought by the Political Agent, Southern Mahratta Country, as administrator of the estate of the Chief of Malhed, who was described in the plaint as being 19 years of age, to eject the defendants from certain lands belonging to the Chief situated in the Satara district, it was found, on preliminary objections taken by the defendants, that the Political Agent had no authority to institute the suit, he being neither a certificated guardian of the Chief under the Bombay Minor's Act XX of 1861 nor a "recognized agent" under s. 37 of the Civil Procedure Code. *Held, also*, that the irregularity of the Political Agent's suing for the Chief without authority was not affecting the merits of the case, though not the jurisdiction of the Court. If the Political Agent was not properly representing the Chief, he had no *locus standi* against the defendants. The District Judge was, therefore, right in reversing the decree of the first Court.—s. 578 of the Code of Civil Procedure having no application to the present case. **VENKATRAY RAO GHOSWAMI C. MADHAVARAY RAOCHASTA** [I. L. R., 11 Bom., 53]

**171. ——— Omission to appeal from order—Civil Procedure Code, 1882, s. 578.**—s. 578 of the Code applies to the Court when dealing without appeal from a decree, to deal with

## APPELLATE COURT—continued.

## 6. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.

[I. L. R., 9 All., 447]

172. ——— Permission to relative to sue, Proof of—*Act XL of 1858, s. 3—Civil Procedure Code, ss. 140, 578.*—In a suit conducted on behalf of a minor by a relative, the absence of the certificate of guardianship required by s. 3 of the Bengal Minors Act (XL of 1858) is not a fatal defect; and the fact of the Court allowing such a suit to proceed must be taken as implying that the necessary permission has been given. Even if such permission has not in fact been given, the irregularity is covered by s. 578 of the Civil Procedure Code. *Dhoba Pershad Khan v. The Secretary of State for India in Council, I. L. R., 11 Calc., 159*, followed. *PARNESWAR DAS v. BELA*. I. L. R., 9 All., 503

[I. L. R., 9 All., 623]

to proceed with the execution of the decree if he had chosen to make a formal application for execution, it is an error of procedure and not one affecting the merits of the case. *DWAR BUKSH SIKKAR v. FATIK JALI*. I. L. R., 20 Calc., 250 [3 C. W. N., 222]

## 175. ——— Exclusion of evidence—

conclusion that the evidence refused, if it had been received, ought to have varied the decision. *DISORZA v. PESTANI DHANJIBHAY*. I. L. R., 8 Bom., 408

176. ——— Error in rejecting documents already admitted—*Order of remand—Civil Procedure Code, 1852, s. 578.*—Where in a suit to recover the amount due on three khattas the first Court found they were bonds and admitted them on payment of stamp duty and penalty under s. 31 of the Stamp Act, but at a subsequent stage of the suit his successor in office was of opinion that they were promissory notes, and that, therefore, they,

## APPELLATE COURT—continued.

## 5. ERRORS AFFECTING OR NOT MERITS OF CASE—continued.

with the order of remand, as it was not one which affected the merits of the case or the jurisdiction of the Court. *DEVACHAND v. HIRACHAND KAMARAS* [I. L. R., 13 Bom., 440]

177. ——— Execution of document by a pardanashin lady—*Refusal of her application as defendant for the issue of a commission to take her evidence—Civil Procedure Code (Act XII of 1852), ss. 353, 390—Irregularity not affecting merits of case—Civil Procedure Code (Act XII of 1852), s. 578.*—*atkn*  
where  
evidence  
on  
a mortgage bond, the execution of which she had

or not it would have been better to have issued it) was, at all events, no valid ground of appeal. The evidence taken on the commission could not have affected the merits of the case within s. 578 of the Civil Procedure Code. *AKKUNNISA BINT v. RUP LAL DAS*. I. L. R., 25 Calc., 807 [3 C. W. N., 588]

178. ——— Refusal of Court to summon witnesses—*Civil Procedure Code (1852), ss. 159 and 578*—Where an application to a Civil Court for witnesses to be summoned has been refused on the ground that the applicant had negligently or with intention to delay the hearing postponed the making of his application for a summons until a time when it would be impossible to obtain the attendance of the witnesses at the hearing, and the refusal is made one of the grounds of appeal against the decree in the suit—*Held* that s. 578 of the Code of Civil Procedure would apply if the irregularity in refusing the application did not affect the merits of the case. If it did affect the merits of the case, the ground of appeal would be a good one. *BHAGWAR DAS v. DEBI DIXI*

[I. L. R., 16 All., 218]

179. ——— Execution of decree against representative of debtor—*Civil Procedure*

**APPELLATE COURT—continued.****5. ERRORS AFFECTING OR NOT MERITS OF CASE—concluded.**

*Code (1882), ss. 234, 248, and 578—Application by decree-holder for execution of decree by substitution on death of the judgment-debtor to the Court where the decree has been transferred.*—A decree was transferred to another Court for execution. Pending the proceedings, one of the judgment-debtors died. On an application to that Court by the judgment-creditor to execute the decree against the legal representative of the deceased judgment-debtor, a notice was issued under s. 248 of the Code of Civil Procedure. The legal representative objected that the Court had no jurisdiction to entertain the application, and that the application should have been made under s. 234 of the Code to the Court that passed the decree. *Held* that, even assuming that an application under s. 234 to the Court which passed the decree was a necessary preliminary to proceedings under s. 248 by the Court executing the decree, the omission to make it was only an irregularity which did not affect the merits of the case, and, under s. 578, the order of the Court of first instance should not have been reversed on account of such irregularity. **SHAM LAL PAL v. MODHU SUDAN SIRCAR** [I. L. R., 22 Calc., 558]

**180.** ——— *Illegal order of remand—Civil Procedure Code (1882), s. 578—Irregularity affecting the merits.*—Where a District Court reversed the District Munsif's decree and remanded the case for a revised finding on the merits:—*Held* that this procedure was *ultra vires* and illegal, and that, as the irregularity might have affected the merits of the case, s. 578, Civil Procedure Code, was inapplicable. **MALLIKARJUNA v. PATHANENT** [I. L. R., 19 Mad., 479]

**181.** ——— *Jurisdiction of a Court where a decree has been transferred for execution to substitute the name of the transferee of the decree—Civil Procedure Code (1882), ss. 232 and 578—Whether an order passed without jurisdiction can be cured by the provisions of s. 578 of the Civil Procedure Code.*—An application by the transferee of a decree for execution after substitution of his name can be entertained only by the Court which passed the decree, and the Court to which the decree has been transferred has no jurisdiction to entertain it. **Sheo Narain Singh v. Hurbans Lall**, 14 W. R., 65, **Nakoda Ismail v. Kassam**, 9 Bom. H. C., 46, and **Kadir Baksh v. Ilahi Baksh**, I. L. R., 2 All., 283, referred to. In a case where a decree has been transferred to another Court for execution, and that Court orders the execution to proceed after substitution of the name of the transferee of the decree, the said order is one passed without jurisdiction, and can be set aside on appeal, notwithstanding the provisions of s. 578 of the Civil Procedure Code. **Sham Lal Pal v. Modhu Sudan Sircar**, I. L. R., 22 Calc., 558, distinguished. **AMAR CHUNDEA BANERJEE v. GURU PRASUNNO MUKERJEE** . I. L. R., 27 Calc., 488

**APPELLATE COURT—continued.****6. INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT.**

**182.** ——— *Power of, on appeal ex parte—Act XXIII of 1861, s. 37—Power to remand.*—An Appellate Court, hearing an appeal *ex parte* in the absence of the respondent, cannot *suo motu* raise points in favour of the respondent, but must confine its decision to the question raised by the appellant. **DURGA PRASAD v. KHAIRATY** [I. L. R., 1 All., 545]

**183.** ——— *Making different case for appellant from that which he makes for himself in first Court—Practice.*—A Judge is not permitted to make, on appeal, a different case for the appellant from that which he alleged for himself in the Court of first instance. **KACHUBHAI v. KRISHNABAI** . . . I. L. R., 2 Bom., 635

**184.** ——— *Travelling beyond record.*—An Appellate Court should not ordinarily travel beyond the record, or take up points which are not the subject of appeal before it. **KASHINATH ROY CHOWDREY v. ROY DWARKANATH CHUCKERBUTTY** [7 W. R., 61]

**185.** ——— *Decision of case on issue not raised in Court below.*—A lower Appellate Court is not justified in determining an appeal on an issue which was not raised before the parties in the Court of first instance. **USTOORUN v. MOHUN LALL** [21 W. R., 333]

**FRANKISHORE DEB v. MAHOMED AMER** [21 W. R., 338]

**RUKMINI BURMONIA v. FOODUN KOOMAREE BURMONIA** . . . 23 W. R., 408

**186.** ——— *Decision on issue not taken in Court below—Want of evidence for decision.*—No issue was taken in the Court of first instance on the question whether an agreement was void for champerty. An issue was raised on this question by the Appellate Court, and (no evidence being taken) was decided in favour of the defendant. *Held*, on special appeal, that unless it was manifestly apparent on the face of the proceedings that the agreement was against morality or public policy, the Appellate Court ought not to have held it void. **RAMRAY KHANDERAY v. GOVIND PANDSHET** [6 Bom., A. C., 63]

**187.** ——— *Raising issue without cross-appeal—Appeal from decree partly in favour of appellant.*—When a decree gives title to land to defendant and right of way to plaintiff, and plaintiff alone appeals, the Appellate Court must not raise an issue as to right of way without cross-appeal from defendant. **SOOKHANUNDAMOYEE DEBIA v. BANERJEE MADHUB MOOKERJEE** . . . I W. R., 73

**188.** ——— *Giving relief not asked for—Civil Procedure Code, 1859, s. 334.*—An Appellate Court exceeds its authority in giving a plaintiff relief for which he does not ask, although, under Act VIII of 1859, s. 334, the Court may decide an appeal before it on other grounds than those stated in the memorandum of appeal. That section does not entitle the Court to go beyond the subject-matter

## APPELLATE COURT—continued.

## 6. INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT—continued.

of appeal. *SHARODA SOONDURIE DABEE v. GOBIND MOZER alias BROJO SOONDURIE DABEE*

[24 W. R., 179]

169. — Alteration of decree on appeal.—*Defendant not objecting to decree on appeal.*—Where the defendant does not appeal against or object to the amount awarded by the first Court to the plaintiff, it is not open to the Appellate Court to reduce it. *NATASCHANDRA v. NARAYAN*

[I. L. R., 4 Bom., 293]

190. — Improper procedure.—*Suit by raiyat for rent.*—In a suit by a raiyat against a zamindar for rent, the Court of first instance gave the plaintiff a decree for a part of his claim. The

191. — Rejection of appeal.—*Quare*

—Whether, after registering and admitting an appeal, and causing notice to be served, an Appellate Court can reject the appeal as not being filed within the prescribed time. *SECRETARY OF STATE FOR INDIA IN COUNCIL v. MUTU SWAMY*

[4 B. L. R., Ap., 84; 13 W. R., 246]

192. — Raising questions on second appeal.—The question of due diligence on the part of a judgment-creditor can be gone into on a second appeal. *KADUMBINI DANTA v. KOTLASH CHUNDER PAL CHOWDHRY*

[I. L. R., 6 Calc., 554; 8 C. L. R., 19]

## 193. — Ex-parte decree passed

of first instance, directed the *ex-parte* decree to be set aside and ordered a new trial. *CHANDASAPPA BIN SAGOTTA v. MALHA BIN MAHADESH*

[7 Bom. A. C., 138]

194. — Grounds of appeal.—*Contention abandoned in lower Court.*—An appellant in regular appeal may not, at the hearing, raise a contention of law expressly abandoned by him in the Court below, and not contained in the memorandum of appeal. *PANITRA DAS v. DAMTAR JANA*

[7 B. L. R., 697; 24 W. R., 397 note]

195. — Finding of Court not appealed against.—A finding of the first Court not appealed against cannot be interfered with by the Appellate Court. *KALIE DAS ROY v. KHUSODA SOONDURIE DABEE*

10 W. R., 300

## APPELLATE COURT—continued.

## 6. INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT—continued.

196. — Presumption of correctness of judgment of lower Court.—*Grounds for interference with.*—An Appellate Court ought not to interfere with the judgment of the lower Court until

[7 B. L. R., 631; 15 W. R., 228]

197. — Judgment of lower Court.—*Grounds for reversal of—Defect in investigation—Insufficient finding.*—An Appellate Court should find some sufficient and significant facts before it reverses a judgment of the lower Court, and should show a proper basis for its conclusions. *ANISUL FUJWA v. CHANDO*

8 B. L. R., Ap., 3

198. — *Grounds for reversal.*—An Appellate Court is bound to state its reasons for reversing the decision of a lower Court. *MAHADEO OJHA v. PARNESWAR PANDAY*

[2 B. L. R., Ap., 20]

LALLA SOOKLALL SING v. BISSOODHUN. NOOR ALLY v. LALLA SOOKLALL SING

[W. R., 1864, 347]

199. — Appeal on full Court-fee from decree dismissing suit in part.—*Remand of whole case, though no cross-appeal or objections preferred.*—*Civil Procedure Code, ss. 562, 579—Practice—Dismissal of whole suit on remand—High Court competent in second appeal to consider validity of remand order not specifically appealed.*—*Civil Procedure Code, ss. 544, 561.*—A plaintiff whose suit had been decreed in part appealed from so much of the first Court's decree as was adverse to him, and stamped his memorandum of appeal with a stamp which would have covered an appeal from the whole decree. The defendant did not appeal or file cross-objections. The lower Appellate Court remanded the whole case to the first Court under s. 562 of the Civil Procedure Code, the plaintiff not appealing under s. 553 (25) from the order of remand. The first Court then dismissed the whole suit, and, on appeal by the plaintiff, the lower Appellate Court confirmed the decree. On a second appeal to the High Court, *held* (i) that the High Court was competent to consider the validity or propriety of the order of remand, though it had not been

the subsequent appearance of the plaintiff before the first Court or by the appeal from the first Court's decree on the remand; and (iv) that the case was not

APPELLATE COURT—*continued*.6. INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT—*continued*.

covered by s. 578 of the Code. *Per* MAHMOOD, J.—S. 544 had no application to the case, that section relating only to cases where one or more of the parties arrayed on the same side appealed against a decree passed on ground common to all, and not cases where either of two opposite parties appealed from a part of the decree upon a Court-free sufficient for an appeal from the whole. *Moheshur Sing v. Bengal Government*, 7 Moore's I. A., 283, *Forbes v. Ameroonissa Begum*, 10 Moore's I. A., 340, and *Mukhun Lal v. Sree Kishen Sing*, 12 Moore's I. A., 157, referred to. CHEDA LAL *v.* BADULLAH

(I. L. R., 11 All., 35

200. ——— Application to set aside sale in execution of decree—Court reversing lower Court on evidence taken before necessary party was added—*Superintendence of High Court—Civil Procedure Code*, s. 622.—A person, alleging himself to be the undivided brother and as such the legal representative of a deceased judgment-debtor, applied to have set aside a sale of certain property alleged by him to be joint family property, which had taken place in execution of the decree. He did not make the purchaser a party to such application. The Court of first instance dismissed the application. On appeal, the Appellate Court made the purchaser a party to the proceedings, and, holding that there was irregularity in conducting the sale, reversed the order of the Court of first instance. *Held* that the Appellate Court was wrong in so holding upon evidence recorded by the Court of first instance when the purchaser was not a party to the proceedings, and the order of the Appellate Court was set aside under s. 622 of the Code. SUBBARAYADU *v.* PEDDA SUBBARAZU . . . . . I. L. R., 16 Mad., 478

201. ——— Want of cause of action—*Grounds for rejecting plaint—Civil Procedure Code (Act X of 1877)*, s. 53.—In a suit for confirmation of possession and declaration of title in respect of land, where the plaint did not disclose any facts from which it could be said that the defendants denied the plaintiff's title, but from the proceedings in the original cause it was established that, before the suit was brought, there was a dispute existing between the parties as regards the title, and a decree in favour of the plaintiffs had been given by the original Court on the merits of the case

APPELLATE COURT—*continued*.6. INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT—*concluded*.

*Life*.—When the decree of a subordinate Court is under appeal to the High Court, it is open to the High Court to vary it either in points in which it is erroneous or in respect of matters occurring subsequently to the date of such decree which are admitted. The plaintiff obtained a decree in a partition suit in the Subordinate Judge's Court for his share in certain joint family property in the possession of the defendants (his co-parceners). The decree was affirmed on appeal. The defendants filed a second appeal in the High Court, but, before it was decided, one of the defendants died. The plaintiff at the hearing of the second appeal claimed a larger share in the family property than he had been awarded by the decree of the Courts below. *Held* that he (plaintiff) was entitled to a share in that of the co-parcener who died *pendente lite*, and that the decree appealed from ought to be varied accordingly. SAKHARAM MAHADEV DANGE *v.* HARI KRISHNA DANGE

(I. L. R., 8 Bom., 113

203. ——— Power to vary decree as made in the lower Court—*Decree confined to rights in issue between parties—S. 565 of the Code of Civil Procedure, 1877*.—After the trial of issues raising the question whether the plaintiff was, or the defendants were, entitled to zamindari rights in certain mehals, a decree was made affirming the title of the plaintiff, the evidence in support of the defendant's case being discredited, and the latter were declared by the decree to be the "plaintiff's under-tenure-holders of the said mehals." This was modified on appeal by the declaration that "the defendants are patnidars of the same mouzahs." *Held* that it was unnecessary on this appeal to consider whether the Appellate Court was right in its conclusion that the defendants were patnidars; because, upon the case which had been set up for the defendants, and upon the issues framed and tried in the lower Court, the Appellate Court could not properly make such a declaration: the defendants could not be in a better position than they would have been in had they claimed to be patnidars, in which case an issue as to that title would have been framed and tried. S. 565 of Act X of 1877 does not enable an Appellate Court to declare a right in favour of one of the parties, where no issue has been fixed on the point, and the right has not been tried up in the lower Court. OFFICIAL TRUSTEE OF

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

objection to be taken and had overruled it, the High Court allowed it to be raised in special appeal, and, being of opinion that it was a valid objection, reversed the decision of the Court below. **DINDAYAL PARAMANIK v. SURENDRANATH ROY**

[3 B. L. R., A. C., 78 note; 10 W. R., 77

205. ——— Plea sought to be raised that was not taken in the memorandum of appeal—*Civil Procedure Code, s. 512*—S. 512 of the Code of Civil Procedure was intended to confer upon the Court a power exercisable by it alone; it was not intended to enable an appellant to take the respondent by surprise by urging matter of which he had no notice. **BASEMDHAR v. SITA RAM**

[L. L. R., 13 All., 381

206. ——— Objection to procedure.—The errors of procedure of the Court of first instance are not to be remedied when they have not been made a ground of complaint before the lower Appellate Court. **ANURUP CHANDRA MUKHOPADHYA v. HIRANMAYI DAS**

3 B. L. R., Ap., 38

**OSOOROO CHUNDER MOOKERJEE v. HEERA MONEE DOSSEE**

11 W. R., 418

207. ——— Objection to procedure.—

to be taken in special appeal. **NARATTAM DASS**

**CROWDNEY v. ROSOPYARI CHOWDHRAIN**

[3 B. L. R., A. C., 271

208. ——— *Held* that a fresh ground could not be taken in appeal which had not been taken below, though based upon a Full Bench ruling. **KASIMUDDIN KHANDKAR v. NADIR ALI**

3 B. L. R., A. C., 285; 11 W. R., 184

But see **HYES v. MOYERROODDEEN AHUNG**

[24 W. R., 6

**BOKOMALEE BAGADAR v. KILASH CHUNDER MOJUMDAR**

24 W. R., 72

209. ——— Objection based on point of law—*Second appeal*.—An objection based upon a point of law may be made in second appeal, provided it does not involve the taking of any additional evidence on matters of disputed facts. **GAYDAPPA v. GIRIMALLAPPA**

L. L. R., 10 Bom., 331

210. ——— New point.—*Discretion of Court*.—On second appeal the appellant should not be allowed to raise an entirely new point, if it is one for the right determination of which it is necessary to go into evidence which has not been produced in the lower Court, or unless it is a pure point of law going into the question of the jurisdiction of the lower Court and capable of being determined without the consideration of any evidence other than that on the record; and even if it fall within the above exception, it is purely discretionary with the Court whether to consider it or not. **FAKIR CHAND ADEKIAJI v. ANCYA CHANDER BHATTACHARJEE**

[L. L. R., 11 Cal., 584

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

211. ——— Objection which, if taken, might have been cured.—An objection which, if taken, might have been cured, and which has not been taken in the Court below, cannot be taken in the Court of appeal. **DUFEM DASS PASDEY v. SHAMA SOONDERY DEBIA**

[6 W. R., P. C., 43; 3 Moore's L. A., 229

212. ——— Objection taken too late.—A point not taken in either of the lower Courts was disallowed as being too late when taken for the first time at the hearing of the special appeal. **MAHADAJI v. VYANKAJI GOVIND**

L. L. R., 1 Bom., 197

**RAMABAI SAHEB PATVARDHAN v. ATFA**

[13 Bom., 13

**CHUNDEE CHURN ROY v. RAM COOMAR DUTT**

[7 W. R., 413

**BUNSEE LALL v. AGADH ANSAR**

[23 W. R., 552

213. ——— Allowing objections.—The High Court allowed objections to be taken by a defendant which had not been taken in either of the lower Courts. **BHUBAN CHANDRA SHOME v. RANDYAL SHAMANTA**

[5 B. L. R., Ap., 62; 14 W. R., 55

**RAMTARAK KARATI v. DINASATH MASDAL**

[7 B. L. R., 184

24 W. R., 414 note

214. ——— Objection apparent on pleadings.—The High Court can raise and adjudicate upon certain points in special appeal, when they are apparent on the face of the pleadings, even though the parties to the suit are silent. **EXALT HOSSEIN v. KUREEMOONISSA**

3 W. R., 40

215. ——— Objection involving point of mixed law and fact.—*Second appeal*.—An objection involving a point of law as well as of fact, if not taken in the Court below, cannot be entertained in second appeal. **VARANJEE HANDESHAI v. LALLU ACHU**

L. L. R., 9 Bom., 285

216. ——— Question of mixed law and fact raised for first time in Appellate Court.—*Objection taken for first time on appeal*.—*Smile*.—When a question raised before the Appellate Court is a mixed one of law and fact, and one which was not raised before the Court of first instance, it is doubtful whether the Appellate Court should allow it to be raised. **UMRAO BHAI v. MANOHED ROJABI**

L. L. R., 17 Cal., 205

[4 C. W. N., 78

217. ——— Objection not taken on cross-appeal.—*Remand*.—An objection not taken in cross-appeal before the lower Appellate Court cannot be taken in special appeal; but if the case be remanded for new trial, such objection may then be taken before the Court of first instance. **DUGGARAM ROY v. NARSING DEB**

[3 B. L. R., A. C., 254

**DOOGARAM ROY v. NARSING DEB**

[11 W. R., 134

**APPELLATE COURT—continued.****7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.**

**218.** ——— Omission to prefer appeal against remand order.—*Objection to its legality on special appeal.*—The omission of a party to prefer an appeal against an order of remand does not preclude him from questioning its legality when it comes up in special appeal from the subsequent decision passed after remand. *MAGARAM OJHA v. NILMONEE SINGH DEO* . . . . . **13 B. L. R., 198**  
[21 W. R., 326]

**219.** ——— Objection taken but not pressed.—Where an objection taken in the grounds of appeal is not pressed at the hearing of the case, it cannot be raised again in special appeal. *NORKRISTO SIRCAR v. KALACHAND DOSS*  
[12 W. R., 470]

*SOORJO KANT BANERJEE v. KRISTO KISHORE PODDAR* . . . . . **14 W. R., 423**

**220.** ——— Want of opportunity to raise objection.—A defendant is entitled to take in the Appellate Court an objection which he had no opportunity of taking until the case was heard in appeal. *LOWA JHA v. BISSESHUR SINGH*  
[11 W. R., 6]

**221.** ——— Objection by pro forma defendant.—A *pro forma* defendant cannot be allowed to raise in appeal objections which he neglected to raise in the suit. *DEOKEENUNDUN ROY v. KALEE PERSHAD* . . . . . **W. R., 1864, Mis., 34**

As to taking objections for the first time, *see also* *MANIRUDDIN AHMED v. RAM CHAND*  
[2 B. L. R., A. C., 341]

*NAIMUDDA JOWARDAR v. SCOTT MONCRIEFF*  
[3 B. L. R., A. C., 283]

*NYEMODDEE JOWARDAR v. MONCRIEFF*  
[12 W. R., 140]

*NANOO ROY v. JHOOMUOK LALL DASS*  
[12 B. L. R., 292 note; 13 W. R., 376]

*GOUR KISHORE DUTT v. AKBUR*  
[22 W. R., 489]

*SHEO GOBIND RAWUT v. ABHAY NARAIN SINGH* . . . . . **5 B. L. R., Ap., 17**

**(b) SPECIAL CASES.**

**222.** ——— Adoption.—*Objection to invalid adoption.*—An objection (that an adoption was invalid, because the party adopted was the eldest son of his natural father) was rejected in special appeal, because not urged in the lower Courts at any stage of the trial, and not specifically taken in the petition of special appeal. *JOY TARA DOSSIE CHOWDRAIN v. ROY CHUNDER GHOSE* . . . . . **1 W. R., 136**

**223.** ——— Omission of performance of ceremonies.—*Held* that, as no objection to the omission of any of the usual ceremonies of adoption or to the age of the adopted son was taken before the lower Court, its decision was not open to those objections when taken on appeal. *DURYAO SINGH v. KARUN SINGH* . . . . . **1 Agra, 31**

**APPELLATE COURT—continued.****7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.**

**224.** ——— Objection to share taken on adoption.—*Objection on appeal to extent of share awarded to adopted son.*—In a suit by an adopted son to recover his share in his adoptive father's estate, a son having been born to the adoptive father subsequently to the plaintiff's adoption, the Court of first instance awarded the plaintiff a fourth share of the property in dispute. The defendant appealed to the District Court, but in appeal raised no question as to the extent of the share awarded to the plaintiff. On second appeal to the High Court, it was contended that, in any event, the plaintiff was only entitled to a fifth share. *Held* that, under the circumstances and having regard to the nature of the question, the point might be taken in second appeal on behalf of the defendant, and the High Court varied the decree by awarding the plaintiff a fifth share instead of a fourth share, but ordered the appellant (defendant) to bear his own costs of the appeal. *GIRIAPA v. NINGAPA* . . . . . **1 L. R., 17 Bom., 100**

**225.** ——— Alienation.—*Alienation by member of Mitakshara family—Invalidity of alienation—Proof of consideration.*—A father having executed a deed conveying certain ancestral property to two persons (*D* and *B*), who alienated it to several others, his son sued to have the conveyances by *D* and *B* set aside on the ground that the deed given by the father was benami, and that *D* and *B* never had possession. The suit was dismissed by both the lower Courts. *Held* that, as plaintiff went to trial in the Courts below upon one issue only, *viz.*, whether *D* and *B* were ever really in occupation, he was not entitled in special appeal to complain that evidence had not been taken as to the passing of consideration—money. *Held* that, as no issue was raised in the lower Courts which could have been the foundation for a declaration of right, the non-decision of a claim to such a declaration could not be made a ground of special appeal. *Held* that where the question whether the alienation of certain property by the father without the son's consent was valid under the Mitakshara law was not raised in the lower Courts, such invalidity could not be admitted as a ground of objection in special appeal, for it necessarily involved an issue of fact. *PURIAG DUTT v. BROJO KOONWAR*  
[9 W. R., 503]

*BENODE PATNAIK v. DOYANIDHEE BULLIOR SINGH* . . . . . **9 W. R., 493**

**226.** ——— Appeal.—*Objection that no appeal lies.*—The High Court refused to entertain an objection (not taken till the close of the appellant's argument) that, the amount in appeal being less than Rs. 5,000, no appeal would lie. *CHUNDER NATH MISSEER v. SIRDAR KHAN* . . . . . **13 W. R., 218**

**227.** ——— Attachment.—*Invalidity of attachment.*—An objection that an attachment under s. 240 of Act VIII of 1859 was invalid, because the formalities required by s. 239 had not been complied with, was not allowed to be taken on appeal.

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

it not having been raised in the Courts below. *RAM-KRISHNA DAS SURWAI v. SURFENESSA BEGUM*

[I. L. R., 8 Cal., 129]

228. ——— Award—*Objection that arbitrators had no power to administer other than usual oath.*—Where on a reference to arbitration the arbitrators had made an award founded on the evidence

preferred in the lower Courts, and was not to be found in the memorandum of special appeal. *WAIJULLA v. GHULAM ALI*

[I. L. R., 1 All., 636]

229. ——— *Objection to validity of award.*—Where objection to the validity of the award on the ground that it was made beyond the time allowed was not taken by the defendant in the first Court,—*Held* that he was not thereby estopped from raising the objection for the first time in appeal, inasmuch as it was not shown that in the first Court he was aware of the defect, or had done anything to imply consent to extension of the time. *CHURA MAL HARI RAM*

[I. L. R., 8 All., 548]

230. ——— Coverture—*Plea of coverture—Execution of decree.*—The plea of coverture not allowed to be raised against a decree-holder, because not taken when she first sought to execute the decree. *KIRKEY v. DILLON*

[I. N. W., Ed. 1873, 243]

231. ——— Custom—*Objection as to custom against inheritance.*—In a suit by a Hindu widow for possession and declaration of title,—*Held* that defendant could not be allowed to come in and urge for the first time on appeal that, by a family custom or koolchar, females were excluded from inheriting. *DOOROA PERSHAD SINGH v. DOOROA KOONWARIE*

[13 W. R., 10; 9 B. L. R., 308 note]

232. ——— Damages, Measure of—*Mode of calculation of damages.*—*Held* that, as the defendant had made no objection to the manner in which the plaintiff had calculated damages in the Courts below, the question could not be gone into on special appeal. *MCDONALD v. RAJARAM RAY*

[9 B. L. R., Ap., 28; 11 W. R., 371]

233. ——— Decree, Form of.—An objection as to the form of a decree not allowed to be taken in the first time on special appeal. *MONHESTER BULSH SINGH v. MUTHOORAPERSHAD*

[8 W. R., 616]

234. ——— Defence not raised in the lower Court—*Declaratory decree, Suit for—Objection to declaratory decree.*—*B. J.*, a Hindu widow, made a will disposing of property, of which under an award she had only the use during her life,

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

and to which the plaintiff, her son, was entitled after her death. While she was still living, the plaintiff filed this suit, praying that the will might be declared invalid. The defendants were the testatrix and those who took under the will. While the suit was pending, the testatrix died. The Subordinate Judge passed a decree in plaintiff's favour, and declared the will invalid. The defendants appealed, and contended for the first time in appeal that the allegations in the plaint, viz., that the will was in their favour,

See *BOMBAY-DURMAN TRADING CORPORATION v. SMITH*

[I. L. R., 17 Bom., 197]

235. ——— Enhancement—*Waste of objection.*—In a suit for enhancement of rent, where defendant pleaded Bengal Act VIII of 1860, s. 4, plaintiff referred in both the lower Courts to a clause

*PERSHAD v. LALLA DABER PERSHAD*

[24 W. R., 436]

236. ——— Service of notice.—In a suit for enhancement of rent it was objected on behalf of the defendant in special appeal that service of notice had not been proved. *Held* the question was one of fact, and the objection ought, therefore, to have been taken in the Court of first instance. *DUMAIN v. UTTAM SINGH*

[5 B. L. R., Ap., 44]

[13 W. R., 463]

237. ——— *Objection to want of notice of enhancement.*—An objection that no notice of enhancement had been served, though not taken in the Court below, was allowed to be taken on appeal. *THEKMER BELDAR v. RAM KIRKEY LALL*

[15 W. R., 71]

But not a technical objection to the form of notice. *SHREE GOPAL MELLICK v. DWARAKANATH SAH*

[15 W. R., 630]

*SHAMA SOONDREER DEBIA v. DEGUNDREER DEBIA*

[21 W. R., 309]

though see *WOOMA CHENY DUTT v. GAIKH CHENDER BOSE*

[17 W. R., 32]

*RAM RUTTEN GHOSH v. PRATYUS NATH HAITTACHARJEE*

[20 W. R., 203]

238. ——— *Informality of notice of enhancement.*—Where a notice of enhancement, though informal, was sufficient to inform the tenant of the landlord's intention to increase the rent

**APPELLATE COURT—continued.****7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.**

to the rates paid for similar lands in places adjacent, and the notice was accepted by the raiyat, and treated by him in the lower Court as a notice under cl. 1, s. 17, Act X of 1859, it was held that the informality could not be objected to for the first time in the High Court in special appeal. **KASHEENATH DEB v. SHIBESSUREE DEBIA** . . . **8 W. R., 503**

**239.** ————— *Suit to contest enhancement—Irrigation expenses.*—Held that in a suit for enhancement the plea of increased expense on account of irrigation cannot be admitted for the first time in special appeal. **KUNCHUN SINGH v. SHEORAJ** [1 Agra, Rev., 7

**240.** ————— *Objection not taken before as being unnecessary.*—A suit for enhancement of rent was defended on two grounds, the first of which was overruled, but the second succeeded, and the suit was dismissed. Plaintiff appealed, and the second ground having been overruled in appeal, the respondent (defendant) again put forward the objection which had been overruled by the first Court. Held that, under the circumstances, it was not too late for him to take that objection. **TAREE MAHTOON v. RAM SAHOY SINGH** [25 W. R., 110

**241.** ————— *Evidence—Time for objection to evidence.*—It is the duty of the party who wishes to object to evidence to object in the first instance, and not to delay doing so until the case is before the High Court in special appeal. **SEETUL PERSHAD MITTER v. JUNMEJOY MULLICK** [12 W. R., 244

**242.** ————— *Objections to evidence as not being the best.*—Objections to evidence as not being the best evidence should not be allowed to be taken on special appeal. **AYUDH BEHARER SINGH v. RAM RAJ TEWABEE** . . . **18 W. R., 105**

**LOOHUN SINGH v. HET NARAIN SINGH** [24 W. R., 232

**243.** ————— *Objection to mode of recording evidence.*—The objection that the depositions of the witnesses were not taken in the manner prescribed by the Code of Civil Procedure, but only notes of the evidence, is not one which can be taken in special appeal. **LALL MAHOMED v. PRER NUTUR** . . . **18 W. R., 112**

**244.** ————— *Documents, though inadmissible, admitted in first Court by consent—Documents not objected to in first Court—Appeal.*—Judgments not inter partes, though not conclusive as *res judicata*, are admissible in evidence under s. 13 of the Evidence Act (I of 1872) to show the conduct of the parties, or particular instances of the exercise of a right, or admissions made by the parties or their predecessors in title, or to identify property, or to show how it has been previously dealt with. Where parties to a suit, in order to save delay or expense or for any other reason, have agreed or not objected to the admission of certain evidence given in some former proceedings, although it is not strictly

**APPELLATE COURT—continued.****7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.**

admissible, and the first Court has allowed this to be done, it is not open to the Appellate Court to take objection to such a procedure and exclude the evidence. **LAKSHMAN GOVIND v. AMBIT GOPAL**

[1 L. R., 24 Bom., 591

**245.** ————— *Objection as to admissibility of evidence.*—It being objected in special appeal that the decision of the lower Appellate Court was based on documents which were neither admissible as legal evidence nor had any bearing on the point to be decided,—Held that, though the objection to the admissibility of the evidence ought to have been taken in the Court in which the evidence was tendered, yet coming in such a shape as it did, it could not be got over. Held also (MITTER, J., *dis-sentiente*) that, as defendant has succeeded in special appeal on an objection which he should have taken before, he ought to pay his own costs in this appeal, even should he succeed ultimately (the case being remanded); and that it is not the exclusive duty of a Court, but that of pleaders also, to see whether evidence tendered is legally admissible. **MUNRAKHUN ROY v. JUGGUT DOSS** . . . **10 W. R., 124**

**246.** ————— *Objection as to admissibility of evidence.*—The reception of papers and documents by the lower Appellate Court, unless objected to at the time, cannot be made a ground of special appeal. **RASH BEHARI SINGH v. NABATI PODDAR** . . . **3 B. L. R., A. C., 99** [11 W. R., 465

**247.** ————— *Objection as to admissibility of evidence.*—Where no objection had been taken as to the admissibility of documentary evidence,—viz., a decree and other proceedings in regard to that decree, which had been made use of by the opposite party,—an Appellate Court has no jurisdiction to exclude it. Where defendant allows, without objection, a purchaser of a plaintiff's interest in the suit to substitute his name on the record under an order of Court, he cannot afterwards contend that the suit is thereby abated. **BIR CHANDEA ROY MAHAPATTER v. BANSI DHAR ROY MAHAPATTER** [3 B. L. R., A. C., 214

**248.** ————— *Evidence received without objection.*—Where a deposition made in another suit, to which special appellant was not a party, was admitted and used by the first Court without any objection on the part of the special appellant, it was held that he could not be allowed to object to it in special appeal. Where the lower Appellate Court's judgment is good, and its adjudication of a plaintiff's right has been based on a sound principle, the High Court will not allow a new point to be taken in special appeal which was not taken in either of the Courts below. **WAZEER JEMADAR v. NOOR ALI** . . . **12 W. R., 33**

**249.** ————— *Objection to validity of document.*—Before an objection to the validity of a document filed as evidence in a case can be admitted as a ground of special appeal, it must be shown

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

to have been made at every stage in the Courts below.  
JOKISHEN MOOKERJEE v. RAJKISHEN MOOKERJEE  
[13 W. R., 316]

250. ————— Where a party

[13 C. W. N., 695]

251. ————— Objection to

v. THAKOMONER DABER [11 W. R., 381]

252. ————— Evidence wrongly received without objection.—Objection as to reception of evidence not before objected to disallowed on special appeal. GODART JOARDAR v. MEHRA [10 W. R., 60]

RUGHONATH PRESHAD v. HURKE MCHURST [10 W. R., 37]

CHADDER SINGH v. BEHAREE TAWARE [10 W. R., 81]

MUCKDOOMUNSHIA v. NOKHY SINGH [24 W. R., 296]

ANAR MOLLAH v. HILLS [10 W. R., 139]

KISHAN KAMINER DOSSEN v. RAM CHUNDER MITTAR [13 W. R., 13]

PROTAP CHUNDER BOROOAH v. COLLECTOR OF GOWALPARA [23 W. R., 216]

253. ————— Objection to unregistered document.—Regular appeal.—Held that the Court is bound in regular appeal to entertain an objection that a document is invalid for want of registration, even though no objection may have been raised to its admissibility in the Court below. BASAWA GURBASAWA v. KALKAPA [1 L. R., 2 Bom., 489]

254. ————— Held that, as the plea as to the inadmissibility of a document as evidence for want of registration was not specially taken in the Court below, it could not be allowed in a special appeal. GURISH CHANDRA HOY CHOWDARY v. AMINA KHATUN [3 R. L. R., Ap., 131]

255. ————— Costs.—Whether

TOOL FATIMA v. GHUNNOO SINGH [19 W. R., 23]

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

256. ————— Objection that document is improperly stamped.—The plaintiff appealed to the Judge against a dismissal of his suit, who reversed the decision of the Court below, and gave the plaintiff a decree. The defendant thereupon appealed to the High Court on the ground that a document had been admitted in evidence in support of the plaintiff's case, which did not bear a proper stamp. Held that the defendant, having omitted to take the objection before the Judge, could not appeal on this ground. RAMBHEM LAL v. ABLECHEN SINGH [Marsh., 287; 2 Hay, 148]

258. ————— Refusal to examine witness.—A Court of first instance, being satisfied that plaintiff's case could not be established, refused to examine defendant's witnesses. The lower Appellate Court, differing from the Munsif, gave plaintiff a decree. Held that, although the Munsif had committed a great irregularity, still, as that point was not raised in the lower Appellate Court, it could not be taken in special appeal. GOOROO DASS AKHOOLER v. PORAN MUNDLE [13 W. R., 363]

259. ————— An objection that the Court had refused to examine witnesses, if not brought before the Appeal Court, cannot be raised on special appeal. OSMAN SINGH v. CHUMMEN MASTOO [15 W. R., 87]

260. ————— It is too late to make an objection, for the first time in second appeal, that a certain witness, for whose evidence no application had been made in the Courts below, ought to have been examined by the Appellate Court. SOMASHEKHARA v. SUBHADRAMAJI [1 L. R., 3 Bom., 624]

261. ————— Refusal to take evidence.—Where the Court refuses to take evidence offered, that fact should be made the ground of regular appeal, and not first set up in special appeal. LALLA DEBENDEN v. SHEO GHOLAM SINGH [2 N. W., 206]

262. ————— Execution of decree.—Mode of execution.—Description of Court.—When the mode of execution has not been specifically objected to in the Court below, the High Court will not interfere. DWANKANATH DASS BISWAS v. USFOODA CHUTTA DASS [8 W. R., 318]

263. ————— Objection that decree cannot be executed in portions.—A decree cannot be executed in aliquot parts, but where it was objected for the first time in second appeal that a person seeking execution of a portion of decree was not entitled to execution, the High Court refused to allow the objection. GOODER SANKAR v. DEBPRASAD KORA [7 C. L. R., 117]

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

264. ———— Form of suit—*Madras Local Boards Act (Madras Act V of 1881), s. 27.*—An objection that the suit was not properly framed was not allowed to be taken for the first time on second appeal in a suit brought under the Madras Local Boards Act. *PRESIDENT OF THE TALUK BOARD v. NARAYANAN*. . . . I. L. R., 18 Mad., 317

265. ———— Fraud—*Omission to allege fraud.*—*Held* that defendant could not be allowed in special appeal to object that the lower Court had not determined the *bond fides* of plaintiff's purchase, unless he (defendant) had not only alleged fraud, but shown the way in which the fraud was intended to be carried out. *BOIKUNTO NATH SETT v. RUSSECK LALL BURMONO*. . . . 10 W. R., 331

266. ———— Guardian—*Objection as to due appointment of guardian.*—Where plaintiff claimed as his inheritance what had been sold to defendants by his mother to liquidate debts due by his late father, it was held, first, that it was too late in special appeal to raise doubts as to his mother having been plaintiff's guardian when the objection had not been taken below at any stage of the proceedings. *KOOL CHUNDER SURMAH v. RAMJOY SURMONA*. . . . 10 W. R., 8

267. ———— Want of certificate—*Maxim "Omnia presumuntur rite esse acta."*—On a suggestion taken for the first time in special appeal that a guardian has not obtained a certificate, it will not be assumed for the purpose of reversing the decree that such is the case. It will be presumed rather that the proceedings in the Court below have been regularly conducted until irregularity be shown. *TRUMMUN v. GOLAN RAE*. . . . 2 N. W., 89

268. ———— Issues—*Omission to raise issues.*—Where appellant satisfies the Court that he has been substantially injured by no issues being framed by the Judge previous to his decision, effect will be given to such objection. *SAH KOONDUN LALL v. MAKHUN LALL*. . . . [1 N. W., 168, Ed. 1873, 247

269. ———— Jurisdiction.—The defendant objected to the jurisdiction of the first Court, but took no objection to the jurisdiction before the lower Appellate Court. *Held* that objection to the jurisdiction was waived. *MAHOMED HOSSEIN v. AKAYA NARAYAN PAL*. . . . [2 B. L. R., Ap., 42: 18 W. R., 37 note

*HURISH CHUNDER ROY v. POORNA SOONDUREE DEBER*. . . . 18 W. R., 35

270. ———— Suit brought in Court without jurisdiction—*N. W. P. Rent Act, XVIII of 1873, s. 206.*—As the plaintiff's claim, instituted in the Civil Court to eject the defendant, a quondam tenant, and to recover mesne profits, could not be entertained in any suit in any Court, the provisions of s. 206 of Act XVIII of 1873, that the objection that a suit was instituted in the wrong Court shall not be entertained by the Appellate Court, unless such objection was taken in the Court of first

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

instance, were not applicable. *RAM-AUTAB RAI v. TALIMUNDI KUAR*. . . . 7 N. W., 49

271. ———— Summary suit for possession.—*A and B* obtained a decree for possession of land against *C*. On their proceeding to execute their decree, *D*, who was in possession, presented a petition to the Munsif, complaining that they were thereby attempting unlawfully to interfere with his possession. The case was tried, on remand from the Judge, as a suit under the provisions of s. 229 of Act VIII of 1859. *Held, per JACKSON, J.*, that, as the decree-holder had not complained that the officer of the Court had been obstructed or resisted by the claimant, the case did not fall within s. 229 of Act VIII of 1859; and, therefore, the Court had not jurisdiction to take summary cognizance of the case. *Per MITTER, J.*—This objection, taken for the first time on special appeal, did not affect the merits of the case or the jurisdiction of the Court. *BUNAL SINGH CHOWDRY v. BEHARI LALL*. . . . [1 B. L. R., A. C., 208: 10 W. R., 318

272. ———— Objection to suit for mesne profits as being matter for execution—*Civil Procedure Code (Act XIV of 1882), s. 244.*—A landlord sued his tenant for arrears of rent, and obtained a decree for a certain amount and a declaration that, if the amount were not paid within fifteen days, the tenant should be ejected under s. 52, Act VIII of 1869. The amount was not paid, and the landlord executed the decree and obtained possession. The tenant appealed, and succeeded in getting the decree set aside, and the amount found due from him for arrears by the first Court was reduced and a decree made, directing that, if the reduced amount were not paid within fifteen days, he should be ejected. He paid the amount found due by the Appellate Court within the fifteen days, and recovered possession of his holding. He then brought a suit in the Munsif's Court to recover mesne profits from his landlord for the time he was in possession after the execution of the first Court's decree. It was contended on second appeal that the suit would not lie, as the matter might and should have been determined in the execution department under s. 244 of the Civil Procedure Code. *Held* that, as the suit was instituted in the Munsif's Court and the Munsif, under the circumstances of the case, was the officer who, in the first instance, would have had to determine the matter in the execution department, there was at most only an error of procedure and no exercise of jurisdiction by the Munsif which he did not possess, and that upon the authority of the decision in *Purmessuree Pershad Narain Singh v. Jankee Kooer*, 19 W. R., 90, this could not be made a ground of objection on appeal. *Held* also that, the point being one that was not raised in the pleadings or before either of the lower Courts, and being a point which went exclusively to the jurisdiction of the Court, it could not be raised on second appeal. *AZIZUDDIN HOSSEIN v. RAMANUGRA ROY*. . . . [I. L. R., 14 Cal., 805

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

[I. L. R., 13 Bom., 424]

[I. L. R., 13 Mad., 36]

376. — *N. W. P. Rent Act (XII of 1881), s. 206.*—Under s. 206 of the N. W. P. Rent Act, when no objection to the jurisdiction was taken in the first Court, an objection to the jurisdiction is not to be entertained in the Appellate Court, but the Judge must try the case upon the facts, and apply the law applicable to those facts. *Debi Saran Lal v. Debi Saran Upadhyay, I. L. R., 6 All., 378, approved. MADHO LAL v. SHEO PRASAD MISHRA. I. L. R., 13 All., 419*

378. — Question of jurisdiction taken for first time on appeal.—An objection to the jurisdiction of the Court may be taken at any stage of the suit, and the Court is not only competent, but bound to take notice of it. In this case it was taken and allowed on appeal. *RAMCHAND MOHAR v. BELAKSHI ENGLISH. I. L. R., 20 Bom., 80*

277. — Jurisdiction.—Suit for property wrongly taken in execution of decrees.—Separate suit brought where proceeding should have been in execution.—Where a suit for the recovery of lands taken by the decree-holder in excess of his decree has been held not to lie under s. 244 of the Civil Procedure Code, but the suit had been instituted in the Court which had jurisdiction to execute the decrees, the plea may be regarded as an application to that Court for determining the question whether the lands are covered by the decree, and the suit does not therefore fail for want of jurisdiction. *Purmasen Pershad Narain Singh v. Jankee Koor, 19 W. R., 90, and Aniruddha Hosain v. Ramaswami Roy, I. L. R., 18 Cal., 605, referred to and followed. Held, also, that in such a case it is incumbent upon the defendant to raise the plea of jurisdiction in the Court of first instance, the question being not a pure question of law, but a question which would depend upon facts. BIRU MANATA v. SHYAMA CHURN KHAWAS. I. L. R., 23 Cal., 463*

278. — Objection to jurisdiction on the ground of wrong valuation of suit.—*Suits Valuation Act (VII of 1859), s. 11.*—The High Court held that it was not at liberty to entertain an objection that the suit was not within the

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

[I. L. R., 19 Mad., 419]

the Court had no jurisdiction to entertain the suit, as the plaintiffs had not previously asked the Collector to place them on the register.—*Held* that this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. That objection, however, being taken for the first time in second appeal, was disallowed. *BUKASH BAJI v. PANDU. I. L. R., 19 Bom., 43*

380. — *Kabuliat, Suit for—Failure to prove case.*—Where, in answer to a suit for a kabuliat at a specified rent, defendant pleaded in the Court below, not that plaintiff was not entitled to any kabuliat at all, but that he was not entitled to a kabuliat at the rates he claimed.—*Held* that defendant could not be allowed in special appeal to take advantage of the Full Bench ruling in *Ghulam Mahomed v. Asmat Ali Khan, B. L. R., Sup. Vol., 974; 10 W. R., F. B., 14*, and ask for the suit to be dismissed. *GHULAM ALI v. ADGHA ALI*

[I. W. R., 105]

381. — *Failure to prove case.*—In a suit for a kabuliat at an enhanced rate, the Court of first instance gave a decree for an amount less than that of the claim. No objection was taken before the lower Appellate Court, that, under the Full Bench ruling in *Ghulam Mahomed v. Asmat Ali Khan Chokdary, B. L. R., Sup. Vol., 974; 10 W. R., F. B., 14*, the suit was liable to be dismissed. This objection was taken for the first time in special appeal. *Held* that the objection could not be entertained. *NIZAMT ALI v. ROMESH CHANDRA ROY*

[3 B. L. R., A. C., 79; 11 W. R., 430]

But see *HAMED ALI v. AFTERGOODEN*

[1 B. L. R., R. N., 14; 10 W. R., 213]

282. — *Omission to tender pottah.*—The lower Appellate Court ought not to have entertained the objection of the defendant that no pottah had been tendered before the institution of the suit, as the objection had not been taken before the first Court. That issue was not essential to the right determination of the suit upon the merits. *RAMANATH BAKSHI v. CHAND HARRI BHUTA. 6 B. L. R., 350*

283. — *Omission to tender pottah.*—In a suit for a kabuliat an objection cannot be raised on appeal for the first time that a pottah had not been tendered. *DOORAN KASS MOZOOMDAR v. HIRSHIMT DUTY CHOWDHURY*

[W. R., 1864, Act X, 44]

**APPELLATE COURT—continued.****7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.**

**284.** ——— **Landlord and tenant—Suit to have pottah cancelled.**—Where a plaintiff sued to have the defendants' pottah cancelled on the ground of fraud, to restrain them from felling trees, and for a declaration that a certain shola was Government property,—*Held* that, having failed to establish the grounds upon which relief was claimed, the plaintiff was not entitled to object on appeal, for the first time, that the defendants were merely tenants from year to year. **SECRETARY OF STATE FOR INDIA v. NUNJA** . . . **I L R., 5 Mad., 163**

**285.** ——— **Limitation—Possession.**—Where a defendant in the lower Court pleaded limitation, but placed that issue upon the simple fact that he himself had possession for twelve years and upwards, which issue was found against him,—*Held* that it was too late for the defendant in special appeal to object that that finding did not dispose of the issue of limitation. **KISTO MORUN KURMOKAR v. NOXAN TARA DOSSEE** . . . **10 W. R., 389**

**286.** ——— **Minority—Right of member of family to alienate.**—A plaintiff obtained a decree to set aside an alienation of ancestral property effected by his father during his minority. Defendant objected in special appeal, first, that the suit was barred by lapse of time since plaintiff attained his majority; and, secondly, that, under the Mitakshara law, the father had a right to alienate a share of the property. *Held* that, as the first of these objections was entirely a matter of fact, and as the second, though essentially a matter of law, went to the substance of the plaintiff's claim, they should have been urged in the lower Courts, and could not be admitted for the first time in special appeal. **BENODE PUTNAIK v. DOYANIDHEE BULLIOE SINGH** **[9 W. R., 493]**

**287.** ——— **Settlement.**—In the first Court an issue was raised whether or not the hearing of this suit was barred by the law of limitation. One of the grounds of appeal to the Judge was, that the Principal Sudder Ameen ought to have held the suit barred as regards the diaras under the special limitation of three years from the date of the Collector's settlement. The Judge did not notice this ground in his judgment. The same ground of appeal was repeated in the special appeal to the High Court, but that Court refused to entertain it, for the reason that it did not appear to have been raised in argument before the Judge or in the first Court. **RAJ KUNWAR alias SHEOMURAT KUNWAR v. INDERJIT KUNWAR** **[5 B. L. R., 585; 13 W. R., 52]**

**288.** ——— **Guardian and Ward—Minority.**—A sued B to recover possession of a hereditary jote, of which he alleged he had been dispossessed by B during his minority. B raised the defence of limitation and relinquishment by A's grandmother and guardian. The Munsif held that the suit was not barred on the ground that it had been brought within three years from the date on which A had attained his majority, but decided

**APPELLATE COURT—continued.****7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.**

against A on the merits. On appeal the question of limitation was not raised, but on the merits the Judge also found against A. On special appeal by A, B took an objection under s. 348 of Act VIII of 1859 that A's suit was barred. *Held* that B could not take the objection at that stage. **KEDERNATH MOOKERJEE v. MATHURANATH DUTT** **[1 B. L. R., A. C., 17; 10 W. R., 59]**

**289.** ——— Where an objection that the suit was barred by limitation was not taken into consideration by the lower Appellate Court, and in special appeal the facts necessary to support the plea of limitation were stated in the ground of appeal, but for another reason and in another form than those for which it was raised before, the High Court allowed the objection to be taken and to prevail, and dismissed the suit. **BISSONATH SURMA v. SHOODAMOOKKEE** **[11 B. L. R., Ap., 1; 20 W. R., 1]**

**290.** ——— **Setting aside ex-parte case.**—A Munsif entertained a petition by a defendant under s. 119 of the Civil Procedure Code, and set aside his former judgment given *ex-parte* in favour of the plaintiff, and dismissed the plaintiff's suit. The plaintiff, on appeal before the Judge, did not raise the objection that the Munsif ought not to have entertained the petition of the defendant, as it had not been presented in due time. It was held to be too late to raise the objection on special appeal. **BORO KHASTIA v. JATA SINDAR** **[8 B. L. R., 78; 15 W. R., 315]**

**291.** ——— **Limitation.**—Where the question of limitation was raised for the first time on second appeal, *held* that it could not be decided against the plaintiff. **SHIVAPA v. DOP NAGAYA** . . . **I L R., 11 Bom., 114**

**292.** ——— **Merger—Plea of merger.**—A plea of merger cannot be raised for the first time in special appeal. **RUSTON v. ATKINSON** **[11 W. R., 485]**

**293.** ——— **Misjoinder—Misjoinder of causes of action—Suit for arrears of rent—Separate leases.**—The Court refused to admit in special appeal the plea that the lessor should have instituted separate suits to recover the arrears of rent due on each lease, as it allowed the objection that the leases could not be declared forfeited for the aggregate of the arrears of rent and cesses due on both leases, but that the forfeiture of each lease was incurred in respect of the arrears due on it, and that the lower Courts should have therefore determined and declared in their decrees what was the amount of arrear due in respect of rent and cesses on each lease separately. **GOLARI SINGH v. RAI NORMAL CHAND** . . . **6 N. W., 342**

**294.** ——— **Misjoinder of causes of action.**—An objection that the plaintiff has joined together causes of action which, by s. 44 of the Civil Procedure Code, may not be joined together without leave first obtained, is taken too late for the first time in the Court of Appeal after the case

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

has been already heard on its merits. *DHONDRA KRISHNAJI PATEL v. RAMCHANDRA BHAGVAT*

[I. L. R., 5 Bom., 554

GUNESH PERSAD v. WILSON

[W. R., 1864, Act X, 86

295. ————— Civil Proce-

be taken in the Court of first instance, and not for the first time on appeal. Where such an objection had been raised for the first time in appeal, the High Court in second appeal declined to entertain it. *Dandab Krishnaji Patel v. Ramchandra Bhagvat, I. L. R., 5 Bom., 554*, followed. *MAULA v. GUZARI SINGH* [I. L. R., 16 All., 130

296. ————— *Misjoinder of parties*.—Misjoinder of parties is not an objection which can be allowed to be taken in special appeal. *TILUCK CHUNDER CHUCKERBUTTY v. MUDDEN MOHUN JOOGER* [13 W. R., 504

*LALL MAHOMED v. PIR NIZUR* [18 W. R., 113  
*LUTHER DUTT PATTICK v. RUGHOOBER SINGH* [24 W. R., 280

297. ————— *Held that, even if there had been a misjoinder, the plea could not be allowed in second appeal, as the defendants had not been prejudiced.* *MALAGURI GARUDIAN v. NARAYANA HUNOIAN* [I. L. R., 3 Mad., 359

*NUMMOODDEEN AHMED v. ZEHOOBUN* [10 W. R., 45

*RAM DOTAL DUTT v. RAM DOOLAL DEB* [11 W. R., 273

*TULSHA v. GOPAL RAI* [I. L. R., 8 All., 632

*Contra SREEKANT ROY CHOWDERY v. KITAS MOODDEN SINGAR* [10 W. R., 49

298. ————— *Misjoinder of causes of action*.—As a general rule, if an objection on the ground of misjoinder of causes is pressed and carried to a decision in the first Court, the High Court will, even upon special appeal, upon its being shown to be well founded, give the objector the benefit of it; but if it is not pressed and carried to a de-

[20 W. R., 420

299. ————— *Objection to defendant being made plaintiff*.—Where a defendant was made one of the plaintiffs by the consent of the first Court and appealed as one of the plaintiffs, and took no objection until the case came up on special appeal, the objection was not allowed to be taken. *KARNAL DOSS MUNDLE v. PROYAT CHUNDER NAR-* [12 W. R., 455

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

300. ————— *Notice of enquiry*.—*Went of notice of enquiry by Ameen*.—A judgment-debtor, who, while objecting before the Judge as to what had been done by the Ameen in the enquiry as to the means profits, raised no objection as to the want of notice of the Ameen's enquiry, was not allowed to raise the latter objection on appeal. *SHARODA MOYER HERMONER v. WOOMA MOYER HERMONER* [8 W. R., 9

301. ————— *Notice of sale*.—*Objection to form of notice of sale for arrears of rent under Bengal Regulation VIII of 1819, s. 8*.—An objection to the form of the notice of sale under a 8 of Bengal Regulation VIII of 1819 was taken for the first time in the Appellate Court. *Held that, as a defect fatal to the whole proceeding appeared in the notice, the objection was competently taken in that Court.* *Macnaghten v. Mahabir Pershad Singh, I. L. R., 9 Calc., 656* [I. L. R., 10 J. A., 25, distinguished. *ANSANULLA KHAN BANADUR v. HARICHARAN MOZUMDAR* [I. L. R., 20 Cal., 68 [I. L. R., 19 I. A., 191

302. ————— *Notice of suit*.—*Omission to give notice of action under s. 42, Police Act, V of 1861*.—In a suit against a police officer, the objection under a 42, Act V of 1861, that one month's notice has not been given, must be taken in the lower Court; if not taken then, it cannot be made a ground of appeal. *NARAIN DEEN TEWARI v. RAM DASS* [8 W. R., 425

303. ————— *Notice of suit against Municipal Commissioners*.—*New joinder of party*.—*Special appeal*.—*Act XV of 1873, ss 22, 43*.—The plea that no notice was given as required by a 43 cannot be taken for the first time in special appeal. *Quere*.—Whether a plea that the Local Government had not been made a party to a suit against a Municipal Committee in accordance with a 23 can be taken for the first time in special appeal. *MUNICIPAL COMMITTEE OF MORADABAD v. CHATRA SINGH* [I. L. R., 1 All., 209

304. ————— *Notice to quit*.—An objection as to the necessity of notice to quit is one which may be taken on special appeal. *DOHRU v. MADHARAO NARAYAN GADRE* [I. L. R., 18 Bom., 110

305. ————— *Suit for ejectment*.—Where notice to quit is a necessary part of plaintiff's title to eject, and when the issues raised the question of plaintiff's right to eject, and no proof was given of notice by plaintiff, but no objection was taken to the want of notice by the defendant until second appeal. *Held that it was competent to the Court to entertain the objection in second appeal, but that the plaintiff should have liberty to meet the objection upon the trial of an issue referred to the lower Court upon that point.* *ABDULLA HAWTAN v. SUBBANATHAN* [I. L. R., 3 Mad., 340

306. ————— *Denial of landlord's title throughout case*.—*Objection as*

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

*special appeal that no notice to quit has been given.*—Where a tenant denies his landlord's title and persists throughout in a vexatious and aggressive course of conduct towards him, he will not, in a suit for ejectment, be allowed in special appeal to assert that he has not been served with a notice to quit, that objection not having been taken in the Courts below. *RAM NUFFER BHATTACHARJEA v. DHOL GOBIND THAKOOR* . . . 1 C. L. R., 421

307. ——— Parties—*Suit by receiver in his own name—Error in frame of suit.*—Where the receiver of an estate, appointed by the High Court on its Original Side, received permission to bring a suit on behalf of the parties interested in the estate, and brought the suit in his own name, it was held that, though the frame of the suit was erroneous, yet the error being one of form only, and no objection on the ground of that error having been taken in the Court below, such objection could not be allowed to prevail in the Court of Appeal, which might amend the proceedings without consent of the parties interested, or further notice of appeal. *JUGGUNNATH PERSHAD DUTT v. HOGG* . . . 12 W. R., 117

308. ——— Defect of parties, *Objection as to.*—Where a decree for *wasilat* was given against the manager of an unregistered trading company, and the plea that the company was not a corporate body, and therefore not liable without a disclosure of the names of the parties constituting the company, was not taken until the execution stage,—*Held* that the plea was a technical one, and taken too late to be of any weight in a Court of equity. *TRIPP v. NURSING CHUNDER MITTER* [W. R., 1864, Mis., 7

309. ——— Defect of parties, *Objection as to—Per PRINSEP, J.*—The objection as to defect of parties after the case had passed through two Courts is not one affecting the merits of the case so as to be a ground of special appeal. *BOYDONATH BAG v. GRISH CHUNDER ROY* [I. L. R., 3 Cal., 26

310. ——— Non-joinder of parties—*Misjoinder.*—*Held* by *MUTTUSAMI AYYAB* and *BRANDT, J.J.* (*KERNAN, J.*, dissenting)—The objection as to non-joinder of parties is not essential, but merely formal, and weight should not be attached to it when it is first taken on second appeal. *MORDIN KUTTI v. KRISHNAN* . . . I. L. R., 10 Mad., 322

311. ——— Defect of parties.—Where a suit is brought by one member of an undivided Hindu family to recover land, the property of the family, and no objection is taken at the hearing on the ground of the non-joinder of the plaintiff's co-parceners, it is not open to an unsuccessful defendant to raise such objection on appeal. The objection should be taken at the first hearing at as early a stage as possible. *PARAMASIVA v. KRISHNA* [I. L. R., 14 Mad., 498

See *RAJNARAIN BOSE v. UNIVERSAL LIFE ASSURANCE CO.* . . . I. L. R., 7 Cal., 594, at p. 603

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

312. ——— *Suit for specific performance—Practice.*—An objection that certain of the defendants should not have been made parties to a suit for specific performance of an agreement because they were not parties to the agreement cannot be taken in second appeal for the first time, as it only involves a question of practice. *DODHU v. MADHAV-RAO NARAYAN GADRE* . . . I. L. R., 18 Bom., 110

313. ——— *Suit for payment of mortgage money or foreclosure—Non-joinder of person interested in the mortgaged property, Effect of—Transfer of Property Act, s. 85—Civil Procedure Code (1882), s. 32.*—The non-joinder in a suit to which Chap. IV of Act IV of 1882 applies of a person interested in the mortgaged property, within the meaning of s. 85 of that Act, and of whose interest the plaintiff has notice, is a fatal defect in the suit, unless cured by the action of the Court under s. 32 of the Code of Civil Procedure; and where such non-joinder is brought to the notice of the Court, the Court will give effect to the objection and dismiss the suit, even though such objection be raised for the first time in appeal. *Mata Din Kashodan v. Kazim Hussain, I. L. R., 13 All., 432, Janki Prasad v. Kishen Das, I. L. R., 16 All., 478, and Bhawanji Prasad v. Kallu, I. L. R., 17 All., 537, referred to.* *GHULAM KADIR KHAN v. MUSTAKIM KHAN* [I. L. R., 18 All., 109

314. ——— Technical objection.—In suit for possession by right of foreclosed mortgage, plaintiff having obtained a decree which was *ex-parte* against one of the defendants, the lower Appellate Court found as a fact, on the appeal of the defendants, that the mortgage transaction was benami and collusive (the defendant *A* having been a sharer in the fraud), and dismissed the claim. *Held* that plaintiff could not in special appeal be allowed, under the finding of the lower Appellate Court, to urge that his suit should not have been dismissed as against the share of *A* on the technical ground that *A* had not appealed. *RAMLOCHAN SOOR v. NITYYA KALLEE DEHI* . . . 12 W. R., 210

315. ——— Partition—*Objection to report of Ameen as to partition—Waiver of objection.*—In a suit for partition, the Subordinate Judge appointed an Ameen, under s. 396 of the Civil Procedure Code, to effect a partition. The Ameen made his report, which was objected to on the merits by the defendant, but ultimately the report was confirmed, the defendant having acquiesced in the proceedings. On appeal to the District Judge, the defendant took an objection that the appointment of the Ameen was irregular. *Held* that, having acquiesced in the proceedings so far, it was too late for the defendant to take the objection. *GYAN CHUNDER SEN v. DURGA CHURN SEN* . . . I. L. R., 7 Cal., 318 [8 C. L. R., 415

316. ——— Policy of insurance—*Jettison.*—Where the plaintiffs could not recover on a policy for a partial loss, except as for jettison, and that point was not taken in the Court below, the point

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

could not be raised in appeal. *MACKINNON v. DUNDAS* . . . *Bourke, A. O. C., 155*

317. — Purchase—*Suit to enforce sale of religious office.*—In a suit to enforce a right by purchase of a priest's office, no objection was taken to the legality of the transaction until second appeal. Held that the objection must be allowed. *KUPPA v. DORASAMI* . . . *I. L. R., 8 Mad., 76*

318. — *Suit on bond as asset purchased.*—A plaintiff who had purchased a

the assets of the factory, and his suit was dismissed. Held that the objection ought not to have been allowed to prevail so far as to dismiss the suit, but the plaintiff ought to have an opportunity given him of adducing the requisite proof. *CHANDER COOMAR ROY v. KUBEROODEN* . . . *10 W. R., 332*

[8 W. R., 252]

320. — *Raising new*

could not be admitted in special appeal, when the facts on which alone it could be supported had not been found in the lower Court. *SATGOBAM MAJUMDAR v. PRONATH BANSER* . . . *10 W. R., 424*

321. — *Res judicata—Act X of 1877*

when such plea has not been urged in either of the lower Courts, or in the memorandum of appeal, if raised in the second appeal, it must be considered and determined either upon the record as it stands or after a remand for findings of fact. *MUHAMMAD ISMAIL v. CHATTAR SINGH* . . . *I. L. R., 4 All., 69*

*KOTLASHNATH CHAND v. MOXMOHNEY DOSER* (Marsh, 276)

*MOXMOHNEY DOSER v. KOTLASHNATH CHAND* [3 May, 154]

*See MUJIB MOYEE DEBIA v. HER CHANDER HAQUT* [3 W. R., Act X, 146]

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

322. — *Plea of res judicata taken for the first time in appeal—Power of Court to entertain it.*—Although the plea *res judicata* may be taken at any stage of a suit, including first or second appeal, an Appellate Court is not bound to entertain the plea if it cannot be decided upon the record before that Court, and if its consideration involves the reference of fresh issues for determination by the lower Court. *Muhammad Ismail v. Chatter Singh I. L. R., 3 All., 69*, and *Tek Narain Rai v. Dhondh Bahadur Rai, Weekly Notes, All., 1593, p. 104*, referred to. *KARNAH LAL v. SUBAS KUNWAR* . . . *I. L. R., 31 All., 440*

323. — *Right of suit.*—An appellant cannot defeat the suit by an objection to the plaintiff's right to sue brought forward for the first time on appeal. *PAREYASAMI alias KOTTAI TEVAR v. SALLUCAI TEVAR alias OTTA TEVAR* . . . *8 Mad., 157*

324. — *Objection to competency to sue.*—Incompetency to sue is a defect not admitting of cure or palliation, but that plea being of a material preliminary nature, and involving the plaintiff's *locus standi* in Court, was held to be admissible, though pleaded orally for the first time on appeal. *RADHA KISHEN v. BUCHTAWA LALL*

[1 Agra, 1]

325. — *Absence of tender before suit.*—Where a party has a good objection, such as an absence of tender before suit, to urge to the prosecution of a suit, his omission to do so in the first instance is fatal to his availing himself of it as an objection on appeal. *MAHOMED AMER-OODDEN KHAN v. MOJIBUDDIN HOSSEIN KHAN* [5 B. L. R., 570; 14 W. R., P. C., 6]

326. — *Suit not brought on agreement.*—In a suit for maintenance, the amount of which had been fixed by agreement, an objection taken on appeal that the suit should have been brought on that agreement, held taken too late; the defendant

[I. L. R., 9 Calc., 846; 13 C. L. R., 330]

327. — *Partnership—Contract Act, s. 342.*—An objection taken for the first time in special appeal that the plaintiff had no right as a partner and no right to sue, under s. 342 of the Contract Act, was not allowed. *BRINDRAN SANY v. HAMPREYAS SANY* . . . *25 W. R., 511*

328. — *Jurisdiction of Civil Court.*—A party who applied to a Magistrate for the removal of an obstruction, having been referred to the Civil Court, brought a suit there and obtained a decree declaratory of his right of way. In special appeal it was objected that the suit was not cognizable in the Civil Court. Held that after decree it ought to be presumed that plaintiff had a right to bring the suit in the Civil Court, and the objection was

## APPELLATE COURT—continued.

7. OBJECTIONS TAKEN FOR FIRST TIME  
ON APPEAL—continued.

not allowed to prevail. *TELOCHUN DOSS v. GUGUN CRUNDER DEY*. . . . . 24 W. R., 413

329. ————— *Competency of agent to sue.*—The question of competency of an agent to sue, if not raised in the initial stage of a suit, cannot be permitted to be raised in special appeal. *SOORENDRONATH ROY v. RUGHOOBUR DYAL AWUSTEE* [15 W. R., 392]

330. ————— *Insolvency.*—Where the defendants for the first time in second appeal objected to the plaintiff's right to sue on the ground of his having taken the benefit of the Insolvency Act, the objection was entertained by the High Court upon admission, by the plaintiff, of the fact of his insolvency. *SADODIN v. SPIERS* [I. L. R., 3 Bom., 437]

331. ————— *Suit for declaratory decree.*—An objection urged by the respondents for the first time in special appeal, that inasmuch as it was the plaintiff's own fault that he did not appear before the Collector and make his objection in time, his suit, which was one merely for declaration of title, and therefore was in the discretion vested in the Court by the 15th section of Act VIII of 1859, ought not to be entertained, was not allowed. *SPENCER v. PUHUL CHOWDREY*. *SPENCER v. KADIR BUKSH* [6 B. L. R., 658; 15 W. R., 471]

*Contra*, *SOODHUKHINA CHOWDHRAI v. ISSUR CRUNDER MOJOOMDAR*. . . . . 12 W. R., 24

332. ————— *Suit for declaratory decree—Wrongful distraint.*—A suit was brought against the plaintiff by his tenants for an illegal distress in attaching crops raised by them on the land let to them by him. The present defendant, in the course of that suit, presented a petition to the Court, in which he stated that he was the owner of the land on which the crops attached had been raised. The plaintiff brought the present suit for a declaration of his title and confirmation of possession, alleging that the defendant's statement affected his (plaintiff's) title by throwing a cloud over it. On special appeal it was objected for the first time that the plaintiff disclosed no cause of action, and the objection was admitted and prevailed. *JAN ALI v. KHONKAR ABDUR KUHMA*. . . . . 6 B. L. R., 154; 14 W. R., 420

333. ————— *Suit for declaratory decree—Possession.*—In a suit merely for a declaration of right in respect of certain property, the lower Appellate Court, considering that the suit was really one for the possession of such property, allowed the plaintiff to make up the full amount of Court-fees required for a suit for possession. The plaintiff in the suit was not amended, and the lower Appellate Court eventually gave the plaintiff a declaratory decree. *Held*, on second appeal by the defendant, who objected that a suit merely for a declaratory decree could not be maintained, that such objection ought not to be allowed under the circumstances. *SARASUTTI v. MANNU* [I. L. R., 2 All., 134]

## APPELLATE COURT—continued.

7. OBJECTIONS TAKEN FOR FIRST TIME  
ON APPEAL—continued.

334. ————— *Cause of action.*—An objection as to the plaintiff having no cause of action may be taken at any stage of the suit. *PARBATI CHARAN MUKHOPADHYA v. KALI NATH MUKHOPADHYA*. . . . . 6 B. L. R., Ap., 73

*Contra*, *KALICOOMAR SIRCAR v. BROMOMOYEE DOSSER*. . . . . 1 W. R., 23

*SUDAKHINA CHOWDHRAIN v. RAJMOHAN BOSE* [11 W. R., 350]

335. ————— *Plaint disclosing no cause of action—Discovery at the stage of an appeal under the Letters Patent of defect in the plaint.*—Where in an appeal under s. 10 of the Letters Patent it was brought to the notice of the Court that the plaint in the suit disclosed no cause of action against the defendant named therein, the Court entertained the plea and dismissed the suit. *SECRETARY OF STATE FOR INDIA v. SUKHDEO* [I. L. R., 21 All., 341]

336. ————— *Dismissal of suit on the ground that the plaint disclosed no cause of action, although no such ground taken in the written statement.*—It is competent to the defendant at the earliest possible stage of the hearing to obtain the declaration of the Court upon the question whether the plaintiff does or does not disclose a cause of action, even if that question is not expressly raised in the written statement. *UNAMOYE DASSEE v. RAJ-KRISTO NUNDUN*. . . . . 3 C. W. N., 220

337. ————— *Cause of action.*—In a suit by a purchaser of an estate to have his name registered in the Collectorate and his possession confirmed, which failed in the Court of first instance, but was decreed in the lower Appellate Court, it was held to be too late for the defendant, after contesting the suit in two Courts, to urge in special appeal that the plaintiff disclosed no cause of action. *BUKSH ALY SOWDAGUR v. JOYANTU KHAN* [11 W. R., 248]

*SOODHUKHINA CHOWDHRAI v. RAJ MOHAN BOSE* [11 W. R., 350]

338. ————— *Cause of action.*—*Per PEARSON, J., and STRAIGHT, J.* (SPANKIE, J., dissenting)—That in disposing of a second appeal the High Court is competent, under s. 542 of Act X of 1877, to consider the question whether the plaintiff has any cause of action or not, although such question has not been raised by the defendant appellant in the Courts below or in his memorandum of second appeal, but is raised for the first time at the hearing of such appeal. *LACHMAN PRASAD v. BAHADUR SINGH*. . . . . I. L. R., 2 All., 884

339. ————— *Cause of action—Premature suit.*—*K* sued *N* (his uncle) for partition of the estate of *V* (the father of *N*) in the lifetime of *V*, who was alleged to be of unsound mind. *N* objected to the suit being entertained on the ground that *V* was alive. Before issues were settled, *V* died, and the suit was tried and *K* obtained a decree. On appeal by *N* on the ground that, when the plaint was

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

*Filed, K had no cause of action.*—*Held* that the decree could not on this ground be set aside. *NARAYANA v. KRISHNA* . . . I. L. R., 8 Mad., 214

340. — *Suit for partition of portion of property.*—A case is not to be decided in special appeal upon a question which was not raised or tried or considered by the lower Courts. the objection that a suit for a partition of portion of joint property will not be taken for the first time on special appeal was therefore not allowed to prevail. *SHIB SATHY SINGH v. NERINGH LALL* [23 W. R., 353]

341. — *Separate suit for question determinable on execution of decree.*—Where a question such as is provided for by Act XXIII of 1861, s. 11, instead of being determined by order of the Court executing the decree, was made the subject of a separate suit in that Court, it was held that, though the form of procedure was wrong, there was not a want of jurisdiction which could be made a ground of objection in appeal. *PERMES-SUREN PERSHAD NARAIN SINGH v. JANKER KOOER* [19 W. R., 90]

342. — *Delay in bringing suit.*—An objection that there had been such delay that the Court in its discretion under s. 27 of the Specific Relief Act would not give relief in a suit for specific performance not allowed to prevail in second appeal. *MOKUND LALL v. CHOTAT LALL* [I. L. R., 10 Cal., 1061]

343. — *Sale, setting aside.*—*Setting up new case on appeal.*—*Suit to set aside sale on ground of fraud, misrepresentation, etc. by vendor.*—*Raising issue as to breach of covenant for title.*—When a vendor who sues to cancel a sale on the ground of fraud, misrepresentation, or concealment by his vendor fails to establish those grounds of relief, he is not entitled to set up in second appeal a case founded on the implied covenant for title under the Transfer of Property Act, s. 55. *MAHOMED v. SITAHAMATTAR* . . . I. L. R., 15 Mad., 50

344. — *Service of summons.*—*Objection that suit ought to have been dismissed for non-service of summons on non-payment of costs.*—Where the Court did not dismiss the suit under s. 5 of Act XXIII of 1861 as it should have done, but proceeded with the suit and passed a decree from which the original defendant appealed on the merits to the Assistant Judge, without taking the objection that the suit ought to have been dismissed, it was held that he could not raise the objection for the first time in special appeal. *ARAS v. ISRAHIMJI* [5 Bom., A. C., 110]

345. — *Settlement.*—*Suit for possession.*—In a suit to recover possession, the plaintiff alleging that the land in dispute from which he had been ousted had been settled with him by Government in 1533 as part of his zamindari, and the defendant alleging that the land was part of his lakshmi garden land, which had been released by Government from

## APPELLATE COURT—continued.

## 7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—continued.

assessment, the Courts below found that the lands in dispute were part of those which had been settled with the plaintiff. On appeal to the Privy Council, the defendant attempted to show that, assuming the lands in question to have been part of those settled with the plaintiff, that settlement had been improperly made. *Held* that this contention was not open to the defendant upon the record, never having been taken in the Courts below. *SRIMATI DAS v. LALANMANI* [3 B. L. R., P. C., 84; 11 W. R., P. C., 37]

346. — *Transfer of case.*—*Objection to transfer of case for execution of decree.*—An objection on special appeal that the transfer of the suit for execution had been made without jurisdiction was allowed to be taken in special appeal. *HAMID-ODDDEEN v. BHADOO SAHAI* . . . 18 W. R., 345

347. — *Objection to transfer from Munsif to Judge.*—Although the transfer by the Judge of a case from the file of the Munsif to that of his own Court, and the decision of it upon issues framed by and evidence taken before the Munsif, is improper, yet, if no objection be taken to it at the time, it must be presumed that the parties consented to the action of the superior Court, and they are not at liberty to await its decision and on finding it adverse to them to take exception for the first time to the Court's proceedings on appeal. *YAKOOB ALI v. LUTMUN DAS* . . . 8 N. W., 80

348. — *Valuation of suit.*—*Objection as to valuation of suit.*—An objection to the decree of a subordinate Court, founded on the improper valuation of the suit, is not such an objection as may be entertained when raised for the first time in special appeal. *KALADDIN GURU DAKTS v. ILAHOODJI* . . . 1 Bom., 63

*KALEN COOMAR CHATTERJEE v. KRISTO KISHORE PODDAR* . . . 14 W. R., 106

349. — *Objection to valuation of suit.*—Where no question of valuation for the purpose of determining the amount of institution-fee payable on a suit has been raised, either in the Court of first instance or in the grounds of appeal, the Appellate Court is not competent to raise such question. *KALA CHAND BEN v. ANAND KRISTO BHOIR* . . . 22 W. R., 433

350. — *Question of*

with regard to the said land, and in consequence paid an insufficient Court-fee on their plaint. This mistake was not discovered until the case had come in appeal before the High Court, and, when discovered, the deficiency was at once made good. *Held* that, no plea as to the deficiency in the Court-fee having been raised, as it might have been, by the defendant before the decision of the suit in the Court of first instance, such plea could not be raised for the first time in appeal. *WILAYAT ALI KHAN v. UMARABIZ ALI KHAN* . . . I. L. R., 19 All., 103

**APPELLATE COURT—concluded.****7. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—concluded.**

**351.** ——— Will—*Transaction treated as gift—Objection to it as an invalid will.*—In a suit to recover certain property left by one *R*, both the lower Courts found that it had been left by *R* before his death to defendants by way of gift. In special appeal the plaintiffs raised the objection that under the Hindu Wills Act a verbal will of this kind was not legal. *Held* that, after two Courts had decided unfavourably to plaintiff the only case raised by him there, he could not now turn round and throw out the defendant's case on a technical ground that the alleged gift was really a will. *RADHA BULLUBH CHUCKERBUTTY v. BANEE MADHUB CHUCKERBUTTY* 23 W. R., 230

**352.** ——— Withdrawal of suit—*Plea taken for the first time at the hearing of second appeal.*—The plea that the plaintiff had improperly been permitted to withdraw from a former suit with liberty to bring the present one, which had not been taken in the lower Courts, and was not taken in the memorandum of second appeal, was not permitted to be urged at the hearing of the second appeal. *ZAHURUNNISSA v. KHUDA YAB KHAN*

[I. L. R., 3 All., 528]

**APPLICATION.**

*See* LIMITATION ACT, 1877, s. 4.

[I. L. R., 2 Mad., 230

I. L. R., 5 Bom., 680]

——— by person not a party to suit.

*See* MANAGEMENT OF ESTATE BY COURT.

[I. L. R., 15 Calc., 253]

*See* PRACTICE—CIVIL CASES—APPLICATION BY PERSON NOT PARTY TO SUIT.

[I. L. R., 17 Calc., 285]

——— to another Judge after refusal by one.

*See* PRACTICE—CIVIL CASES—APPLICATION AFTER REFUSAL.

[I. L. R., 16 Bom., 511]

——— for execution of decree.

*See* EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT.

*See* CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, ART. 167 ; 1859, s. 20).

——— to sue in forma pauperis.

*See* MAHOMEDAN LAW—DOWER.

[15 B. L. R., 306

24 W. R., 163 : I. R., 2 I. A., 235

*See* CASES UNDER PAUPER SUIT.

**APPOINTMENT.**

——— by will.

*See* COURT FEES ACT (SCH. I, ART. 11).

[12 B. L. R., Ap., 21 : 21 W. R., 245]

**APPOINTMENT—concluded.**

——— of daughter.

*See* HINDU LAW—CUSTOM—APPOINTMENT OF DAUGHTER . . . 15 B. L. R., 180

——— Exercise of—

*See* TRANSFER OF PROPERTY ACT, s. 53.

[I. L. R., 22 Calc., 185]

——— Power of—

*See* HINDU LAW—ENDOWMENT—DISMISSAL OF MANAGER OF ENDOWMENT.

[I. L. R., 17 Bom., 600]

*See* HINDU LAW—WILL—CONSTRUCTION.

[I. L. R., 15 Bom., 328

I. L. R., 18 Bom., 492

I. L. R., 19 Bom., 647

I. L. R., 21 Bom., 709]

*See* WILL—CONSTRUCTION.

[I. L. R., 4 Calc., 514

I. L. R., 18 Bom., 1]

**APPRAISEMENT PROCEEDINGS.**

——— Collector acting in—

*See* SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.

[I. L. R., 17 Calc., 872]

**APPROPRIATION OF PAYMENTS.**

*See* GUARANTEE.

[I. L. R., 4 Calc., 560 : 3 C. L. R., 381]

1. ——— Payment of rent.—A general payment made in one year, without proof that it was in satisfaction of the rents of that year, may be applied in satisfaction of the arrears of the previous years. *ARMUTY v. BRODIE*

[W. R., 1864, Act X, 15]

2. ——— The payments in each year must be presumed to be for the current year, and surplus payments to be for the past, not subsequent years. *TARAMONEE DOSSEE v. KALLY CHURN SURMAH*

. W. R., 1864, Act X, 14

3. ——— Where a tenant pays money to his landlord on account of rent, without any specification whether the payment was for old or enhanced rent, the landlord is at liberty to credit the payment as he thinks fit. *SHURNO MOYEE v. KASHEE KANT BHUTTACHARJEE*

. . . 7 W. R., 511

4. ——— Payment of debts—*Debt barred by limitation.*—An unappropriated payment is to be applied to the earliest debt, although the debt is barred by the Act of Limitation, where the facts do not raise any question which might affect such priority. *MOONEAPPAH v. VENOCATARAYADOO*

[8 Mad., 32

MULCHAND GULABCHAND v. GIRDHAR MADHAV

[8 Bom., A. C., 6]

# APPROPRIATION OF PAYMENTS— concluded.

5. — Payments unapplied by either the debtor or the creditor should be appropriated to the earlier items making up the debt due. This rule is not impaired by the decisions in the cases of *Mills v. Fowler*, 5 Bing., N. C., 455, and *Nash v. Hodgson*, 6 De G. M. and G., 473. *HIRADA KARIRASAPPAH v. GADIGI MUDDAFFA*

[3 Mad., 197

by delivery of half the amount of the rubber crops of every description produced at the first-class rates; and in case the same is not paid in kind, it will be paid principal with interest from the date of execution at one anna per cent. per mensem in cash in the month of Baisakh 1287 P. S. (April 1850). The defendants admitted execution of the bond, and pleaded payments in grain to the amount of Rs 130, which they failed to prove. It was found that the plaintiff had received payments in grain to the extent of Rs 171, more than half of which, however, he claimed to be entitled to appropriate to the payment of other antecedent debts which were due to him by the defendants. It was not stated at the time of payment towards which debt the payments were to be applied, but all the payments were admittedly made in kind. Held that the plaintiff was not entitled to appropriate the payments to the antecedent debts, inasmuch as, within the meaning of a GO of the Contract Act, there were "other circumstances" indicating that the payments were made in liquidation of the amount of the bond. *SENGU LAL v. BALMATH ROR*

[L. R., 13 Cal., 184

## 7. — Contract Act

compound interest, on the other hand, had been left to accumulate. In a suit brought against the representative of the debtor after his decease, to enforce the mortgage bearing compound interest, the objection was taken to the appropriation by the creditor. Held that the rule in a GO of the Indian Contract Act, 1872, follows the ordinary law in prescribing a rule as to the case in which the creditor may at

[L. R., 23 Cal., 30  
2 C. W. N., 633

# APPROVERS.

See CASES UNDER ACCOMPLICE.

Prosecution of—

See PRACTICE—CRIMINAL CASES—APPROVERS I. L. R., 24 Cal., 493

1. — Mode of dealing with evidence of approvers.—The evidence of persons who are themselves liable to punishment should be carefully sifted and tested before they can be relied on in a Court of law. *QUEEN v. REAZ ALI alias DULLOO KHAN*.

[6 W. R., Cr., 77

2. — Uncorroborated evidence.—The evidence of an approver is not sufficient to convict a person charged with an offence. *QUEEN v. TULSI DOSAD*.

[3 B. L. R., A. Cr., 68

*QUEEN v. ISSEN MUNDLE* . . . 3 W. R., Cr., 8

*QUEEN v. NAWAB JAX* . . . 8 W. R., Cr., 19

*QUEEN v. RAM SAGOR* . . . 8 W. R., Cr., 57

*QUEEN v. CHIRAG ALI* . . . 13 W. R., Cr., 5

3. — Where a prisoner

High Court on appeal refused to set aside the conviction. *QUEEN v. MAHIMA CHANDRA DAS*

[9 B. L. R., Ap., 108; 15 W. R., Cr., 37

See *QUEEN v. ELANI BUKSH*

[B. L. R., Sup. Vol., 459; 5 W. R., Cr., 80

4. — *Illegal conviction.*—A conviction based on the testimony of approvers, uncorroborated as to the identity of the accused person, cannot be sustained, and confessions of co-prisoners, implicating him, cannot be accepted as sufficient corroboration of such testimony. *REO, v. HEDHU NANKU*.

[L. R., 1 Bom., 475

5. — When evidence is given by an approver, it is not important to consider whether a story told by the accused to him tallies with that made to another person. *QUEEN v. NYTANAM MITTEN*.

[1 Ind. Jur., N. B., 171

6. — Direction to Jury.—A Sessions Judge should not permit the evidence of an approver who was examined as a witness before the committing Magistrate to be laid before the jury by whom the prisoners were tried. *ANONYMOUS*

[4 Mad., Ap., 22

to that evidence, and he should also tell them (if the fact be so) that the approver is speaking under the influence of an offer of conditional pardon.

[29 W. R., Cr., 10

8. — Corroboration.—*Decoy.*—Rule as to corroboration of the evidence of an approver laid down in case of decoy under a 400, Penal Code. *QUEEN v. KALLA CHAND DOSA*

[11 W. R., Cr., 21

APPROVERS—continued.

9. of the evidence of an approver should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does. *QUEEN v. BYKUNT NATH BANERJEE* [10 W. R., Cr., 17]

10. *Accomplice of accused person.*—There is no rule of law which prevents the admission without corroboration of the evidence of a witness who says he committed breaches of the law with the accused, if the witness is not open to the same charge as the accused. *IN THE MATTER OF ROJONI KANT PORAMANICK* [13 W. R., Cr., 24]

11. *Confessions of co-prisoners when others were absent.*—Exact correspondence in details of several statements made by an approver in the course of a trial is not corroborative evidence such as is ordinarily required to make it safe to convict a particular prisoner. Confessions of prisoners are not, as against their fellow-prisoners who were not present when the confessions were made, such corroborative evidence of the statement of an approver as would justify the conviction of the other prisoners thereon. *QUEEN-EMPRESS v. BEPIN BISWAS* [I. L. R., 10 Cal., 970]

12. *Dacoity—Possession of stolen property.*—Criminal Courts dealing with an approver's evidence in a case where several persons are charged should require corroboration of his statements in respect of the identity of each of the individuals accused. *Queen-Emress v. Ram Saran*, I. L. R., 8 All., 306, *Queen-Emress v. Kure*, I. L. R., 8 All., 306, p. 65, and *Reg. v. Mul-Weekly Notes*, All., 1886, p. 526, referred to. *A, B, M, R, and N* were tried together on a charge under s. 460 of the Penal code. The principal evidence against all of them was that of an approver. Against *A, B, and M* there was the further evidence that they produced of the crime from the house where the crime was committed. With regard to *R*, it was proved that he was present when *B* pointed out the place where some of the property was dug up, but he did not appear to have said anything or given any directions about it. *Held*, with reference to *A, B, and M*, that it could not be said that their recent possession of part of the stolen property, so soon after it had been evidence of their participation in the crime as entitled the Court to act upon his story in regard to those particular persons. *Held* that, inasmuch as there was no sufficient material to warrant the inference of guilty knowledge on *R*'s part, and with regard to *N* no property was found with him or produced through his instrumentality, both *R* and *N* ought to have been acquitted. *QUEEN-EMPRESS v. BALDEO* [I. L. R., 8 All., 509]

13. *Conditional pardon—Jurisdiction of Magistrate.*—*Criminal Procedure Code, 1872, s. 349.*—A party, charged along with others with murder, having had a conditional pardon granted to him by the Deputy Magistrate, retracted before the Sessions Judge the

APPROVERS—continued.

statements he had made before the Deputy Magistrate. On being sent back to the Deputy Magistrate, that officer committed him for trial on a charge of giving false evidence. The Sessions Judge considered that the Deputy Magistrate was bound, under s. 349, Code of Criminal Procedure, to commit on the original charge of murder, and not on that of giving false evidence, and he recommended that the order of commitment should be quashed and the Deputy Magistrate directed to commit on the charge of murder. The High Court declined to interfere, as there was evidence on the record tending to support the charge for giving false evidence, and as s. 349 did not have the effect of taking away from Magistrates the power to entertain a charge of this kind. *QUEEN v. MULLICK JEECHOO* [23 W. R., Cr., 12]

14. *Criminal Procedure Code, 1872, s. 349—Withdrawal of pardon.*—*Per FIELD, J.*—There is a grave doubt whether the deposition of an approver, taken before the committing Magistrate, may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. Where a conditional pardon granted to an approver is withdrawn under s. 349 of the Criminal Procedure Code by the Sessions Court, the Judge ought to wait till the conclusion of the trial of the accomplices, and then, before passing judgment on them, if found guilty, proceed against the approver. *IN THE MATTER OF JOYUDEE PARAMANICK* [7 C. L. R., 86]

15. *Admissibility of after withdrawal of pardon.*—Whether the depositions of an approver taken before the committing Magistrate may be used in the Sessions Court as evidence against accomplices, the approver having retracted his former statement and the conditional pardon having in consequence been withdrawn. See *Joyudee Paramanick*, 7 C. L. R., 66. *NANHA MALLA v. EMPRESS* [13 C. L. R., 328]

16. *Criminal Procedure Code, 1872, s. 349—Acquittal of prisoner—Withdrawal of pardon granted to approver after judgment of acquittal—Conviction on trial impugned.*—*Power of High Court to set aside.*—At a Sessions trial the Judge, after acquitting the prisoner, passed an order withdrawing a pardon already granted to an approver, who had given his evidence as such approver before the Sessions Court, and ordered his commitment. The approver was charged, tried, and found guilty. *Held* by MITTAR, J., that the order withdrawing the pardon and committing the approver was contrary to the provisions of s. 349 of the Criminal Procedure Code, the words "before judgment has been passed" being words inserted in the section to put a limit to the time within which the power of withdrawal of the pardon conferred in the Court of Sessions may be actually exercised; and that therefore the trial of the approver was illegal. The power of directing commitments conferred upon the Sessions Court by s. 349 of the Criminal Procedure Code can be exercised only before judgment has been passed. *Held* by MACLEAN, J., that it is not necessary that the order should be made before judgment is

## APPROVERS—continued.

passed, but that it must appear to the Judge before he passes judgment that the conditions of the pardon have not been complied with; and that in the present case it was impossible to hold that, because the actual

THE MATTER OF THE PETITION OF NOBIN CHUNDER BANIKIA. *EMRESS v. NOBIN CHUNDER BANIKIA*  
[L. L. R., 8 Cal., 560; 10 C. L. R., 360]

17. — *Criminal Procedure Code, 1852, s. 338*—Tender of pardon to accomplice who has pleaded guilty—*Accomplice—Evidence—Corroboration*.—A Court of Session, under s. 338 of the Criminal Procedure Code, tendered a pardon to an accused person charged jointly with two others for the same offence, who had pleaded guilty. The tender was accepted, and such person was examined as a witness against the other accused. Held that the tender of pardon was not improperly made, and the evidence of the approver was admissible. *PER DUFFOIR, J.*—The word "supposed" in s. 338 must be taken merely as intended to exclude the case of a man who has actually been convicted of the crime, and not the case of a man who, although admitted to be a party to the crime, is not convicted. *QUEEN v. EMRESS v. KALLU* L. L. R., 7 All., 160

18. — *Criminal Procedure Code, 1872, s. 349*—Withdrawal of pardon granted under s. 349.—A pardon granted under s. 349 of Act X of 1872 was withdrawn by the Sessions Judge before the hearing of the whole of the evidence, without proof that the statement made by the person pardoned was inconsistent, except upon immaterial points, with previous statements by him or contradicted by the evidence, and before any evidence affecting his veracity had been given. Held that the pardon had been improperly withdrawn. *SIRDOP v. EMRESS* 13 C. L. R., 226

and was there, together with other persons, charged before a Magistrate with offences punishable under ss. 167, 473, and 475. The conduct to which these charges related was closely connected and mixed up with that to which the charges first-mentioned had reference. Under s. 337 of the Criminal Procedure Code, the Magistrate at Calcutta tendered a pardon to the prisoner upon the conditions specified in that section, and the prisoner accepted the pardon, and gave evidence for the prosecution. The Magistrate held that this evidence was not sufficiently corroborated and accordingly discharged all the accused, but the pardon was not withdrawn, and there was nothing to show that the Magistrate was dissatisfied with the prisoner's statements or considered that he had not complied with the conditions in which the

## APPROVERS—continued.

to the subject; and the Sessions Judge, having made a brief inquiry as to the proceedings at Calcutta, came to the conclusion that there was no sufficient proof of any conditional pardon, and convicted and sentenced the accused. Held that by the terms of the conditional pardon granted to the accused by the Calcutta Magistrate, the conditions of which were satisfied, as was shown by his never having been withdrawn, the accused was protected from trial at Benares in respect of the offences under ss. 471, 472, and 474, and was not liable to be pro-

examined him as a witness, and subsequently discharges all the accused for want of a *prima facie* case against them, the words "every person accepting a tender under this section shall be examined as a witness in the case" mean that for all purposes (subject to failure to satisfy the conditions of the pardon as provided for by s. 339) such a person ceases to be triable for the offence or offences under inquiry or (with reference to s. 339) for "any other offence of which he appears to have been guilty in connection with the same matter," while making "a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence" directly under inquiry. The words last

GINGA CHAMAN L. L. R., 11 All., 79

20. — Trial of persons whose pardon has been cancelled—*Conditional pardon granted and afterwards cancelled—Criminal Procedure Code, s. 332*.—It is unfair to put an approver, whose conditional pardon has been cancelled on trial, along with other prisoners, in the course of whose trial such approver has given evidence. *QUEEN v. EMRESS v. RAMA TEVAR*

[L. L. R., 15 Mad., 362]

21. — *Pardon tendered and afterwards withdrawn—Criminal Procedure Code, ss. 338, 339*.—An accused person to whom a tender of pardon has been made, and who has given evidence under that pardon against persons who were co-accused with him, should not, if such pardon is withdrawn, be put back into the dock and tried as if he had never received a tender of pardon, but his trial should be separate from, and subsequent to, that

**APPROVERS—concluded.**

of the persons co-accused with him. *QUEEN-EMPRESS v. MULUA* . . . I. L. R., 14 All., 502

*QUEEN-EMPRESS v. SUDHA* I. L. R., 14 All., 338

22. ————— *Criminal Procedure Code (Act V of 1898), s. 337—Pardon tendered to one of the accused—Approver—Trial of approver for non-fulfilment of the condition on which pardon was offered.*—No action can be taken against a person who has accepted a pardon for breach of the condition on which the pardon was tendered until after the case in the Court of Session has been finished, and then his trial should be commenced *de novo*. *QUEEN-EMPRESS v. BHAI*

[I. L. R., 23 Bom., 493]

**ARBITRATION.**

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*See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.*

[I. L. R., 20 Bom., 304]

*See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS* . . . I. L. R., 21 Bom., 335

*See GUARDIAN—DUTIES AND POWERS OF GUARDIANS* . . . I. L. R., 19 Calc., 334

## ———— Revocation of Agreement to refer—

*See CONTRACT ACT, s. 28.*

[I. L. R., 1 Calc., 42, 466]

*See SPECIFIC RELIEF ACT, s. 21.*

[I. L. R., 9 All., 168]

## 1. ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS.

(a) ACT VI OF 1857.

1. ————— Act VI of 1857—*Land acquisition—Appointment of third arbitrator—Non-attendance of umpire—Waiver.*—Where one of two arbitrators, appointed under s. 10 of Act VI of 1857, by letter and also verbally authorized his co-arbitrator to appoint a certain person as third arbitrator, and the co-arbitrator wrote to the proposed third arbitrator informing him that he had been so appointed,—*Semble*—That there was a good appointment “by writing” of the third arbitrator within the meaning of s. 12 of Act VI of 1857. Where a third arbitrator appointed under s. 12 of Act VI of 1857, considering that his services were required merely as an umpire, though he had due notice of the first meeting, neglected to attend that or any subsequent meetings of the arbitrators and took no part in the making of the award,—It was held that such non-attendance of the third arbitrator did not render the award a nullity, but was only a ground for setting it aside on the ground of irregularity. Where an officer, appointed under Act VI of 1857 to conduct arbitration proceedings on behalf of Government, attended the first two meetings of the arbitrators and did not object to two of the arbitrators proceeding with the reference in the absence of the third arbitrator, and did not attend the subsequent meetings of the arbitrators,—It was held that the Government had thereby waived their right to insist on the non-attendance of the third arbitrator as a ground for setting aside the award. *ARDESAR HORMASJI WADIA v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL* [9 Bom., 177]

2. ————— *Land acquisition—Judgments of arbitrators separately given.*—The separately recorded opinions, on different dates, of arbitrators (appointed, under Act VI of 1857, to assess the value of land taken for a public purpose) who have never met or consulted together do not constitute an award under the Act. An award, to be good, must contain the joint judgment of the arbitrators up to the latest period previous to the execution of the award. *FATMA BIBER v. COLLECTOR OF SURAT* . . . . . 8 Bom., A. C., 79

## ARBITRATION—continued.

1. ARBITRATION UNDER SPECIAL ACTS  
AND REGULATIONS—continued.

## 3. ————— s. 32—Waiver of

to be seen in the Collector's office. On the 4th of

the compensation for the land required. The secretary went to the Collector's office, and there saw a plan, from which it appeared that an adjoining well from which the engine of the mill was supplied with water was intended to be taken, but no compensation for the well or land required was then agreed upon. On the 25th November a notice signed by the Collector was served on the defendants, stating that he had appointed an arbitrator on behalf of Government, and requiring the defendants to appoint an arbitrator also; the defendants in reply stated that they had already appointed an arbitrator. *Held* that the de-

fendants had shortly before such proceedings made such a claim. *KHARSHEDI NARSAYANI v. SECRETARY OF STATE FOR INDIA* 5 Bom., O. C., 97

## (4) Act X of 1859.

4. ————— Act X of 1859, Suit under.  
—*Quere*—Whether Act X of 1859 empowered a Judge to refer a case to arbitration. *GAREE v. HANFEN HENRI* 10 W. R., 100

5. ————— *Civil Procedure Code (Act X of 1877), Chap. XXXVII—Kabalati, Suit for*—Notwithstanding that Chapter XXXVII of Act X of 1877 in reference to arbitration does not refer specially to suits brought under Act X of 1859, yet if both parties to a suit for a kabalati brought under the latter Act agree to refer the matters in dispute between them to certain arbitrators named by them, and file a joint petition in the Court of the Deputy Collector, stating that they had so agreed, and praying that the case may be referred to such arbitrators, neither of them will be afterwards at liberty to object to a decree made, embodying the award of the arbitrators on the ground that the reference to arbitration was irregular, and not warranted by any of the provisions of Act X of 1877. When a case has been so referred, the arbitrators are at liberty to determine what appears to them to be a fair and equitable rate of rent, and, notwithstanding the amount so found is less than that demanded by the plaintiff in his plaint, the Court of which the reference issued is at liberty on that ground to dismiss the suit, but is bound to

## ARBITRATION—continued.

1. ARBITRATION UNDER SPECIAL ACTS  
AND REGULATIONS—continued.

order the defendant (with the alternative of eviction) to execute a kabalati in favour of the plaintiff, engaging himself to pay rent to the plaintiff at the rate determined by the arbitrators to be fair and equitable. *KHEMYA GOWALA v. BUDOLLOO KHAN* [I. L. R., 6 Calc., 231; 7 C. L. R., 92]

## (c) ACT XX OF 1863.

tanam committee and damages was referred under Act XX of 1863, s. 16, to arbitrators who passed an award dismissing them as prayed and decreeing a portion of the damages claimed with interest:—*Held* that the Court had power to refer the matter to the arbitrators, and the arbitrators had power to decide it and to award damages with interest, provided the amount, inclusive of interest, did not exceed the amount claimed in the plaint. *PERUMAL NAIR v. SAMIVATHA PILLAI* I. L. R., 10 Mad., 408

7. ————— *Award—Decision by majority without such provision in the award*—Plaintiff brought this suit to obtain a decree dismissing defendants, committee and manager of a certain pagoda, from their offices on the ground of malversation. The Court made an order expressed

Each arbitrator delivered a separate award in writing, two arbitrators finding for the plaintiff. The Civil Judge made a decree in accordance with the award of the majority of the arbitrators. The first defendant appealed on the grounds (1) that he had not consented to the arbitration, and (2) that there being no provision in the order of reference to the effect that the finding of a majority of the arbitrators should prevail, there was no valid award. *Held* that in this case the order of the Judge was valid without the assent of the persons to be bound; that he might, when he made the order, have inserted as a provision that the decision of the majority should be that of the body; and that there was no reason why his satisfaction of that mode of decision, wholly within his discretion, should not be equivalent to a previous command. *IMREDDY KANFOO BAWAIA GARDAN v. RAMASWAMI AMBALAM* 7 Mad., 173

8. ————— *Case referred to arbitration under s. 16 of Act XX of 1863, in which it was held that that Act did not apply, and that the award and decree made thereon were illegal and void*. *PRETAR CHANDRA MISSEY v. BROODHAY MISSEY* [I. L. R., 10 Calc., 275]

## (4) DOMESTIC REGULATION VII OF 1827.

9. ————— *Bom. Reg. VII of 1827—Award, Validity of*—Where an award was held to be

## ARBITRATION—continued.

## 1. ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—continued.

bad on the ground that the deed of submission to arbitration did not contain all the conditions required by the law (Bombay Regulation VII of 1827), as it made no provision as to the "time within which the award was to be given."—*Held* that the parcel consent of the parties to the deed of submission before the arbitrator to waive such omission will not cure the defect. *NUSSERWANJEE PESTONJEE v. MYNOODDEEN KHAN* . . . 6 Moore's I. A., 134

## (c) DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879.

10. ——— Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 47—*Code of Civil Procedure (XIV of 1882), s. 525—Construction—Conciliator's certificate.*—Where a matter has been referred to arbitration, without the intervention of a Court of Justice, by parties one of whom is an agriculturist, and an award has been made thereon, any person interested in the award may, without obtaining the conciliator's certificate, apply for the filing of the award under s. 525 of the Code of Civil Procedure, the provisions of which are not superseded by s. 47 of the Dekkhan Agriculturists' Relief Act, 1879. *GANGADHAR SAKHARAM v. MAHADU SANTAJI* . . . I. L. R., 8 Bom., 20

11. ——— ss. 47 and 74—*Civil Procedure Code (1882), ss. 518-521 and 522—Power to file private award to which agriculturist debtors are parties.*—A Civil Court can file a private award to which agriculturist debtors are parties without adjusting the accounts under the Dekkhan Agriculturists' Relief Act. *Gangadhar v. Mahadu, I. L. R., 8 Bom., 20*, followed. *MOHAN v. TUKARAM* . . . I. L. R., 21 Bom., 63

## (f) N.-W. P. RENT ACT, 1873.

12. ——— N.-W. P. Rent Act (XVIII of 1873).—Under the general law, parties to suits may, if they are so minded, before issue joined, refer the matters in dispute between them to arbitration, and, after issue joined, with the leave of the Court. Act XVIII of 1873 does not prohibit the parties to the suits mentioned therein from referring the matters in dispute between them in such suits to arbitration. Where, therefore, the parties to a suit under that Act agreed to refer the matters in dispute between them to arbitration, after issues had been framed and evidence recorded, and applied to the Court to sanction such reference,—*Held* (STUART, C.J., dissenting) that the Court was competent to grant such sanction, and on receiving the award to act on it. *GOSHAIN GIRDHARIJI v. DURGA DEVI* . . . I. L. R., 2 All., 119

## (g) N.-W. P. LAND REVENUE ACT, 1873.

13. ——— N.-W. P. Land Revenue Act (XIX of 1873), s. 221—*Civil Procedure Code, s. 521—Award delivered after expiration*

## ARBITRATION—continued.

## 1. ARBITRATION UNDER SPECIAL ACT AND REGULATIONS—concluded.

of time allowed by Court.—The principle of the ruling of the Privy Council in *Har Narain Singh v. Chaudhrain Bhagwant Kuar, I. L. R., 13 All., 300 : L. R., 18 I. A., 51*, is applicable also to arbitrations under s. 221 of Act No. XIX of 1873. *GAURI SHANKAR v. BABBAR LAL*

[I. L. R., 14 All., 347]

## 14. ——— ss. 222 to 231—

*Award by one arbitrator only—Effect of such award and of the decision of the Settlement Officer thereon.*—The provisions of ss. 222 to 231 of Act XIX of 1873 contemplate that the award therein dealt with should be an award made by more arbitrators than one. Where therefore a Settlement Officer had delivered a decision under s. 230 upon what purported to be an award by one arbitrator only, it was held that such so-called award and the decision thereon of the Settlement Officer would not prevent the matters dealt with therein being reopened in a civil suit. *Jatan Singh v. Mahadeo Singh, Weekly Notes, All., 1886, p. 180*, distinguished. *PANDEY RAI v. RAJI NAIN RAI*

[I. L. R., 18 All., 172]

## 2. REFERENCE OR SUBMISSION TO ARBITRATION.

15. ——— Power of Court to refer—*Remand under Civil Procedure Code, s. 566, for trial of issues—Reference by first Court of whole case to arbitration—Refusal of arbitrator to act—Award by remaining arbitrators—Illegality of award—Civil Procedure Code, s. 510.*—A Court of first instance to which issues have been remitted under s. 566 of the Civil Procedure Code by the Appellate Court has only jurisdiction to try the issues remitted and is *functus officio* in other respects, and cannot make a reference of the case to arbitration, which is only within the jurisdiction of the Appellate Court. *Gossain Dowlat Geer v. Bissessur Geer, 22 W. R., 207*, referred to. *NAND RAM v. FAKIR CHAND* . . . I. L. R., 7 All., 523

16. ——— Power of parties to refer—*Civil Procedure Code, 1859, ss. 312, 325—Mode of reference to arbitration.*—Ss. 312 and 325 of the Code of Civil Procedure (VIII of 1859) were enabling, and were not intended to be restrictive or exclusive. Parties who are *sui juris* are competent, before decree, to make any agreement as to the settlement of the suit. *JOGESSUR BANERJEE v. KULYANEE CHURN DEO* . . . 24 W. R., 41

17. ——— Matters for arbitration.—Whatever matters parties to a suit may agree to refer to arbitration, they can refer such matters or any of such matters as are in difference between them in the suit. *TRUNATH CHOWDHRY v. MANICK CHUNDER DOSS* . . . 14 W. R., 469

18. ——— Agreement to refer future differences to arbitration—*Naming of arbitrators—Civil Procedure Code (1862), s. 523.*—A general agreement to refer future differences to

## ARBITRATION—continued.

## 2. REFERENCE OR SUBMISSION TO ARBITRATION—continued.

ment is agreed to be referred to arbitration. But the agreement must name the arbitrator or arbitrators, and an agreement which provides for the future appointment or election of arbitrators does not fall within the section. The effect of the last clause of

[I. L. R., 20 Bom., 232

—*Power of executor to refer question of execution of will to arbitration.*—Any dispute (for instance, as to the due execution of a will) in a suit on the testamentary side of the High Court

[I. L. R., 20 Bom., 238

In the same case on appeal.—*Semle* (FARMAN, C.J., and STRACHEY, J.)—An executor, against whose application for probate a caveat has been entered, cannot submit to arbitration the question whether the will propounded by him was duly executed by the deceased. GUILLABHAI ARMARAM *v.* NANDUBAI . . . I. L. R., 21 Bom., 335

to be set aside. BAIKANTHANATH CHATTERJEE *v.* NAZIBUDDIN

[I. B. L. R., S. N., 11: 10 W. R., 171

## ARBITRATION—continued.

## 2. REFERENCE OR SUBMISSION TO ARBITRATION—continued.

21. ———— *Mode of application.*—The application for a reference to arbitration must be made in Court by an instrument in writing by the parties in person, or their pleaders specially authorized in that behalf. BHUGOO ROY *v.* BHAGURTH UPADHYA W. R., 1884, Act X, 41 GAZEE *v.* HANID BEKSH . . . 16 W. R., 160

debt due to the firm, has no power, in the absence

[1 W. R., 80

NARAIN . . . 1 Agra, Rev., 49  
RAM PERSHAD *v.* NAZEER HOSSEIN  
[1 Agra, Rev., 63

quired. AKBER BEG *v.* BUNDA ALI . . . [3 N. W., 419

JEYASANKIRA DEVI *v.* NAGANNADA DEVI  
[1 Mad., 108; 1 Ind. Jur., O. S., 136

26. ———— Submission in writing—

MANOCKJEE & Co. . . . 1 Ind. Jur., N. S., 69

27. ———— *Order of reference to arbitration.*—Civil Procedure Code (Act XIV of 1852), s. 606—*Jurisdiction.*—Absence of written authority to refer practice.—By a Judge's order consented to by the plaintiff and defendant, this suit was referred to arbitration on the 13th December 1893. In the following January and February two

**ARBITRATION—continued.****2. REFERENCE OR SUBMISSION TO ARBITRATION—continued.**

meetings were held before the arbitrator which were attended by the defendant and the managing clerk of his then attorney, and he took an active part in the proceedings. Subsequently the defendant changed his attorney, and declined to proceed with the arbitration, contending that the order of reference was illegal, inasmuch as no special authority in writing was given by the parties to their attorneys to obtain the order, as required by s. 506 of the Civil Procedure Code. He took out a summons to set aside the order. *Held* (dismissing the summons) that the absence of a written authority did not invalidate the order of reference. *LUXUMBAI v. WIDINA CASSUM*

[I. L. R., 23 Bom., 629]

**28.** ————— *Code of Civil Procedure (Act XIV of 1852), ss. 506 and 573—Reference to arbitration, not by a written petition, but by consent of parties—Whether an award passed on such reference ab initio void—Irregularity not affecting the merits of the case or the jurisdiction of the Court.*—The second paragraph of s. 506 of the Civil Procedure Code, which says that every application for an order of reference shall be made in writing, is directory only; therefore in a case where both parties consented to a reference to arbitration and where the order of reference was made by the Court in the presence of their counsel or advocates, but not upon a written application, such a reference is not a nullity, as it is merely an irregularity not affecting the merits of the case or the jurisdiction of the Court. *SHAMA SUNDARAM IYER v. ABDUL LATIF*

[I. L. R., 27 Calc., 61]

[4 C. W. N., 92]

**29.** ————— *Ineffectual reference—Refusal of arbitrator to act—Act VIII of 1859, ss. 319 and 326.*—Where parties had executed a deed agreeing to refer all matters in dispute to the arbitration of three persons, and one of the arbitrators refused to continue to act, and the other two consequently refused to proceed with the reference, the Court refused to order the agreement to be filed in Court. *BROOKE v. SUDIAL*

[12 B. L. R., Ap., 13]

**30.** ————— *Want of express consent.*—The Judge intimated that he should refer the suit to arbitration, and allowed a certain time to the parties to object to that course. No objection was made within such time, and thereupon the Judge referred the cause to arbitrators named by him. After the day fixed, the defendants objected. *Held* that the reference was not warranted, there having been no express consent by the parties. *DEGUMBUR CHATTERJEE v. RAM PREA DEBEA*

[Marsh., 517; 2 Hay, 583]

**31.** ————— *Refusal to consent to arbitration—Presumption.*—Nothing which passes between the parties to a suit in any attempt at arbitration or compromise should be allowed to effect the slightest prejudice to the merits of their case as it eventually comes to be tried before the Court. No presumption can be raised against a party to a suit

**ARBITRATION—continued.****2. REFERENCE OR SUBMISSION TO ARBITRATION—concluded.**

from his refusal to withdraw from the determination and submit to arbitration. *MOHABEER SINGH v. DHUJJOO SINGH*

20 W. R., 172

**32.** ————— *Jurisdiction of Court over arbitrators—Civil Procedure Code (Act XIV of 1852), ss. 508, 510.*—When a Court has referred a suit to arbitration, it has jurisdiction over the arbitrators to compel them to give up documents filed by them, and to examine the originals of the suit which may have been handed to them. Such jurisdiction can be exercised by an application made in the suit on notice to the arbitrators. *NURSING CHUNDER DAWN v. NUFFUR CHUNDER DUTT*

[I. L. R., 17 Calc., 832]

**3. APPOINTMENT OF ARBITRATORS AND UMPIRES.**

**33.** ————— *Power of Judge to appoint—Consent of nominees—Fresh appointment after refusal to act.*—Before a Judge refers a case for arbitration, he should ascertain whether the persons nominated are willing to accept the office, and till he has done so, any nomination of an arbitrator by him, without the application or consent of the parties, is illegal. But when a case has once been referred to arbitration, after the preliminary steps have been properly taken, the Judge has the sole power of appointing fresh arbitrators in the room of such as refuse to act. *TROYLUCKHONATH ROY v. COLLECTOR OF BEERBHOOM. LOCKENATH ROY v. COLLECTOR OF BEERBHOOM. HURONATH ROY v. KASHEENATH ROY*

W. R., 1864, 338

**34.** ————— *Nomination by Judge—Civil Procedure Code, 1859, s. 314—Validity of appointment of arbitrator.*—Where both parties could not agree in nominating an arbitrator, and the Judge nominated one under s. 314, Act VIII of 1859, and one of the parties, six weeks after the nomination, objected to the Judge's nominee, but could not show on appeal that he did not request the Judge to nominate some one, the appointment was held good and binding upon both parties. *SUROOP RAM DEB v. GOBIND RAM DEB*

7 W. R., 13

**35.** ————— *Civil Procedure Code (1852), ss. 510 and 524—Refusal of person appointed arbitrator to act—Appointment of arbitrator by Judge—Effect of s. 524 on such appointment.*—The words "so far as they are consistent with any agreement so filed" in s. 524 of the Code of Civil Procedure do not mean that the agreement must contain in every case an express provision as to what ought to be done if any arbitrator is unwilling to act, in order that a Judge may act in conformity to it, and that s. 510 has otherwise no application. The reasonable construction is that the action of the Judge under s. 510 should not be inconsistent with the agreement, if it contains any special provision on the subject. *BALA PATTABHIRAMA CHETTI v. SEETHARAMA CHETTI*

[I. L. R., 17 Mad., 498]

## ARBITRATION—continued.

## 3. APPOINTMENT OF ARBITRATORS AND UMPIRES—continued.

[1 Ind. Jur., N. S., 181; 5 W. R., P. C., 21  
10 Moore's L. A., 413]

37. — Appointment of sole arbitrator in place of four—*Civil Procedure Code, 1909, ss. 315, 318, 319—Recall of reference—Consent—Appointment of substitute for arbitrator.*—In a suit for a partnership account, the matters in dispute were, by an order dated the 19th April 1977,

the time had failed, the plaintiff moved that "the order of the 9th April 1977" might be recalled, and that the matters in dispute might be referred to the arbitration of such person or persons as the Court might be pleased to admit, or be tried and determined by the Court. The defendant opposed the application. An order was, however, made on the 29th May 1978 that the order of the 19th April 1977 should be recalled, and that all matters in difference between the parties should be referred to C D, who should make his award in writing within three months, or within such further time as the said C D might think necessary. Certain provisions as to the payment of costs were also made. Held that the order of the 19th May was not an order recalling the reference under s. 315, and then referring it afresh under s. 315 of Act VIII of 1909, but an order under s. 319 appointing a new arbitrator in the place of the old ones, for which the consent of all parties was not necessary. Under s. 319 of Act VIII of 1909, the Court has power to appoint an arbitrator or arbitrators either in the place of an arbitrator or in the place of arbitrators. *HAMPRESD v. JAGGERNAUTH*, 8 C. L. R., 1

## ARBITRATION—continued.

## 3. APPOINTMENT OF ARBITRATORS AND UMPIRES—continued.

arbitrators again with a distinct order under s. 316. *HARADHAN DATT v. RADHANATH SHARMA*  
[2 B. L. R., S. N., 14; 10 W. R., 398]

39. — by Court named in the in the the parties ought to be heard upon the selection to be made. *Pestonjee Nassercajee v. Maskejee*, 12 Moore's L. A., 112, referred to. *COLEY v. DACCOSTA*

[I. L. R., 17 Calc., 200]

40. — Power of Court to appoint new arbitrators—*Civil Procedure Code (Act XIV of 1902), s. 310.*—The Court has power under s. 310 of the Code of Civil Procedure to appoint a new arbitrator in the place of another, only when the latter had consented to act as arbitrator. *Pegardie Beaudin v. Williams Beaudin*, I. L. R., 6 Mad., 418, approved of. *SHRI BIRAJ CHANDRA v. ANANDA PRASAD MISHRA*

[I. L. R., 13 Cal., 204]

41. — Appointment of umpire by arbitrators—*Arbitration Act of 1909, s. 315.*—The arbitrators of their right to appoint an umpire, and cannot provide that dispute between the parties was to be referred to the arbitration of two arbitrators, and that, should the arbitrators be unable to agree, they should appoint an umpire. The parties who and arbitrators referred their dispute to two arbitrators. These arbitrators disagreed in their report, and referred the case to the District Magistrate of Calcutta for the appointment of an umpire. The District Magistrate appointed an umpire who made his award. Held that the appointment of the umpire was invalid. The arbitrators cannot delegate the power of appointment conferred on them by the contract. *SAHAI v. SURESH CHANDRA SAHAI*

[I. L. R., 13 Cal., 205]

42. — Incompetency to act—*Act VIII of 1909, s. 315.*—Dispute from the Arbitration Act of 1909, s. 315, from the Arbitration and Conciliation Act, 1925, s. 2, in relation to show an intention to refer the dispute to arbitration, and that the parties were incapable of acting as umpire while the awarding of s. 319 of Act VIII of 1909. *GHANSHYAM MOHANT v. GANGA PRASAD MOHANT*, 4 B. L. R., O. C., 53

## 4. DUTIES AND POWERS OF ARBITRATORS.

43. — Ascertainment of points at issue—*Decision on issue.*—All matters in difference in the suit, including all dealings and transfers between the parties.

the majority should prevail, or should have appointed an umpire; or should have such arrangement as the parties would have consented to; or if they could not agree, such arrangement as it thought fit. Where this was not done, and the case came up in special appeal to the High Court, the case was sent down that it might be submitted to

# ARBITRATION—continued.

## 4. DUTIES AND POWERS OF ARBITRATORS—continued.

### DIGEST OF CASES.

## 4. DUTIES AND POWERS OF ARBITRATORS—continued.

44. *Absent arbitrators.*—Arbitrators have no power to delegate their authority to others. Thus, if some of the arbitrators are absent, those present cannot appoint others in their stead. *SURUDJEET NARAIN SINGH v. GOURIE PERSHAD NARAIN SINGH* [7 W. R., 269]

45. *Procedure of arbitrators.*—Arbitrators are not bound by the technical rules of Court. *REEDY KRISHTO MOZOOMDAR v. PUDDO LUCHON MOZOOMDAR* 1 W. R., 12

46. *Evidence.*—Arbitrators ought only to take such evidence as is required by the terms of the agreement referring the question in dispute to arbitration. *KRISHNAKANTA PARAMANIK v. BIDYA SUNDAREE DASI* [2 B. L. R., Ap., 25]

47. *Matters referred by Court, also by parties.*—*Separate awards.*—Arbitrators should give separate awards in a case referred to them by the Judge, and on other matters referred to them by the parties, instead of mixing them all up and giving a general award. *ROGHOO NUNDUN LALL SAHOO v. BUNWAREE LALL SAHOO* [3 W. R., Mis., 27]

48. *Decision on matters not referred.*—The decision of arbitrators in a matter not in difference between the parties, nor referred to them, is null and void for want of jurisdiction. *MOSHAHEL SINGH v. KONOMUTTY BEWA* 15 W. R., 172

49. *Power to order payment of fees to be condition precedent to hearing of reference.*—There is nothing in the Civil Procedure Code which authorizes arbitrators to apply to the Court for confirmation of an order passed by them making payment of their fees a condition precedent to the hearing of a reference. *STEEL v. ROBERTS* [I. L. R., 6 Cal., 809; 8 C. L. R., 439]

50. *Interest after date of submission.*—*Costs of reference.*—*Act VIII of 1859, ss. 312-322.*—Where all matters in difference between the parties in the suit were referred to arbitrators under an order of Court, *Held* that the arbitrators had power to award interest after the date of the submission, and to deal with the costs of the reference and award. *MOHAN LALL v. NATHU RAM* [I. B. L. R., O. C., 144]

51. *Costs.*—*Omission to fix scale of costs.*—An award directed that the defendant should pay the costs of the suit, and of the reference, and of the award, without fixing the scale. On application to the Court to do so, the case was sent back to the arbitrator for that purpose. *Held* that, when the order of reference gives the arbitrator full discretion over costs, he alone can fix the scale. *BARBUT CHUNDEE DOSS v. DAMJEE PITTUMBER* [Bourke, O. C., 7: Cor., 150]

52. *Civil Procedure Code, 1859, s. 317 et seq.*—Where by an order of

reference made pending a suit, all matters in difference between the parties are referred to an arbitrator by the Court under Act VIII of 1859, s. 317 *et seq.*, the arbitrator has power to deal with the costs of the suit. *MUDDOOSOODUN CHOWDHRY v. KOYLAS CHUNDER SHAW. KOYLAS CHUNDER SHAW v. MUDDOOSOODUN CHOWDHRY* 2 Ind. Jur., N. S., 12

53. *Power of arbitrators to deal with question of costs.*—*Excess in award.*—The parties to a suit having referred the matters in dispute between them to arbitration, the arbitrators, without being specially authorized to decide the question of costs, included in the award a direction that the defendant should pay the costs of the plaintiff. On the application of the plaintiff the Subordinate Judge, under s. 526 of the Civil Procedure Code (Act XIV of 1882), ordered the award to be filed, holding that the arbitrators had as such an implied power to deal with the costs. The defendant applied to the High Court under its extraordinary jurisdiction, praying that the record of the case might be sent for, and the order of the Subordinate Judge set aside. *Held* that the arbitrators had no implied power to deal with the question of costs, and that on the defendant's objection the Subordinate Judge should have refused to file the award. Under the circumstances, the High Court, instead of setting aside the order to file the award, directed the award to stand good, except so far as it awarded costs, and that the decree should be drawn in accordance with it, as it would be if it contained no direction as to costs. *DAGDUSA TILAKCHAND v. BHUKAN GOVIND SHET* I. L. R., 9 Bom., 82

## 5. SUBMISSION OF AWARD.

54. *Extension of period for submission of award.*—*Practice.*—Applications for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded. *MONJI PREMI SEET v. MALYAKEL KOTASSAN KOYA HAJI* [I. L. R., 3 Mad., 59]

55. *Umpire.*—*Civil Procedure Code, 1882, s. 509.*—As in the case of an arbitrator, so in the case of an umpire, a Court has power to extend the period within which the award is to be submitted. The Court can extend the time allowed to an umpire under s. 509 of the Code. *KUPU RAU v. VENKATARAMAYYAR* [I. L. R., 4 Mad., 311]

56. *Order extending time for presentation of award.*—An order extending the time for the presentation of an award upon application presented within time is not bad in law by reason of its having been made after the expiry of the term which it purports to extend. *SURPU v. Gov. INDACHARYAR* I. L. R., 11 Mad., 85

57. *Omission to fix time for delivery of award.*—*Extension of time after expiration of period fixed.*—*Civil Procedure Code*

## ARBITRATION—continued.

## 5. SUBMISSION OF AWARD—continued.

WANT KUAR

I. L. R., 10 All., 137

58. ——— Making and filing award—Award made, but not filed within time specified by order of Court—Civil Procedure Code (Act XII of 1859), ss 508, 514, 521.—The present suit for dissolution of partnership and all matters in

The word "made" in ss. 514 and 521 of the Civil Procedure Code (Act XIV of 1859) does not include the filing of the award. UMLSEY PRABHU v. SHAMJI KANJI

I. L. R., 13 Bom., 119

59. ——— Award leaving point at issue undecided—Omission from reference of a point in dispute—Decision by Court after submission.—Where matters in dispute are referred to arbit-

not wrong in not passing any order or coming to any decision on that point. RAJ NARAIN ROY v. JUGGESSEE MOOKERJEE

14 W. R., 247

60. ——— Delivery of award to party—Completion of arbitration—Act VIII of 1859, ss. 315, 318, and 320—Record of proceedings.—By an order of Court of January 17th, 1867, a suit was referred to two arbitrators, under s. 312, Act

was taken; at the last of which meetings, namely, on 27th July, an objection for the first time was taken on behalf of the defendant that the time limited by the order of reference had expired, but the arbitrators

## ARBITRATION—continued.

## 5. SUBMISSION OF AWARD—concluded.

into Court on the 10th May 1870, and judgment was moved for in accordance therewith. Held that the arbitrators had authority to make the award. The award was properly submitted to the Court. S. 320, Act VIII of 1859, does not make it necessary for the arbitrators to submit the award to the Court personally.

JAGAT SUNDARI DAS v. SANATAN BISAK

[5 B. L. R., 357]

## 6 REMISSION TO ARBITRATORS

61. ——— Defective and illegal award.—An award, defective and illegal on the face of it, should be at once remitted to the arbitrators. LUCHMER NARAIN v. PYLE

2 N. W., 160

or misconduct under s. 324. MOHUN KISHEN v. BHOSUN SHYAM

7 W. R., 406

63. ——— Application to remit award

64. ——— Judgment passed on award within time allowed for remission—Civil Procedure Code, 1859, ss. 324, 325—Remission

and correction. PUNKAB PAKSHAD v. PENCHUM RAE

2 N. W., 235

65. ——— Remission to arbitrators after decision on special appeal.—A case having been referred to arbitration without provision being made for a difference of opinion, and the arbitrators having given in differing awards, the Court of first instance tried the case anew, and dismissed the suit. This decision was confirmed on appeal. In special appeal the plaintiff asked that

**ARBITRATION—continued.****6. REMISSION TO ARBITRATORS—continued.**

the case might be sent back to the arbitrators with a provision for difference of opinion, and that they might submit their award a second time. *Held* that it was too late at this stage to allow such a course. **THAKOOR DASS CHUCKERBUTTY v. RAM JEEBUN CHUCKERBUTTY** . . . 14 W. R., 150

**66. ——— Refusal of arbitrator to reconsider award.**—The plaintiff in this suit sued the defendants to recover certain moneys presented to him on his marriage, which he alleged the defendants had received and appropriated to their own use. The defendants denied that they had received such moneys, but admitted that such-moneys had been credited by the plaintiff's father to the firm in which they, the plaintiff and the plaintiff's father, were jointly interested, against a larger amount of moneys belonging to the firm which had been expended on the plaintiff's marriage. The parties agreed to refer the matter in dispute between them to arbitration, and to abide by the decision of the arbitrator. The arbitrator decided that the plaintiff could not recover the money he sued for, and which had been credited to the firm of which he was a partner, as a larger sum had been expended on his marriage out of the funds of the firm. The plaintiff obtained the opinions of certain pundits to the effect that, under Hindu law, gifts on marriage are regarded as separate acquisitions, and prayed that the Munsif would remit the award with these opinions to the arbitrator. The Munsif remitted the award with the opinions, requesting the arbitrator to consider them, and to return his opinion in writing within a certain period. The arbitrator having refused to act further, the Munsif proceeded to determine the suit, and gave the plaintiff a decree on the ground that, in a joint Hindu family, presents received on marriage do not fall into the common fund. *Held* (PEARSON, J., dissenting) that, there being no illegality apparent on the face of the award, the Munsif was not justified in remitting the award, or in setting the award aside and proceeding to determine the suit himself, but that he should have passed judgment in accordance with the award. **NANAK CHAND v. RAM NARAIN**

[I. L. R., 2 All., 181]

**67. ——— Refusal by arbitrator to act—Award on one point only—Remission to arbitrator—Limitation—Adverse possession.**—A case was referred for decision to an arbitrator. The arbitrator made his return, deciding by the award only one of the issues raised in the case, *viz.*, that the defendants had been in possession of the land in suit for more than twelve years. The plaintiffs and the defendants claimed under the same landlord. The Munsif remitted the award to the arbitrator for determination of the other matters arising in the case; the arbitrator, however, refused to act further in the matter, and the Munsif himself took up the case and decided it in favour of the plaintiffs. On appeal, the Subordinate Judge held that the award made by the arbitrator was sufficient for the determination of the case, and reversed the decision of the Munsif and gave the defendants a decree in terms of the award. *Held* that, as the

**ARBITRATION—continued.****6. REMISSION TO ARBITRATORS—continued.**

plaintiffs and the defendants claimed under one and the same landlord, and the question between them being which of the two had the better title to the land in dispute, the case could not have been concluded by the finding of the arbitrator upon the question of possession, and that the Munsif had acted rightly, on the arbitrator declining to complete the award, in deciding the case himself. **JONARDON MUNDUL DAKNA v. SAMBHU NATH MUNDUL**

[I. L. R., 16 Calc., 806]

**68. ——— Appeal impugning propriety of order of remission—Civil Procedure Code, 1877, s. 520.**—An award was remitted under s. 520 of Act X of 1877. The arbitrators refused to reconsider it, and the Court thereupon proceeded with the suit, and gave the plaintiffs a decree. The defendants appealed from such decree on the ground, amongst others, that the award had been improperly remitted under s. 520. *Held* that the question whether the award had been properly remitted under s. 520 or not could be entertained in such appeal. **ABDUL RAHMAN v. YAR MAHAMMAD**

[I. L. R., 3 All., 636]

But see **GEORGE v. VASTIAN SOURY**

[I. L. R., 22 Mad., 204]

and cases cited in the judgment in that case.

**69. ——— Omission of arbitrator to carry out terms of reference—Suit for partition and to take accounts—Civil Procedure Code, 1877, ss. 2, 520, 522, 523—Filing agreement to refer to arbitration in Court—"Decree."**—The sharers of a joint undivided estate agreed in writing that such estate should be partitioned, and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties; and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to

## ARBITRATION—continued.

6. REMISSION TO ARBITRATORS—concluded, the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 523 of Act X of 1877, that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have had such lots drawn in Court and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them, that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done, it had acted contrary to the award, and for that reason its decree could not be maintained, and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, viz., the settlement of the accounts, and the Court should, under s. 520 of Act X of 1877, have remitted the award for the reconsideration of the arbitrator; and, as it had the power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to, and in excess of, the award, its decree must be reversed. *SADIE ALI c. IMDAD ALI KHAN* . . . I. L. R., 3 All., 288

70. ————— Civil Procedure

tors may be challenged on appeal against the decree ultimately passed; and (2) that the award ought not to have been remitted; there was no illegality on the face of it, and there was a decision on the whole matter in issue between the parties. *Mothooranath Tewares v. Brindaban Tewares*, 14 W. R., 327, *Ambea Das v. Nadyar Chand Pal*, I. L. R., 11 Cal., 172, *Nanah Chand v. Ram Narayan*, I. L. R., 2 All., 181, and *Bikramjit Singh v. Huzains Begam*, I. L. R., 3 All., 643, referred to. *GEORGE c. VASTIAN SOUVEY*

[I. L. R., 23 Mad., 202]

## 7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION.

71. ————— Revocation of agreement to refer.—It is almost a universal rule that a submission to arbitration is revocable before award

## ARBITRATION—continued.

## 7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—continued.

made. *SURSUBERT NARAIN SINGH c. GOOREE PERSHAD NARAIN SINGH* . . . 7 W. R., 269

## G. NUNDULA PERAIYA alias PERAMBOTLU

[3 Mad., 82]

But see *NAGASAWMY NAIK c. RENGAVAMY NAIK* . . . 8 Mad., 46

terms of which were "any future proceedings, arrange matters here." *Held* that the telegrams sent to the arbitrators did not amount to a revocation of their authority. *KELLIE c. FRASER*

[I. L. R., 3 Cal., 445]

74. ————— Lapse of time, Presumption of revocation from—Suit to enforce agreement to refer.—Where some months had elapsed without either party taking action to carry out an agreement to refer a dispute to arbitration, the plaintiff was held not to be debarred from considering the agreement revoked and prosecuting his suit. *JEORAKHUN LOLL c. MUTTRA PERSHAD*

[I. N. W., Ed. 1873, 252]

## 75. ————— Ground for revocation—

is not, without just and sufficient cause, revocable. *Alla Ayappa v. Nundula Peraiya*, 3 Mad., 82, overruled. *Pestonjee Nusserwanjee v. Maneckjee*, 3 Mad., 183, and *Santanja v. Ramaraya*, 7 Mad., 237, followed. *NAGASAWMY NAIK c. RENGAVAMY NAIK* . . . 8 Mad., 46

76. ————— Long and unreasonable delay in the conduct of the proceedings—Civil Procedure Code (Act XIV of 1852), s. 523.—

may be filed under s. 523 of the Code of Civil Procedure. *COLEY c. DIACOSTA* . . . I. L. R., 17 Cal., 200

77. ————— Omission to fix time within which award should be made.—Notice.—According to the proper construction of the Code of

**ARBITRATION—continued.****7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—continued.**

Civil Procedure (that is to say, construing it with reference to the constitution of the Civil Courts of India and the abiding direction to them to proceed in all cases according to equity and good conscience), when persons have agreed to submit the matter in difference between them to the arbitration of one or more specified persons, no party to the agreement can revoke the submission to arbitration, unless for good cause, and a mere arbitrary revocation of the authority is not permitted. Where no time was originally fixed within which the award was to be made, it is open to either party to hasten the proceedings by giving notice to the arbitrators that the award must be made, and an umpire appointed, within a reasonable time; but where the time clapsing after the notice has been actively employed by the arbitrators, and the delay has been owing to necessity which they could not control, the parties cannot recede from their submission by reason of the notice. *PESTONJEE NUSSEERWANJEE v. MANOCKJEE & CO.*

[10 W. R., P. C., 51: 12 Moore's I. A., 112

*ABLAKEE KOOR v. OODUN SINGH*

[15 W. R., 331

**78.** ——— After the parties to a suit have agreed to refer it to arbitration and the order of reference has been made by the Court under s. 508 of the Civil Procedure Code, neither of them can arbitrarily and on no sufficient ground withdraw from the agreement. *Pestonjee Nusserwanjee v. Manockjee & Co.*, 12 Moore's I. A., 112, followed. *NAINSUKH RAI v. UMADAI* I. L. R., 7 All., 273

**79.** ——— **Revocation of submission.**—A submission to arbitration once made cannot be revoked except for good cause. It cannot be revoked at the mere will of one of the parties to it. *Pestonjee Nusserwanjee v. Manockjee & Co.*, 12 Moore's I. A., 112, referred to. *SULTAN MUHAMMAD KHAN v. SHEO PRASAD*

[I. L. R., 20 All., 145

**80.** ——— **Appointment of new arbitrator, Power of.**—*Civil Procedure Code (Act XIV of 1882)*, ss. 506, 508, 510, 521.—On 19th June 1884, an application for an order of reference was made, under s. 506 of the Civil Procedure Code (XIV of 1882), by both parties to a suit. It was signed by both defendants and by the plaintiffs' pleader. As the plaintiffs' pleader had not been "specially authorized in writing" to join in the application, the Court postponed making any order on the application till the 23rd idem. On that day the first defendant did not attend the Court, but the plaintiffs' pleader produced the requisite authority, and the Court made an order referring the suit to the decision of the arbitrator nominated in the application of the 19th. On 27th June the first defendant made an application to the Court to revoke the authority of the arbitrator and appoint a new arbitrator in his place, on the ground that, after signing the application of the 19th, he had become aware of certain circumstances connected with the arbitrator which showed that he was not worthy of the confidence

**ARBITRATION—continued.****7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—continued.**

reposed in him. No final order was made upon this application till after the submission of the award, when it was rejected on the ground that the charges of misconduct and partiality imputed to the arbitrator were not made out. *Held*, first, that the first defendant not having objected to the appointment of the arbitrator on or before the 23rd June 1884, when the order of reference was made, must be taken to have tacitly acquiesced in the course adopted by the Court, and that such acquiescence amounted to a fresh submission. *Ardesar Hormosji Wadia v. Secretary of State for India*, 9 Bom., 177, and *Sreenath Ghose v. Raj Chunder Paul*, 8 W. R., 171, followed. The objections raised by the first defendant could only be considered after the submission of the award, and then only to the extent permitted by s. 521 of the Code of Civil Procedure (XIV of 1882). When once a matter is referred to arbitration, it is not competent to the Court, under the second paragraph of s. 508 of the Code of Civil Procedure (Act XIV of 1882), to "deal with" the matter in difference between the parties, except as provided in Ch. XXXVII of the Code. There is no section of that chapter which authorizes the Court to revoke the authority conferred on an arbitrator and to appoint a new one except in cases falling strictly within the purview of s. 510 of the Code, where "the scope and object of the reference cannot be executed." It is only in those cases, apparently, that the authority conferred on arbitrators can be revoked "for good cause," the cause being such as is contemplated in that section, as where "an arbitrator refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return to India at an early date." The enactment of the second paragraph of s. 508 of the Code of 1882, which does not occur in the corresponding section (315) of Act VIII of 1859, has the effect of rigidly restricting the Courts to the exact procedure laid down when dealing with cases in which the appointment of a new arbitrator becomes necessary. *HALIMBHAI KARIMBHAI v. SHANKAR SAI* I. L. R., 10 Bom., 381

**81.** ——— **Revocation by one party.**—*"Sufficient cause"*—*Civil Procedure Code, 1859*, s. 326.—The fact of one of the parties to the agreement revoking his submission is not a sufficient "cause" within the meaning of s. 326 of Act VIII of 1859. The English cases on the subject considered. *PESTONJEE NUSSEERWANJEE v. MANOCKJEE*

[3 Mad., 183

S. C. on appeal . 12 Moore's I. A., 112 :  
[10 W. R., P. C., 51

*SANTANJA v. RAMARAYA* . 7 Mad., 257

**82.** ——— **Examination of arbitrator as a witness.**—A reference to arbitration made under an order of Court cannot be revoked at the instance of a party. If an arbitration award is set aside and the matter is tried as a suit before the Court, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made

## ARBITRATION—continued.

## 7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—continued.

before him in the course of arbitration, and which might be material evidence. NIRMONEE BOSE v. MOHINA CHUNDER DUTT 17 W. R., 518

agreed that the matters in difference between them in the suit should be decided in accordance with the

## ARBITRATION—continued.

## 7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—concluded.

them, it is not incumbent upon the Court to appoint other arbitrators, unless both parties agree, the provision of s. 319 being not obligatory, but simply permissive. Held further that, under such circumstances, the refusal on the part of one party to nominate other arbitrators does not amount to a withdrawal from the agreement to proceed to arbitration. SADA SOOKEH v. SHIVA DYAL 1 Agra, 109

87. ———— Withdrawal from arbitration.—Ground for withdrawal.—A party is not entitled to withdraw without good cause shown from a

interested who would not be bound, the grounds were held not to constitute a good ground for withdrawal. RAM COOMAR SHAHA v. KALA CHAND SHAHA

[21 W. R., 395

named by them, and did not agree to accept the decision of any less number of persons so nominated. Three only of the arbitrators nominated were proceeding with the arbitration, and one had declined to act. Held that the suit, which was one to put an end to the arbitration, was maintainable. PARMESHWAR DAT v. HARI NAIK 7 N. W., 357

89. ———— Agreement to withdraw suit.—Failure to make award.—Application for restoration to file of Court.—A suit was, by order of Court, referred to three specified arbitra-

[8 B. L. R., Ap., 74

## 8. AWARDS.

## (a) CONSTRUCTION AND EFFECT OF.

80. ———— Rule of construction.—An award should be construed, not by oral evidence given by the arbitrators, but by looking at the language of the award itself. GENSEHER v. CHETAY LALL 3 N. W., 117

same. LEKHRAJ SINGH v. DULSMA KWAR

[I. L. R., 4 All, 302

84. ———— Revocation by Court.—Illness of arbitrators.—Civil Procedure Code, 1859, s. 318.—Where one of the arbitrators had been ill and the time for sending it in elapsed before they could make their award, the Court superseded the arbitration and recalled the suit. JOSEPH v. SREERAKER Bourke, O. C., 359

85. ———— Withdrawal from arbitration.—Civil Procedure Code, 1859, s. 326.—Either of the parties in a reference to arbitration may withdraw from the proceedings at any time previous to the making of the award unless the submission to

[3 Mad., 83

But see NAGASAWMY NAIK v. RENGASAWMY NAIK

[8 Mad., 46

86. ———— Refusal of some arbitrators to act.—Civil Procedure Code, 1859, s. 319.—Refusal to nominate other arbitrators.—Withdrawal from arbitration.—Where some of the arbitrators named in an arbitration agreement refuse to act, and the parties do not agree to appoint others instead of

**ARBITRATION—continued.****7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—continued.**

Civil Procedure (that is to say, construing it with reference to the constitution of the Civil Courts of India and the abiding direction to them to proceed in all cases according to equity and good conscience), when persons have agreed to submit the matter in difference between them to the arbitration of one or more specified persons, no party to the agreement can revoke the submission to arbitration, unless for good cause, and a mere arbitrary revocation of the authority is not permitted. Where no time was originally fixed within which the award was to be made, it is open to either party to hasten the proceedings by giving notice to the arbitrators that the award must be made, and an umpire appointed, within a reasonable time; but where the time elapsing after the notice has been actively employed by the arbitrators, and the delay has been owing to necessity which they could not control, the parties cannot recede from their submission by reason of the notice. *PESTONJEE NUSSERWANJEE v. MANOCKJEE & Co.*

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ABLAHKEE KOOR v. OODUN SINGH

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**78.** ————— After the parties to a suit have agreed to refer it to arbitration and the order of reference has been made by the Court under s. 508 of the Civil Procedure Code, neither of them can arbitrarily and on no sufficient ground withdraw from the agreement. *Pestonjee Nusserwanjee v. Manockjee & Co., 12 Moore's I. A., 112*, followed. *NAINSUKH RAI v. UMADAI I. L. R., 7 All., 273*

**79.** ————— Revocation of submission.—A submission to arbitration once made cannot be revoked except for good cause. It cannot be revoked at the mere will of one of the parties to it. *Pestonjee Nusserwanjee v. Manockjee & Co., 12 Moore's I. A., 112*, referred to. *SULTAN MUHAMMAD KHAN v. SHEO PRASAD*

[I. L. R., 20 All., 145

**80.** ————— Appointment of new arbitrator, Power of.—*Civil Procedure Code (Act XIV of 1882), ss. 506, 508, 510, 521.*—On 19th June 1884, an application for an order of reference was made, under s. 506 of the Civil Procedure Code (XIV of 1882), by both parties to a suit. It was signed by both defendants and by the plaintiffs' pleader. As the plaintiffs' pleader had not been "specially authorized in writing" to join in the application, the Court postponed making any order on the application till the 23rd idem. On that day the first defendant did not attend the Court, but the plaintiffs' pleader produced the requisite authority, and the Court made an order referring the suit to the decision of the arbitrator nominated in the application of the 19th. On 27th June the first defendant made an application to the Court to revoke the authority of the arbitrator and appoint a new arbitrator in his place, on the ground that, after signing the application of the 19th, he had become aware of certain circumstances connected with the arbitrator which showed that he was not worthy of the confidence

**ARBITRATION—continued.****7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—continued.**

reposed in him. No final order was made upon this application till after the submission of the award, when it was rejected on the ground that the charges of misconduct and partiality imputed to the arbitrator were not made out. *Held*, first, that the first defendant not having objected to the appointment of the arbitrator on or before the 23rd June 1884, when the order of reference was made, must be taken to have tacitly acquiesced in the course adopted by the Court, and that such acquiescence amounted to a fresh submission. *Ardesar Hormosji Wadia v. Secretary of State for India, 9 Bom., 177*, and *Sreenath Ghose v. Raj Chunder Paul, 8 W. R., 171*, followed. The objections raised by the first defendant could only be considered after the submission of the award, and then only to the extent permitted by s. 521 of the Code of Civil Procedure (XIV of 1882). When once a matter is referred to arbitration, it is not competent to the Court; under the second paragraph of s. 508 of the Code of Civil Procedure (Act XIV of 1882), to "deal with" the matter in difference between the parties, except as provided in Ch. XXXVII of the Code. There is no section of that chapter which authorizes the Court to revoke the authority conferred on an arbitrator and to appoint a new one except in cases falling strictly within the purview of s. 510 of the Code, where "the scope and object of the reference cannot be executed." It is only in those cases, apparently, that the authority conferred on arbitrators can be revoked "for good cause," the cause being such as is contemplated in that section, as where "an arbitrator refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return to India at an early date." The enactment of the second paragraph of s. 508 of the Code of 1882, which does not occur in the corresponding section (315) of Act VIII of 1859, has the effect of rigidly restricting the Courts to the exact procedure laid down when dealing with cases in which the appointment of a new arbitrator becomes necessary. *HALIMBHAI KARIMBHAI v. SHANKAR SAI I. L. R., 10 Bom., 381*

**81.** ————— Revocation by one party.—*"Sufficient cause"—Civil Procedure Code, 1859, s. 326.*—The fact of one of the parties to the agreement revoking his submission is not a sufficient "cause" within the meaning of s. 326 of Act VIII of 1859. The English cases on the subject considered. *PESTONJEE NUSSERWANJEE v. MANOCKJEE*

[3 Mad., 183

S. C. on appeal . 12 Moore's I. A., 112 :  
[10 W. R., P. C., 51

SANTANJA v. RAMARAYA . 7 Mad., 257

**82.** ————— Examination of arbitrator as a witness.—A reference to arbitration made under an order of Court cannot be revoked at the instance of a party. If an arbitration award is set aside and the matter is tried as a suit before the Court, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made

**ARBITRATION—continued.****7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—continued.**

before him in the course of arbitration, and which might be material evidence. **NILMONER BOSE v. MOHINA CHUNDER DUTT** 17 W. R., 518

objection, and, having taken J's statement on oath, decided the case in accordance therewith. *Held* by

therefore the defendants were competent to revoke the same. **LEKHRAJ SINGH v. DULBHA KUAR**

[I. L. R., 4 All, 302

**84. — Revocation by Court—Illness of arbitrators—Civil Procedure Code, 1859, s. 318**—Where one of the arbitrators had been ill and the time for sending it in elapsed before they could make their award, the Court superseded the arbitration and recalled the suit. **JOSEPH v. SHERRE**

**Bourke, O. C., 359**

**85. — Withdrawal from arbitration—Civil Procedure Code, 1859, s. 328**—Either of the parties in a reference to arbitration may withdraw from the proceedings at any time previous to the making of the award, unless the submission to arbitration has been made a rule of Court under s. 328 of the Civil Procedure Code. **ALLA AYAPPA v. NUNDALA PERAIYA alias PERAMBHOILU**

[3 Mad., 82

But see **NAGASWAMY NAIK v. RUSGARAY NAIK**

[8 Mad., 48

**86. — Refusal of award**

**ARBITRATION—continued.****7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—concluded.**

named other arbitrators does not amount to a withdrawal from the agreement to proceed to arbitration. **SADA SOOKH v. SHIVA DYAL** 1 Agra, 109

arbitration is not enough from a award was about

to be pronounced and a party withdrew on the grounds, first, that the arbitrator was entering into foreign matters, and, second, that a minor was likely to be interested who would not be bound, the grounds were held not to constitute a good ground for withdrawal. **RAM COOMAR SHARMA v. KALA CHAND SHARMA**

[21 W. R., 395

named by them, and did not agree to accept the decision of any less number of persons so nominated. Three only of the arbitrators nominated were proceeding with the arbitration, and one had declined to act. *Held* that the suit, which was one to put an end to the arbitration, was maintainable. **PARMESHWAR DAT v. HARI NAIK** 7 N. W., 357

**89. — Agreement to withdraw suit—Failure to make award—Application**

The arbitrators had only one meeting, at which an agreement was come to by the parties to settle all matters in dispute among themselves and withdraw the matters from arbitration, which was accordingly done, but nothing appeared to have been afterwards done. No award was made by the original arbitrators within six months from the reference. On application by the plaintiff to have the suit restored to the file of the Court, *Held* that the suit was still pending, the arbitrators not having determined it while they had jurisdiction to do so, and it was ordered that it should be brought again before the Court. **GAPI NATH NANDI v. SHIB CHANDRA NANDI**

[8 B. L. R., Ap., 74

**8. AWARDS.****(a) CONSTRUCTION AND EFFECT OF.**

**90. — Rule of construction.**—An award should be construed, not by oral evidence given by the arbitrators, but by looking at the language of the award itself. **GURJEEV v. CHATUR LALL**

3 N. W., 117

## ARBITRATION—continued.

## 8. AWARDS—continued.

91. ————— *Award of the nature of a family settlement directing an annuity to be paid "ta haiyat validain."*—An award drawn by an unprofessional arbitrator in India is not to be construed according to the same principles as an award settled by counsel or a solicitor in England, but in accordance with what may reasonably be supposed under the circumstances of the case to have been the intentions of the arbitrator. Where an award, which was of the nature of a family settlement between a father, mother, and son of certain property which had been given by the father to the mother in lieu of dower and then by the mother to the son, directed that a certain annuity should be paid out of the property to the father and mother "*ta haiyat validain*," it was *held* that the annuity was to be paid during the joint lives of the father and mother and also during the life of the survivor. *ABDUL MAJID KHAN v. KADIR BEGAM* [I. L. R., 20 All., 245]

92. ————— *Effect of award—Signature of award by parties.*—*Held* that the parties, having signed the award of arbitration, must be bound by that until it is legally set aside, and, until it is set aside, a suit to enforce rights irrespective of the award is not maintainable. *GOLAM ALI KHAN v. IMAM ALI KHAN* . . . . . 2 *Agra*, 224

93. ————— *Party added during arbitration.*—In a suit pending before arbitrators, a person who is made a co-plaintiff on application, and makes no objection to the arbitration, is bound by the award. *SHITANATH BISWAS v. KISHFEN MOHUN MOKERJEE* . . . . . 5 *W. R.*, 130

94. ————— *Defence of submission to arbitration and award upon the matter in suit before suit brought.*—An award upon a question referred to arbitrators, on whose part no misconduct or mistake appears, concludes the parties who have submitted to the reference from afterwards contesting in a suit the question so referred and disposed of by the award. Two widows of a deceased Hindu referred generally to arbitrators the question of their rights, respectively, in the estate of their deceased husband, including the matter whether there was, or was not, any cause disentitling the widow who afterwards brought this suit for her share in the estate against the other who had obtained possession of the whole. The arbitrators declared her to be disentitled to succeed to any portion of the estate, and awarded her maintenance only. *Held* that, in the absence of mistake or misconduct on the part of the arbitrators, the award was binding on the parties. *BHAGATI v. CHANDAN*

[I. L. R., 11 Cal., 386; L. R., 12 I. A., 67]

95. ————— *Person not party to award—Reciprocity—Estoppel of objection of parties—Exclusion from inheritance Evidence Act, s. 115.* An arbitrator's award declared the right of a member of a Hindu family jointly possessed of village houses and property, such member being deaf and dumb, and not a party to the arbitration and award. He afterwards sued for separate possession

## ARBITRATION—continued.

## 8. AWARDS—continued.

against the others, who in their defence denied his title to inherit by Hindu law, on account of his physical infirmity, which was from birth. The award having been produced at the hearing,—*held* that this member of the family, being a stranger to the submission to arbitration, was under no obligation to abide by the award, and that he consequently could not avail himself of what the award contained in his favour. *HIRA SINGH v. GANGA SAHAI*

[I. L. R., 6 All., 322; L. R., 11 I. A., 20]

Affirming decision of High Court in *GANGA SAHAI v. HIRA SINGH* . . . . . I. L. R., 2 All., 809

96. ————— *Award not made on reference by all parties.*—An arbitration award, not being one which has been made upon a reference by all the parties to the suit, is not capable of being converted into a final decree under the provisions of Ch. VI, Act VIII of 1859, though it is evidence against any party who agreed to the reference. *BEEJOY CHUNDER BANERJEE v. BHYRUB CHUNDER BANERJEE* . . . . . 15 *W. R.*, 427

97. ————— *Consent to arbitration—Ambiguity in award.*—A dispute having arisen as to the boundary of two estates, the parties joined in a petition to the Settlement Officer of the district to appoint arbitrators for the purpose of settling the boundary. That officer appointed arbitrators who subsequently made the following award: "Having in the presence of the karpurdazes of both parties taken down the depositions of the witnesses of both parties on the disputed locality and made investigation and enquiry on the spot, and having observed the aspect of the place, we have ascertained as follows." They then proceeded to state the boundary. "Going along west from the high peak of Sathoo Pahar, which is on the south of Lughapara, one comes to a gurb called Rajgurb; on the south of it is Doobhiadidi in Mahomedabad; on the north of that gurb is Kolarkoonda in Belputta; on the west of it is Perma hill; on the east, south, and west is Mahomedabad; on the north is Belputta." At the foot of the award were the words, "Decision of the arbitrators confirmed," dated and signed by the Deputy Collector. The parties to the award afterwards petitioned the Settlement Officer to lay pillars along the line settled by the arbitrators, but he refused the application, but made an order that, "if the petitioners construct the pillars themselves, there will be no likelihood of objection hereafter. It is not necessary for the Court to pass any order in this matter." *Held* (1) that both parties had accepted the award; (2) that the award was not ambiguous; (3) that the effect of the award was not merely to determine possession at the time, but to determine the right to the land itself. *RAMRUNJUN CHUCKERBUTTY v. RAM PROSAD DASS* . . . . . 13 *C. L. R.*, 26

98. ————— *Refusal to award interest to Mahomedan—Suit on mortgage.*—Plaintiff, who was a Mahomedan, sued upon a mortgage executed by the defendants, who were also Mahomedans, to secure certain sums advanced by him, with interest at 24 per cent. The defendants pleaded an

## ARBITRATION—continued.

## 8. AWARDS—continued.

award by which the arbitrator, to whom the question of the defendants' liability under the mortgage and certain cross-claims which the defendants urged against the plaintiff had been referred, had found that the plaintiff was entitled to a particular sum

must be taken to be binding on the plaintiff. *Held*, further, that the plaintiff was entitled to proceed on

cent. from the date of the award. *MOONZOORAH DOWLAH v. MEHIDI BEGUM* 7 C. L. R., 206

## 89. ————— Maintenance,

mission of the disputants, who directed that the village "given as maintenance be decreed in favour of the grantee to continue as heretofore." The

six months after the passing of the Oudh Estates Act, 1850, did not come within s. 33 of that Act. *Held* (1) that the award was not on that account in-

cisl acts of the arbitrators, was admissible. (3) That the terms of the award conferred upon the grantee and his descendants the right to possess the villages free of rent to the talukhdar, who remained responsible for the revenue. (4) That the villages would not revert to the talukhdar's line until the line of the grantee's descendants should have become extinct. *BHAIRIA ARDAWAN SINGH v. UDEY PRATAP SINGH* [I. L. R., 23 Calc., 838 L. R., 23 I. A., 64

## ARBITRATION—continued.

## 8. AWARDS—continued.

## (b) ENFORCING AWARDS.

100. ————— Requisites for enforcing award—*Judgment and decree on award*.—By *MELVILLE and PINNEY, JJ.*—Before effect can be given to an award by execution proceedings, there must be a judgment according to the award and a decree following thereon. *ISHWANNAS JAGJIVAN-DAS v. DOSIRAI* I. L. R., 7 Bom., 318

101. ————— Award allowing mainte-

could not be given to the award as a decree, as no Court would pass a decree fixing a grant of maintenance in perpetuity, that an allowance fixed by a

ance for a longer period than the lifetime of the parties, and all three parties being dead, no effect could any longer be given to the award. *MADHARAY DESHPANDE v. RAMRAY DESHPANDE* [I. L. R., 7 Bom., 151

102. ————— Agreement to be bound by majority—*Refusal of arbitrator to act*.—Where a case was referred by a Court to the arbitration of three persons, and the parties to the reference agreed to be bound as to the matters in dispute by the deci-

*Khand and Kumau Bank v. Row*, I. L. R., 6 All., 469, referred to. *NAND RAM v. FAIR CHAND* [I. L. R., 7 All., 523

## (c) POWER OF COURT AS TO AWARDS.

103. ————— Confirmation of award—*Duty of Court*.—The Court, in passing judgment on the arbitration award, must confine itself to the plaintiff's claim and give a decision thereon. *TATNATH CHOWDARY v. MANICK CHUNDER DASS* [14 W. R., 496

104. ————— *Duty of Court*.—If a Court regards an award as not open to objection, such Court must deliver judgment in accordance

## ARBITRATION—continued.

## 8. AWARDS—continued.

with the terms of such award, and not modify the same. *LUCHMEE NARAIN v. PILE* . 2 N. W., 150

105. ——— Adding to award on confirmation.—The Court can only give judgment in accordance with the award, and cannot add an order for interest to it, if interest has not been given. *MOHUN LALL SHAHA v. JOYNARAIN SHAHA CHOWDHRY* . . . 23 W. R., 105

106. ——— Plea of jurisdiction on limitation.—When an award has been made, no plea of jurisdiction or limitation can be raised before the Court, which is to pass its decree according to the award. *AMEEN CHUND v. MENDHOO KHAN* . . . 1 Agra, Rev., 53

107. ——— Reduction of number of instalments where payment by instalment is ordered—*Civil Procedure Code*, ss. 518, 522.—The arbitrators, to whom the matters in difference in two suits for money were referred to arbitration, made an award for payment to the plaintiff of certain sums by the defendant, and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award in so far as it directed payment by instalments, and the Court, holding that the arbitrators had no power to make such a direction, modified the award to that extent, under s. 518 of the *Civil Procedure Code*. On appeal, the District Judge, while allowing the power of the arbitrators to direct payment by instalments, reduced the number of instalments which had been fixed. *Held* that, as it was clear that the reference to arbitration gave the arbitrators full powers, not only as to the amount to be paid, but also as to the manner of payment, the lower Appellate Court was wrong in reducing the number of instalments which had been fixed. *Per MAHMOOD, J.*—The word "award" used in the last sentence of s. 522 of the Code must be understood to mean an award as given by the arbitrators, and not as amended by the Court under s. 518. The words "in excess of, or not in accordance with, the award," used in s. 522, were intended to enable the Court of appeal to check the improper use of the power conferred by s. 518. *JAWAHAR SINGH v. MUL RAJ*

[I. L. R., 8 All., 449]

108. ——— Power of Court to order sale—Award without power to sell—*Power of Court to go beyond award when made a decree of Court.*—Where the partners of a firm in their partnership deed agreed to refer their disputes to arbitration, and the reference made in pursuance of this agreement gave the arbitrators a power to make partition, but omitted a power to sell, —*Held*, on the award being made a rule of Court, that the Court had no power, under s. 326, Act VIII of 1859, to order the sale of certain property of which the arbitrators were unable to make partition, and the sale of which they recommended on that ground. *CHUNIMONY DASSEE v. NISTARINEE DASSEE* . 3 C. L. R., 357

109. ——— Grant of right of way not given by award—Award for partition—Subsequent suit for right of way not of necessity.—

## ARBITRATION—continued.

## 8. AWARDS—continued.

Where the house and lands of a joint Hindu family were partitioned by the Court according to an award made by an arbitrator to whom the parties had agreed to refer the matter,—*Held*, in a subsequent suit, that the Court could not go behind the award and allow one of the members of the family to claim a right of way from the family house to a public road, through the lands allotted by the award to another member, such right of way not having been granted by the award, and there being no such right of way of necessity. *GOPAL CHUNDER ROY v. BROJENDRO COOMAR ROY* [5 C. L. R., 338]

## (d) VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE.

110. ——— Reversal of award—*Civil Procedure Code*, 1859, s. 324.—An award is not reversible, unless the provisions of s. 324, Act VIII of 1859, apply. *REEDY KISTO MUZOOMDAR v. PUDDO LOCHUN MUZOOMDAR* . 1 W. R., 12

111. ——— Application to set aside award—*Extension of time for applying to set aside award—Civil Procedure Code*, 1859, s. 324.—In an application to set aside an order made by a Judge in chambers, extending the time (of ten days) for making an application under s. 324 of Act VIII of 1859 to set aside an award on the ground of misconduct of one of the arbitrators and of the umpire, —*Held* that the words of the section being in their ordinary import obligatory, and there being nothing in the other parts of the Code to show that such construction was at variance with the intention of the Legislature, and a similar provision having been held by the Courts in England to be imperative, that the application to set aside the award must be made within the ten days, provided the Court be then sitting, and, if not, on the first day of its sitting after that time, and that there is no power to enlarge the time to make such application. *EDULJI SHAPURJI v. TALSIDAS SUNDARAS* . 2 Bom., 285: 2nd Ed., 270

*EDULJI SHAPURJI v. TALSIDAS SUNDARAS*  
[1 Ind. Jur., N. S., 234]

112. ——— Ground for setting aside award—*Delay in returning.*—An award made by the consent of the parties cannot be set aside merely by reason of its having been sent in a week later than the date appointed, when such delay is not owing to misconduct or corruption. *AMEEN CHUND v. MENDHOO KHAN* . . . 1 Agra, Rev., 53

113. ——— Fraud.—To set aside an award, there must have been some fraudulent suppression of evidence or other malpractice of the successful party, which should be definitely stated in the plaint. *HUR CHURN DASS v. HAZAREE MULL* [1 Ind. Jur., O. S., 12]

114. ——— Inconsistency in award.—An award of arbitrators cannot be set aside on the ground of its being inconsistent, because the plea of the defendant was proved as to part of the case, and not as to the other. *DEBRAJ ROY v. KARTICK CHUNDER SIRCAR* . . . W. R., 1864, 153

## ARBITRATION—continued.

## 8. AWARDS—continued.

115. — Civil Procedure Code, 1859, ss. 322, 323, 324. — Where by the terms of a reference to arbitration all matters in difference are referred to the arbitrator, the Court will not modify (s. 322), remit (s. 323), or set aside (s. 324) the award, on the ground that the arbitrator in his discretion has awarded damages to the plaintiff, and at the same time make him pay all the costs, when it is not shown that he exercised the discretion given him improperly. *MOHENDONATH BOSH v. NUSSEER MANGES*. 1 Ind. Jur., N. S., 324

116. — Document wrongly

improperly used as evidence. Held on appeal that, though the arbitrator was wrong in receiving and using a document which ought not to have been received, yet that this was not a sufficient ground to justify the Judge in refusing to confirm the award. *HOWARD v. WILSON*

[1 L. R., 4 Calc., 231; 2 C. L. R., 488]

interest in the matter at issue would necessarily bring the award within the provisions of s. 324 of Act VIII of 1859, and render it liable to be set aside. *SENUR KACHEE v. OBBE DOOREY*

[3 N. W., 241]

118. — Interested arbit-

evidence of witnesses was found in reality to be merely the adoption by the arbitrators of an agreement arrived at and signed by the parties to the reference, it was held that this would not prevent the award being a valid and binding award between the parties. *GOBARDHAN DAS v. JAI KISHEN DAS*

[1 L. R., 22 All., 224]

## ARBITRATION—continued.

## 8. AWARDS—continued.

120. — Arbitrary deci-

defendant. *GOOROO CHURN DEY v. RAMDHON PAUL*. 7 W. R., 23

121. — Misconduct of arbitrators — Refusal to amend award. The refusal of arbitrators to amend a clearly bad award is misconduct under s. 324, Act VIII of 1859. *DEB NABAIN SINGH v. RAJMONER KOONWAR*. 3 W. R., 168

122. — Neglect of some arbitrators to attend—Civil Procedure Code, 1859, s. 324. — The neglect of some of the arbitrators to attend meetings of the arbitrators is misconduct within the meaning of s. 324, justifying the setting aside of the award by the Court which appointed the arbitrators, but not by a Court of Appeal. *SREENATH GHOSH v. RAJCHUNDER PAUL*. 8 W. R., 171

123. — Power of Court on appeal. — But where the decree is appealed from, the Appeal Court has power to take cognizance of the question of misconduct of arbitrators. See s. 363, Act VIII of 1859. *RAMTYAD SINGH v. NIRMUN KERR* [23 W. R., 420]

*RAM GUTTER MUNDUL v. THAKOR DASS MUNDUL*. 22 W. R., 418

124. — Refusal to call witnesses. — Refusal by an arbitrator to call witnesses produced by either party amounts to judicial misconduct within the meaning of s. 321 of the Civil Procedure Code. *RUGHOOBH DHAL v. MAINA KERR* [23 C. L. R., 504]

125. — Suspicion of partiality. An award cannot be set aside by the Court on the mere surmise that the arbitrator has been partial. *NAINSUR RAI v. UMADAI*

[1 L. R., 7 All., 273]

126. — Power to set

of the Judge. — Held that, under s. 325, Act VIII of 1859, the Judge had no jurisdiction to set aside the award when the Court of first instance had passed

## ARBITRATION—continued.

## 8. AWARDS—continued.

judgment according to the award. IN THE MATTER OF THE PETITION OF ILAHI BAX

[5 B. L. R., Ap., 75

ELAHEE BUKSH v. HAJOO . . . 14 W. R., 33

127.

Civil Procedure

*Code, s. 521, cl. (a)*—"Misconduct" of arbitrator.—The word "misconduct," as used in s. 521, cl. (a), of the Civil Procedure Code, should be interpreted in the sense in which it is used in English law with reference to arbitration proceedings. It does not necessarily imply moral turpitude, but it includes neglect of the duties and responsibilities of the arbitrators, and of what Courts of Justice expect from them before allowing finality to their awards. An arbitrator to whom the matters in difference in a suit were referred under s. 503 of the Civil Procedure Code, and who was directed by the order of reference to deliver his award by the 22nd September, applied on the 17th September for an extension of time on the ground that a very full investigation was necessary, which it was not possible to make within the prescribed period. On the 20th September, without waiting for the order of the Court, he notified to the parties that he proposed to hold an inquiry in the case on the 24th, and it appeared that he did not expect this intimation to reach them before the 21st or 22nd. On the 23rd he informed the plaintiff's pleader that a new date would be fixed for the inquiry, of which notice would be given to the parties. Notwithstanding this, on the 23rd the arbitrator took evidence for the defendant in the absence of the plaintiff and his pleader. All these proceedings were held before the arbitrator received an order of the Court extending the time for delivery of the award up to the 26th October. On the 27th September he directed the parties to be informed that the investigation would be held on the 5th October. On the 4th October the plaintiff presented a petition praying the arbitrator to summon witnesses and to take documentary evidence, and upon this nothing definite was settled at the time; but after the pleaders had left, the arbitrator passed an order rejecting the petition, on the ground that the evidence sought to be produced was unnecessary. On the same date and on the 5th and 6th October he took evidence for the defence in the absence of the plaintiff and his pleader. On the 10th he rejected a petition by the plaintiff praying for further time to produce evidence, and complaining of his having taken evidence in the plaintiff's absence and having received in evidence a fabricated document. On the 25th October the arbitrator delivered his award in favour of the defendant. Subsequently, upon objections made by the plaintiff, the Court set aside the award, and directed that the trial of the suit should proceed.—*Held* that, although no case of "corruption" within the meaning of s. 521, cl. (a), of the Civil Procedure Code had been made out against the arbitrator, the circumstances above stated amounted to "misconduct," and the award was, therefore, bad in law, and had rightly been set aside. *Soobal Thakur Opadeeah v. Panchanund Tikka, S. D. A. Bengal, 1848, p. 115, Reedoy Kristo Mozoomdar v. Puddo Luchun Mujumdar, 1 W. R., 12, Sada Ram v.*

## ARBITRATION—continued.

## 8. AWARDS—continued.

*Beharce, S. D. A. N. W., 1864, Vol. 2, p. 399, Paru Dass v. Khoobee, S. D. A. N. W., 1861, Vol. 2, p. 199, Howard v. Wilson, I. L. R., 4 Calc., 231, Bhagirath v. Ram Ghulam, I. L. R., 4 All., 283, Wazir Mahton v. Lulit Singh, I. L. R., 7 Calc., 166, Nainsukh Rai v. Umadai, I. L. R., 7 All., 273, and Pestonjee Nussercanjee v. Manockjee, 12 Moore's I. A., 112, distinguished. GUNGA SAHAI v. LEKHIRAJ SINGH . . . I. L. R., 9 All., 253*

128. ———— *Omission of arbitrators to act in conformity with the rules of evidence.*—It is not a valid objection to an award that the arbitrators have not acted in strict conformity with the rules of evidence. *GUPPU v. GOVINDA-CHARYAR . . . I. L. R., 11 Mad., 85*

129. ———— *Civil Procedure Code, s. 521—Misconduct of arbitrators—Ground for setting aside award.*—Where a suit was referred to arbitration, and objection was taken to the award on the ground that one of the arbitrators had not attended a meeting when witnesses were examined by the other arbitrators:—*Held* that the award was invalid by reason of misconduct on the part of the arbitrators within the meaning of s. 521 (a) of the Code of Civil Procedure. *THAMMIRAJU v. BAPIRAJU [I. L. R., 12 Mad., 113]*

130. ———— *Misconduct of arbitrators—Application to have award set aside—Ground for setting aside award.*—On an application to have an award set aside by reason of misconduct on the part of the arbitrators, their action alleged was *held* not to amount to misconduct, and, therefore, the defendants were not entitled to have the award set aside. *TOOLSEE MONEY DASSEE v. SUDEVI DASSEE [I. L. R., 28 Calc., 361 3 C. W. N., 347]*

131. ———— In another case heard at the same time and between the same parties, the facts were these:—The first meeting of the arbitrators was held on the 9th January without any notice to the defendants. It was alleged that nothing was done at this meeting. On that day the arbitrators sent a notice to the appellants appointing the next day (10th) at 6-30 P.M. for the next meeting. The defendants' attorney thereupon wrote protesting, and asked the arbitrators not to proceed, as they intended to apply to the Court. No notice of this protest was taken by the arbitrators, and they proceeded with the arbitration on the 10th in the absence of the defendants. On the 11th the defendants' attorney received a notice that the arbitrators would hold a meeting on the 12th at 8 A.M. A meeting was held on that day in the absence of the defendants, and an award was made decreeing the suit. *Held* that the arbitrators did not give the defendants a fair and reasonable opportunity of being heard, and were guilty of such misconduct as was sufficient to vitiate the award. *Semble*—The *ex-parte* meeting on the 10th was alone sufficient to warrant the Court in setting aside the award. *TOOLSEYMONY DASSEE v. SUDEVI DASSEE . . . 3 C. W. N., 361*

## ARBITRATION—continued.

## 8. AWARDS—continued.

132. ————— Ground for set-

to an irregular course of conduct on the part of the arbitrator. Where an arbitrator received certain papers and documents from the defendants in a suit referred to his arbitration, together with a letter from

133. ————— Civil Procedure Code, ss. 508, 514, 521—Omission to fix time for

to the action of the Court, must be taken to have waived any objection to the award. The mere circumstance of an arbitrator having first tendered and then withdrawn his resignation does not formally divest him of his character as arbitrator. *Jaymangal Singh v. Mokun Ram Morwarre*, 23 W. R., 429 referred to. *HAB NARAIN SINGH v. BHAGWANT KWAR* . . . . . I. L. R., 10 All, 187

## ARBITRATION—continued.

## 8. AWARDS—continued.

delivery of the award under s 114 of the Code of

treated as enlarging it. The judgment in *Chanda Mal v. Har Ram*, I. L. R., 8 All, 548, approved. Order to be that the suit should proceed. Neither party to be entitled to costs in either Court below after the first judgment with regard to the stage at which the objection was taken; and the costs prior to that to abide the issue. *HAB NARAIN SINGH v. CHAUDHRAIN BHAGWANT KWAR*

[I. L. R., 1 All, 300  
I. L. R., 18 I. A., 355

The principle of this case is applicable also to arbitration under s 221 of the N.-W. P. Land Revenue Act (XIX of 1873) *GOVRI SHANKAR v. BADDAN LALL* . . . . . I. L. R., 14 All, 347

134. ————— Omission to fix time for delivery of award—Award not signed by

137, followed. *MUTHUKUTTI NAYAKAN v. AGHA NAYAKAN* . . . . . I. L. R., 18 Mad., 22

135. ————— Civil Procedure Code, ss. 514, 521—Enlargement of time for award,

tion was granted, and the award was made within the time so extended, and a decree was passed in its terms.

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SOMASTHURAN . . . . . I. L. R., 14 All, 343

136. ————— Civil Procedure Code, ss. 514 and 521—Power of Court to extend time for making award.—A Court has power to act under s 514 of the Code of Civil Procedure at any time before the award is actually made, whether the

[I. L. R., 14 All, 343

137. ————— Civil Procedure Code (1882), ss. 508, 521—Delivery of an award.—A suit was, at the instance of the plaintiff and defendants, referred to an arbitrator. The arbitrator made his award within the period fixed by the order of reference, but did not submit it to the Court until two days later. Held that the award was valid

**ARBITRATION—continued.****8. AWARDS—continued.**

under Civil Procedure Code, s. 508. **ARUMUGAM CHETTI v. ARUNACHALAM CHETTI**

[I. L. R., 22 Mad., 22

**138.** ——— *Validity of award—Omission to fix time for sending in—Act VIII of 1859, s. 318.* Where no time had been fixed in the order directing the award for sending in the award, the award is, under s. 318, Act VIII of 1859, invalid. **GANGAGOBINDA v. KULIPRASANNA NAIK**

[1 B. L. R., S. N., 13: 10 W. R., 206

**139.** ——— *Omission to fix time for delivery of award—Civil Procedure Code, 1859, s. 315.* Where the lower Appellate Court omitted in its order referring the case to arbitration to fix a time for the delivery of the award, as directed by s. 315 of Act VIII of 1859, but both the parties permitted the reference to proceed and took part in the proceedings, without making any objection until after the award was delivered, and when the omission in the order of reference could work no injury to either party, the High Court saw no reason why the omission should be held to avoid the award. **MUBARIK ALI v. KADIR BUKSH**

. 7 N. W., 351

**140.** ——— *Award made out of time—Civil Procedure Code (Act XIV of 1882), ss. 506, 514.* — An appeal was preferred against a decree of an original Court dismissing a suit, and the Appellate Court sent the case back for the purpose of certain evidence being taken, and certified to it. Pending that being done, the parties applied to the Appellate Court to refer the case to arbitration, and that Court referred that application to the original Court for disposal, although the case was still pending on its own file for disposal. Subsequently another application was made to the original Court to refer the case to arbitration, and on the 10th May the record was sent to the arbitrator with directions to submit his award within seven days. On the 12th September, as the award had not been sent in, the original Court passed an order recalling the record, and subsequently the award of the arbitrator, dated the 12th September, was filed. The original Court thereupon forwarded the record to the Appellate Court for its decision. Objections were taken to the award, but overruled, and the Appellate Court passed an order directing the case to be sent back to the original Court, with orders to pass a formal decree in accordance with the award of the arbitrator. *Held* that the award was bad in law, because the time within which it was directed to be made had never been enlarged, and the Court's order of the 12th September recalling the record could not be taken as an indication that the time was enlarged. **BHUGWAN DASS MARWARI v. NUND LALL SEIN**

[I. L. R., 12 Calc., 173

**141.** ——— *Award made out of time—Civil Procedure Code, s. 521—Arbitration.* — Under s. 521 of the Civil Procedure Code, the rule that no award shall be valid unless "made" within the period fixed by the Court, is equivalent to a rule that the award must be "delivered" within that period. Upon a reference to the arbitration of

**ARBITRATION—continued.****8. AWARDS—continued.**

three persons, the Court ordered that the award made by them should be filed on the 19th September 1885. The award was not filed on that date, but was signed by two of the arbitrators on that date, and by the third arbitrator on the 20th September, on which day it was filed. It had been agreed that the opinion of the majority should carry the decision. *Held* that the award was not "made within the period fixed by the Court" within the meaning of s. 21 of the Civil Procedure Code. **BEHARI DASS v. KALIAN DAS**

[I. L. R., 8 All., 543

**142.** ——— *Award made out of time—Civil Procedure Code, s. 521—Arbitration—Order fixing time, or enlarging time fixed, for the delivery of award requisite—Civil Procedure Code, ss. 508, 514, 522—Decree in accordance with award.* — The law contained in ss. 508 and 514 of the Civil Procedure Code requires that there shall be an express order of the Court fixing the time for delivery of the award or for extending or enlarging such time; and the mere fact that the Court has passed a decree in accordance with the award cannot be taken as affording a presumption that an extension of time was given. An award which is invalid under s. 521 of the Civil Procedure Code because not made within the period allowed by the Court, is not an award upon which the Court can make a decree, and a decree passed in accordance with such an award is not a decree in accordance with an award from which no appeal lies with reference to the ruling of the Full Bench in **Luchman Das v. Brijpal**, I. L. R., 6 All., 174. **CHUBA MAL v. HARI RAM**

I. L. R., 8 All., 548

**143.** ——— *Award made out of time—Civil Procedure Code, ss. 508, 521, 522, 622—Act VIII of 1859, s. 318.* — An order of reference to arbitration was made on 21st January. Six weeks' time was allowed for the return of the award. No application was made for extension of time. The award having been returned on 8th May, the Court refused to give judgment in accordance with it, under s. 522 of the Code of Civil Procedure, on the ground that it was not valid. *Held*, on an application under s. 622 of the Civil Procedure Code, that the award was invalid. **SIMSON v. VENKATAGOPALAM**

I. L. R., 9 Mad., 475

**144.** ——— *Making and filing award—Award made, but not filed within the time specified by order of Court—Civil Procedure Code (Act XIV of 1882), ss. 508, 514, 521.* — A suit for dissolution of partnership and all matters in dispute between the parties thereto were, by Judge's order, dated 18th July 1887, referred to the arbitration of A and B. The time for making and filing the award was by subsequent order extended to the 18th May 1888. The award was made on that day, but was not filed until the 18th June 1888. The second defendant obtained a rule calling on the other parties to show cause (*inter alia*) why the award should not be set aside by reason of its not having been filed in time. *Held* that the omission to file the award on or before the 18th May

## ARBITRATION—continued.

## 8. AWARDS—continued.

... consent-  
CHUNDER  
... R., 183

... Court, although not entirely approving of certain  
decisions of the High Court (*Satanath Biswas v.*  
*Ram*  
*erjee, 6*  
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*ROKASHI*

[I. L. R., 11 Calc., 37]

147. ——— Parties not all  
joining in reference—Submission to arbitration by  
one of several defendants.—A having brought a suit  
against B and two of his tenants for possession of  
certain lands of which he alleged he had been dis-  
possessed by the defendants in 1278, it was arranged  
between A and the defendant B that the matter  
should be referred to arbitration. Arbitrators were  
accordingly appointed, and their award having been  
given in favour of A, judgment for the plaintiff was  
recorded in terms of that award. B then appealed on  
the ground that the other defendants had not joined  
in the agreement to submit the matter to arbitration,  
and the judgment was set aside, and the case re-  
manded for re-trial. On remand the plaintiff's suit  
was dismissed, and the order of dismissal was upheld  
by the lower Appellate Court. Held, on further  
appeal by the High Court, that the fact of the  
tenants not having joined in the submission to arbi-  
tration did not vitiate the award, and that, as be-  
tween A and B, the original decision of the Court of  
first instance in terms of that award must be re-  
stored. *BISHOKA DASIA v. ANANTO LALL PAIR*

[4 C. L. R., 85]

## ARBITRATION—continued.

## 8. AWARDS—continued.

148. ——— Parties not all  
joining in reference—Award made without all par-  
ties consenting to arbitration.—*Quere, per JACK-*  
*SON, J.*—What is the effect of an award arrived at  
in a pending suit which was referred to arbitration  
by an order of Court otherwise than by consent of  
all the parties? *DOORGA CHURN THAKOOR v. KALLY*  
*DOSS HAZRAH* . . . 10 W. R., 483

149. ——— Parties not all

150. ——— Award by three

decision of any less number of persons so nominated.  
Three only of the arbitrators nominated were pro-  
ceeding with the arbitration, and one had declined  
to act. The Court which made the reference released,  
in favour of the plaintiffs in the suit in which the  
reference was made, the attachments existing on

permitted the arbitrators nominated to authorize  
either of the parties to collect the debts attached,  
inasmuch as the agreement was unaccompanied by  
any stipulation that a less number than the whole of  
the arbitrators could determine whether such per-  
mission should be given, the act of the three arbi-  
trators which led to the issue of the order could not  
be supported, and that the last portion of that order  
was *ultra vires*, and must be declared void. *PAN-*  
*MESHAH DAT v. HARI DAIK* . . . 7 N. W., 357

151. ——— Award made by  
more arbitrators than were appointed.—An award  
was held invalid, among other reasons, because it  
purported to be the award of four persons, whereas  
the order of reference was addressed only to three.  
*PHIRAN v. BAHARAN* . . . 7 N. W., 367

*ESTABLISHING TO THE CHAIRMAN OF THE BOARD OF  
C. FAKHER CHAND* . . . I. L. R., 7 All., 123

153. ——— Omission of pro-  
vision for difference of opinion and award by major-  
ity—Ground for setting aside award.—Where an  
order of reference to arbitration does not provide for  
difference of opinion among the arbitrators, and for  
authorising a majority to decide the case, the award

## ARBITRATION—continued.

## 8. AWARDS—continued.

will, on objection taken, be set aside. *FUTTEH SINGH v. GANGO* . . . . . 4 W. R., 4

154. ————— *Omission of provision for difference of opinion.*—The mere absence of a clause in the order of reference providing for a difference of opinion between the arbitrators cannot vitiate the award where there is no such difference of opinion. *GOUR CHUNDER BHUTTACHARJEE v. SODOY CHUNDER NUNDEE* . . . . . 17 W. R., 30

155. ————— *Award by majority of arbitrators.*—Where several arbitrators are appointed, and the parties do not agree to be bound by the act of the majority, the award, in order to be valid and binding, must be concurred in and executed by all the arbitrators. *SURUJEET NARAIN SINGH v. GOUREE PERSHAD NARAIN SINGH* 7 W. R., 280

156. ————— *Award made by majority of arbitrators.*—Where the terms of a submission to arbitration give no authority for the majority of the arbitrators to make the award, it should be made by the whole of the arbitrators. An award made by the majority only would not be a valid award. *INTHE MATTER OF THE PETITION OF JUNGLEE RAM. JUNGLEE RAM v. RAM HEET SAHOY* [19 W. R., 47

157. ————— *Award made by majority of arbitrators—Civil Procedure Code, 1882, ss. 506, 509, 510—Refusal of minority of arbitrators to act.*—Where the parties agreed to refer a suit to arbitration, but no provision was made that a decision by the majority of arbitrators should be binding, and two of five arbitrators withdrew,—*Held* that a decision by the majority was invalid. *GURUPATHAPPA v. NARASINGAPPA* [I. L. R., 7 Mad., 174

158. ————— *Award made by arbitrators unwilling to act—Refusal of arbitrators to act—Civil Procedure Code, s. 510.*—It is an essential principle of the law of arbitration that the adjudication of disputes by arbitration should be the result of the free consent of the arbitrators to act; and the finality of the award is based entirely upon the principle that the arbitrators are judges chosen by the parties themselves, and that such judges are willing to settle the disputes referred to them. Where certain matters were referred to arbitrators who refused to act, and the Court of first instance passed an order directing them to proceed and to make an award,—*Held* that all proceedings taken by the arbitrators in obedience to the order of the Court directing them to arbitrate against their will were null and void. *SHIBCHARAN v. RATBRAM*

[I. L. R., 7 All., 20

159. ————— *Award partly by fresh arbitrators appointed against consent of parties—Civil Procedure Code, 1877, s. 510.*—Where two of five arbitrators nominated by the parties to a suit and appointed by the Court had not consented before, and after appointment declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the

## ARBITRATION—continued.

## 8. AWARDS—continued.

suit,—*Held* that, under the circumstances, the appointment of the new arbitrators was not warranted by the provisions of s. 510 of the Code of Civil Procedure, and that the order of reference to such arbitrators, the award made by them, and the decree passed upon the award, were illegal. *PAGARDIN RAVUTAN v. MOIDINSA RAVUTAN*

[I. L. R., 6 Mad., 414

160. ————— *Award made by some only of arbitrators—Death of one of several arbitrators.*—Matters in dispute were referred to the arbitration of five persons, of whom four made their award on 27th August 1875. On 3rd September, the same arbitrators granted an application for re-hearing. Before the matter was re-heard, one of the four died, and an order striking off the application was made by two of the surviving arbitrators. *Held* that the award was not a valid and final award. *BOONJAD MATHOOR v. NATHMOO SHAHOOR*

[I. L. R., 3 Calc., 375; 1 C. L. R., 455

161. ————— *Award made by some only of arbitrators—Absence of some of arbitrators.*—A case was referred to the arbitration of five persons, with a proviso that in the event of any two of the arbitrators being absent, the arbitration should be continued by the other three. Two of the arbitrators named were the pleaders on either side, and these two, with the consent of the parties, ceased to act as arbitrators, but argued the matter before the other arbitrators. *Held* that the award made by the other three arbitrators named was a valid award. *DEBENDRA NATH SHAW v. AUBHOY CHURN BAGCHI* [I. L. R., 9 Calc., 905; 12 C. L. R., 525

162. ————— *Award by umpire and one arbitrator without provision for appointment of umpire—Agreement to refer not providing for disagreement of arbitrators—Appointment of umpire by Court—Civil Procedure Code, ss. 508, 509, 523—Application to set aside award.*—In an agreement to refer certain matters to arbitration, which was filed in Court under s. 523 of the Civil Procedure Code, and on which an order of reference was made by the Court, no provision was made for difference of opinion between the arbitrators, by appointing an umpire or otherwise. The arbitrators being unable to agree upon the matters referred, the Court, on the application of one of them, appointed an umpire and directed that the award should be submitted on a particular date. An award was made by the umpire and one arbitrator, without the concurrence of the other arbitrator, and submitted to the Court, which passed a decree in accordance with its terms. *Held* that, in the present case, there had been no legal award such as the law contemplated, inasmuch as the agreement to refer gave the Court no power to appoint an umpire, and required that the award should be made by the arbitrators named by the parties. *Held* that s. 509 and the other sections preceding s. 523 of the Civil Procedure Code, relating to the power of the Court to provide for difference of opinion among the arbitrators, were only made applicable to cases coming under s. 523, so far as their

**ARBITRATION—continued.****8. AWARDS—continued.**

provisions were consistent with the agreement filed under that section. **MUHAMMAD ABID v. MUHAMMAD ASHGAR** . . . **I. L. R., 8 All. 64**

**163.** ————— *Umpire appointed contrary to agreement—Decision by majority of arbitrators.*—B submitted to arbitration the matters in dispute between himself and the other parties to a suit, on the terms that an umpire should be selected from seven persons whom he named. These terms were not objected to by the other side.

DESOUZA

4 Mad., 120

**164.** ————— *Award by umpire and one arbitrator—Refusal of arbitrator to attend.*—Held that an award made by one of the arbitrators and the umpire in the absence of second arbitrator, who declined to attend, was not a valid award. **BUSUNT RAI v. GRIDHAREE SINGH**

[3 Agra, 93]

valid. **KUPU RAO v. VENKATARAMAYYAR**

[I. L. R., 4 Mad., 311]

**166.** ————— *Partial disagreement of arbitrators.*—A partial disagreement of two arbitrators does not nullify their award as a whole. **PANAGOLAH v. TUNEEGOODDEEN**

[3 W. R., 32]

**167.** ————— *Omission to sign award at same time—Procedure—Act VIII of 1859, s. 395.*—An award of arbitrators, to be legal, must be completed and signed by each in the presence of the whole of them. **IN THE PETITION OF JAY MANGAL SINGH**

[3 B. L. R., A. C., 82; 11 W. R., 433]

**168.** ————— *Omission to sign award at same time—Act VIII of 1859, s. 327.*—Where, on a reference to arbitration, the case had

**ARBITRATION—continued.****8 AWARDS—continued.**

been regularly heard by all the arbitrators sitting together, and an award been drawn up and signed by them, the mere omission of the arbitrators to sign the award at the same time and in each other's presence does not invalidate the award. **BIROOSUNDARI DASI v. MAKHUN LAL DEY** . . . **8 B. L. R., 128**

But see per **NORWAN, J.**, in **JAY MANGAL SINGH v. MOHAN RAM MARWARI**

[8 B. L. R., 130 note, and 319 note; 12 W. R., 397]

**169.** ————— It is necessary,

**170.** ————— *Omission of all*

**171.** ————— *Award not signed by all the arbitrators—Civil Procedure Code, 1859, s. 312—Division of award.*—The parties to certain suits having agreed to submit to arbitration, the suits were so referred under Act VIII of 1859, s. 312. After this reference, the parties agreed by an *ikarnama* to submit the same suits, together with other matters, to the arbitration of five persons, the effect being to withdraw the first submission and substitute the new agreement. Before these arbitrators arrived at a final conclusion, the parties by a *namah* compromised the whole of the subjects of dispute, and afterwards an award was drawn up in the terms of the *namah* and signed by two of the arbitrators and the head arbitrator. When the award was brought before the Subordinate Judge, he considered it had been made *ultra vires* in respect of those matters which were not involved in the suits originally referred, and accordingly made a decree only in those suits corresponding with the terms of the award. Some of the defendants applied to the Subordinate Judge to have the effect of a decree given to that portion of the award which was left outstanding by the first decision. This application was decreed and the remainder of the award enforced. An appeal to the Judge was dismissed with cost. Held that the award was illegal because it was not

## ARBITRATION—continued.

## 8. AWARDS—continued.

signed by all the arbitrators, and there had been no agreement to abide by the decision of the majority, or that the voice of the umpire should prevail. *Held*, however, that, as the parties concerned did not take steps to set the Subordinate Judge right, the High Court could not interfere, but that the effect of the decision was to dispose of the award altogether, and not to divide it into two parts, one of which might form the foundation of a future judgment. *Held* that the application to give effect to the unenforced portion of the award ought to have been dismissed. *NEM ROY v. BHABU ROY*

[21 W. R., 129]

172. ————— *Signing award after tender of resignation by one arbitrator.*—Where one of the arbitrators, before duly signing the award, tendered his resignation in a letter to the Judge, but was induced to withdraw it, and afterwards signed the award, — *Held* that the arbitrator who first tendered and then withdrew his resignation did not formally divest himself of his character of arbitrator, and was therefore not *functus officio* when he signed the award, which was consequently valid. *JOYMUNGAL SINGH BAHADOOR v. MOHUN RAM MARWARREE*

[23 W. R., 429]

Affirming decision of High Court in

[15 W. R., 38]

173. ————— *Resignation of arbitrator and subsequent withdrawal of resignation.*—Power to withdraw resignation.—An arbitrator has full power to retract his resignation of office before it is accepted. An award signed after the withdrawal of such resignation is a valid award. *JOYMUNGAL SINGH v. MOHUN RAM MARWARREE*

[15 W. R., 38]

174. ————— *Award irregularly made.*—Where an arbitrator imported into his proceedings a previous enquiry alleged to have been made by him, and relied upon admissions made in the former proceedings, his award was held to be bad, and the decision based upon it was set aside. *KANHYA CHAND GOSSAMEE v. RAM CHUNDER GOSSAMEE*

[24 W. R., 81]

175. ————— *Award made on special form of oath.*—Power of arbitrators to administer other than prescribed form of oath—Oaths Act (X of 1873), s. 13.—The matters in dispute in a suit were, by the desire of the parties to the suit, referred to arbitration. During the investigation of these matters by the arbitrators the plaintiff offered to be bound by the oath of the defendant administered on the Koran. The defendant agreed to take such oath, and such was accordingly administered to him by the arbitrators, and his evidence taken, and an award made based on the evidence so taken. On special appeal to the High Court by the plaintiff, he objected for the first time, the objection not having been taken in his memorandum of special appeal, that the arbitrators were not legally competent to administer such oath, and the evidence so taken could not form a valid basis of an award, and the award was therefore void. *Held per PEARSON, J., SPANKIE, J.,*

## ARBITRATION—continued.

## 8. AWARDS—continued.

dissenting, with reference to the legal competency of the arbitrators to administer the oath, that the objection was good, and that the arbitrators had no power to administer the oath. *Per PEARSON, J.*, that the statement of the defendant made on an oath illegally administered could not form a valid basis of an award, and the award was void and should be set aside. *Per SPANKIE, J.*, that the plaintiff having offered to be bound by the oath, and the defendant having agreed to take it, the plaintiff was bound by the evidence given on such oath; and that, as the arbitrators had by law and consent of parties authority to receive the evidence of the defendant, the substitution by them of an oath on the Koran for an affirmation did not, under the provisions of s. 13, Act X of 1873, invalidate such evidence, and consequently render the award based on such evidence void. *WALI-UL-LAH v. GHULAM ALI*

[1 L. R., 1 All., 535]

176. ————— *Vague and indefinite award.*—Civil Procedure Code (Act XIV of 1882), ss. 520, 521, 525, 526.—Certain disputes between parties were referred under a written agreement to an arbitrator, who in due course made his award. The plaintiff then applied to the Subordinate Judge to have the award filed in Court under the provisions of s. 525 of the Code of Civil Procedure. The defendants came in and objected to the award on the following amongst other grounds: that the agreement of submission was vague and indefinite, and did not clearly set out the matters in dispute. The Subordinate Judge overruled the objection without taking any evidence, and directed the award to be filed and a decree to be passed thereon. The plaintiff appealed. *Held* on appeal that, as the objection was well founded, inasmuch as the agreement to refer was vague and indefinite, and did not clearly lay down the power of the arbitrator in dealing with the subject-matter in dispute, and as it was not possible to make out what powers were intended to be conferred upon the arbitrator, the award should not be allowed to be enforced under the provisions of ss. 525 and 526. *BINDESSURI PERSHAD SINGH v. JANKEE PERSHAD SINGH*

[1 L. R., 16 Cal., 482]

177. ————— *Award referring parties to separate suit.*—Civil Procedure Code, 1882, s. 522.—After issues had been framed in a suit to wind up a partnership, the matter was referred to an arbitrator, who made his award, and with regard to certain property not part of the partnership property, he referred the parties to a separate suit. *Held* that the award was not illegal by reason of its comprising the reference of the parties to a separate suit. *VENKAYYA v. VENKATAPPAYYA*

[1 L. R., 15 Mad., 348]

178. ————— *Submission to arbitration.*—Award not disposing of all the matters referred—Finality of award—Validity of award—Waiver—Consent of parties—Partition. The ground for holding an award to be invalid on account of its not disposing of all the matters referred appears to be that there is an implied condition in the

## ARBITRATION—continued.

## 8. AWARDS—concluded.

submission of the parties to the arbitration that the award shall dispose of all. This condition may be waived by the consent of the parties before the arbitrators. The partition of joint estate, consisting

suit brought by one of the parties for partition of

SUKAL v. SALIQ RAM SUKAL

[I. L. R., 21 Cal., 599

L. R., 21 L. A., 47

179. ————— Reference

Uniraman v. Chathan. I. L. R., 9 Mad., 451,  
referred to. SATURNIT PERTAB BAHADOOR SAHI v.  
DULHIN GULAB KORA. I. L. R., 21 Cal., 459

Sharifood v. Green, 2 Mad., 225, referred to. RAM  
BAROSH v. KALLU MAL. I. L. R., 23 All., 135

## 9. PRIVATE ARBITRATION.

181. ————— Mode of submission to arbitration—*Civil Procedure Code*, 1542, s. 525 (1859, s. 327).—In arbitrations not started with the sanction of the Court, it is not necessary that the agreement should be reduced to writing before it can be binding. MUDHOO MANJEE v. NIRMAL SINGH DEO. 18 W. R., 633

## ARBITRATION—continued.

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performed, and the possession of the estate property be held under them. The arbitrators may be competent to prove, as well the submission as the making of the award, though no *khramamah* was ever executed. RAHAL SINGH v. SHIBO RAM SINGH

[W. R., 1864, 78

183. ————— Matters for submission—*Subject-matters of suit and other matters in dispute*.—There is nothing in Act VIII of 1859 to prevent parties who have a suit pending in Court from submitting the subject-matter of that suit and other matters in dispute to arbitration under s. 327. THAKOOR DOSS ROY v. HURRY DOSS ROY

[W. R., 1864, M.S., 21

184. ————— Agreement to refer to private arbitration by parties engaged in litigation—*Civil Procedure Code* (Act X of 1877), ss. 523 and 525.—Under ss. 523 and 525 of the *Civil Procedure Code* (Act X of 1877), parties to a suit as well as persons not engaged in litigation may agree to refer matters in dispute between them to private arbitration with out the intervention of the

ment. HARIYALABDAS KALLIANDAS v. UTTAMCHAND MANEKCHAND. I. L. R., 4 Bom., 1

185. ————— Power of arbitrators after making and delivery of award—*Revised*.—After an award has been made and handed to the parties, the functions of the arbitrators cease. They have no power afterwards to deal with an application for review of their decision. IN THE MATTER OF THE PETITION OF DUTTO SINGH. DUTTO SINGH v. DONAD BAHADUR SINGH. I. L. R., 9 Cal., 575

186. ————— Award signed by arbitrators at different times—*Civil Procedure Code*, 1559, s. 327. Award irregularly made. In the case of a private award where the arbitrators granted a new trial, and eventually disposed of the

others elsewhere for signature on a different date. —Held that the award ought not to be enforced under Act VIII of 1859, s. 327. NABER ALI v. MAJOO. 21 W. R., 377

held sittings extending over some months, and at

# ARBITRATION—continued.

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each sitting they came to a decision, either unanimously or by a majority, on different questions submitted to them. These decisions were entered on the minutes of their proceedings, and at their last sitting the arbitrators all agreed, and informed the parties that the decisions so arrived at constituted the final award, and gave directions for embodying these decisions in the shape of a formal document, which was drawn up on a subsequent day, but was signed by four only out of the seven arbitrators. The remaining arbitrators not being asked to sign it, they never did sign it. *Held* that the actual award was an oral award made by all the arbitrators on the last day of their joint sitting, and the drawing up of the formal award was a purely ministerial act to give effect to the previously completed judicial act. The omission to take the signatures of the minority of the arbitrators to the document which formed the record of the award was not fatal to the award. **DANDEKAR v. DANDEKARS** . . . I. L. R., 6 Bom., 603

188. . . . Document recommending solution of disputed points—*Act XIV of 1882, s. 525*.—A document, although headed as an "award" and signed by the arbitrators, which merely recommends a solution of the questions referred to arbitration, will not be treated by the Court as an award on an application made under s. 525 of the Code of Civil Procedure. **NUNDOLOLL MOOKERJEE v. CHUNDER KANT MOOKERJEE** . . . I. L. R., 11 Calc., 356

189. . . . Application to enforce award—*Time for filing award—Civil Procedure Code, 1859, s. 327*.—An award of arbitration, whether private or not, cannot be enforced unless the application for enforcement is made within six months from the date of award. **BHAYRUB JHA v. HUNOOMUN DUTT JHA** . . . 5 W. R., 123

190. . . . Time for filing award—*Limitation Act (XV of 1877), sch. II, art. 176—Civil Procedure Code, 1877, ss. 525, 526*.—Where an award was made and signed by the arbitrators on the 5th of August 1881, but was not delivered to the parties till the 13th of September following, *Seemle* that an application to file the award, made on the 25th of February 1882, under the provisions of s. 525 of the Code of Civil Procedure, was not barred by limitation. It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce the award, under s. 525 of the Code of Civil Procedure, from the time when he is in a position to enforce it. *IN THE MATTER OF THE PETITION OF DUTTO SINGH, DUTTO SINGH v. DOSAD BAHADUR SINGH . . . I. L. R., 9 Calc., 575*

191. . . . Filing award in Court—*Effect of not filing—Civil Procedure Code, 1859, s. 327*.—An arbitration award should be filed in Court. *Effect of not filing as defined in s. 327, Act VIII of 1859.* **SOOPHUL SINGH v. METHOO SINGH** . . . 1 W. R., 163

192. . . . *Effect of not filing—Validity of award.*—An award of arbitration may be valid without being enforced by the Courts,

# DIGEST OF CASES.

## ARBITRATION—continued.

9. PRIVATE ARBITRATION—continued.  
us, for instance, where possession under the award is shown. **MONESH CHUNDER MOITER v. BULORAM MOITER** . . . 6 W. R., 94

193. . . . *Effect of not filing—Validity of award.*—An award made by private submission may be valid and binding, though no proceedings under s. 327, Act VIII of 1859, have been taken to enforce it. **SURUBJEET NARAIN SINGH v. GOURIE PERSHAD NARAIN SINGH** . . . 7 W. R., 260

194. . . . *Effect of not filing—Civil Procedure Code, 1859, s. 327—Validity of award.*—Arbitration awards not brought into Court under s. 327, Act VIII of 1859, are not on that account necessarily invalid. **RAMYAD SAHOO v. DOOLAR SAHOO** . . . 9 W. R., 441

195. . . . *Objection by creditor to filing award.*—The plaintiff applied to file an award and for a decree in terms thereof, to which the defendant consented. A, a creditor of the defendant, thereupon applied to be made a party to the suit and objected to the filing of the award and to the decree, alleging that the award was fraudulent and fictitious, and had been made in order to save the defendant's property from his creditors. The Subordinate Judge made A a party to the suit, and refused the plaintiff's application. On application to the High Court, *Held* that the Judge was bound to file the award, the defendant having raised no objection to it and no illegality appearing on the face of it. **DUNGAESI DIPCHAND v. UJAMSI VELSI** . . . 20 W. R., 420

196. . . . *Obligation to file—Suit to enforce award not filed—Civil Procedure Code, 1859, s. 327.*—A suit lies to enforce an award made without the intervention of a Court of Justice. The procedure provided in s. 327 of the Civil Procedure Code is not imperative upon a plaintiff who seeks to enforce an award so made. **PALANIAPPA CHETTI v. RAYAPPA CHETTI** . . . 22 Bom., 727

KOTA SEETAMMA v. KOLLIPURLA SOOBBIAH . . . 4 Mad., 119

197. . . . *Objections to filing award—Civil Procedure Code (Act XIV of 1882), ss. 520, 521, 525, and 526—Procedure where identity of award impeached—Power of Court to enquire into objection to file award—Jurisdiction.*—Where an application was made to a Subordinate Judge to file an award, and an objection was taken that the arbitrators had made their award several months before the date of the one sought to be filed, thus impeaching the identity of the award, and the Subordinate Judge, after an enquiry with regard to the several objections, ordered the award to be filed. *Held* that the order of the Subordinate Judge should be set aside, or the award be deemed not to have been filed. The only objections which the Court can enquire into under ss. 525

## ARBITRATION—continued.

## 9. PRIVATE ARBITRATION—continued.

and 526 of the Civil Procedure Code (Act XIV of 1882) are those which are specified in ss. 520 and 521, and these relate to cases in which the refer-

rather than a plaintiff, and of having an appeal open to him in the event of an unfavourable decision.

SAMAL NATHU v. JAISHANKAR DALSUKRAM

[I L R, 9 Bom., 254

the plaintiffs and defendant having been referred

an issue was framed with the consent of both parties "whether the award could be filed and enforced," and

HURO NATH ROY v. NISTAKINI CHOWDHRAIN

[13 C. L. R., 14

if even to make out the case in favour of argument, but both to allege cause and to prove it to the satisfaction of the Court. DANDEKAR v. DANDEKARS

[I L R, 6 Bom., 683

200. Civil Procedure Code, ss. 523, 526—Partnership—Agreement to refer disputes to arbitration.—The three parties to a deed of partnership agreed that in case of any dispute or difference the matter should be referred to the arbitration of persons chosen by each party to such dispute, and that in case any such party should refuse or fail to nominate an arbitrator, then the arbitrator named by the other party should nominate another arbitrator, and the two should nominate a third person as umpire. Certain differences having arisen among the three partners, two of them called upon the

## ARBITRATION—continued.

## 9 PRIVATE ARBITRATION—continued.

executors of the third to nominate an arbitrator under the terms of the deed, but they refused to do so. The first-mentioned partners then nominated an arbitrator, who in his turn nominated another, and, these having appointed an umpire, made an award. One of the partners at whose instance the matter in dispute had been referred to arbitration presented an application under s. 525 of the Civil Pro-

cedure within the meaning of s. 520 or s. 521 of the Code. Held that the word "parties," as used in s. 525, should not be confined to persons who are actually before the arbitrators; that if persons by an agreement have undertaken between themselves that, in the event of a certain state of things happening, a particular procedure shall be followed, which, under one state of circumstances, may be adopted in another, they should, for the purposes of s. 525, be regarded as parties to that arbitration; and that there was sufficient reason to show that the defendants

Willcox v. Storkey, L. R., 1 C. P., 671, and Re Newton and Hetherington, 19 C. B., N. S., 342, referred to. Held, also, that ss. 525 and 523 of the Code, read together, mean that the party coming forward to oppose the filing of the award must show cause, that is, must establish by argument, or proof, or both, reasonable grounds to warrant the Court in arriving at the conclusion that the award is open to any of the objections mentioned in s. 520 or s. 521, and it is not sufficient, when it is sought to make the award a rule of Court, for the defeated party to come and merely say up a verified petition that this or that ground referred to in ss. 520 and 521 existed against the filing. Sree Ram Chowdhry v. Denolundhoo Chowdhry, I L R, 7 Calc., 490, and Ichamoyee Chowdhrao v. Prosunna Nath Chowdhry, I L R, 9 Calc., 557, dissented from. Datto Singh v. Dosad Bahadur Singh, I L R, 9 Calc., 575, Dandekar v. Dandekars, I L R, 6 Bom., 663, and Chowdhry Martaza Hossein v. Beckunassara, L. R., 3 I. A., 209 26 W. R., 10, referred to. JONES v. LEDGARD

[I L R, 8 All., 340

201. Sufficient cause—Civil Procedure Code, 1882, ss. 525, 526.—Under

## ARBITRATION—continued.

## 9. PRIVATE ARBITRATION—continued.

ss. 525 and 526 of the Code of Civil Procedure the Court has full power to enter into the question of the sufficiency of the cause shown against the filing in Court of an award. *Dandekar v. Dandekars*, I. L. R., 6 Bom., 663, followed. *Ichamoyee Chowdhralee v. Prosunno Nath Chowdhry*, I. L. R., 9 Calc., 557, dissented from. IN THE MATTER OF THE PETITION OF DUTTO SINGH. *DUTTO SINGH v. DOSAD BAHADUR SINGH*. I. L. R., 9 Calc., 575

203. ————— Sufficient cause  
— *Civil Procedure Code (Act X of 1877)*, ss. 525, 526.—Where an application is made under s. 525 of the Code of Civil Procedure to have an award filed in Court, and it appears to the Court, on cause shown why the award should not be filed, that there is a reasonable dispute between the parties on any of the grounds mentioned in s. 520 or 521, the application should be dismissed. Under s. 525 of the Code of Civil Procedure, sufficient cause may be shown by affidavit or verified petition. *Sree Ram Chowdhry v. Denotundhoo Chowdhry*, I. L. R., 7 Calc., 490, and *Sashti Charan Chatterjee v. Tarak Chandra Chatterjee*, 8 B. L. R., 315, referred to. *ICHAMOYEE CHOWDHRALEE v. PROSUNNO NATH CHOWDHRY*  
[I. L. R., 9 Calc., 557]

204. ————— Sufficient  
cause—Objections to filing award—Setting aside award—*Civil Procedure Code, 1859*, s. 327.—In an application under s. 327 of Act VIII of 1859 to have an award filed in Court so as to be enforced as a decree, it was objected on behalf of the defendant, amongst other things, that the award, which determined the succession to a talukhdari registered under Act I of 1869, having been based on a certain will produced, which in terms referred to another will of the same testator not produced, there was miscarriage on the part of the arbitrators in making their award; the whole of the will, in the absence of the last-mentioned document, not having been before them. It appeared that the defendant in the proceedings before the arbitrators, notwithstanding the knowledge that this document was withheld, submitted nevertheless to take his chances of the arbitration; suggesting in fact favourable presumptions to himself in construing the will produced, or that the whole will not having been produced, it should be declared not to be operative, and that consequently the dispute should be determined according to the British law of succession as laid down by Act I of 1869, or according to custom, or according to the Mahomedan law of succession. Held that the award could not be set aside on the ground of the objection taken. According to the true construction thereof, the earlier sections are not incorporated into s. 327 of Act VIII of 1859, as they are into s. 326. The words "sufficient cause" in s. 327 should be taken to comprehend any substantial objection which appears on the face of the award, or is founded on the misconduct of the arbitrators, or on any miscarriage in the course of the proceedings, or upon any other ground which would be considered fatal to an award on an application to the Courts

## ARBITRATION—continued.

## 9. PRIVATE ARBITRATION—continued.

in England. *CHOWDHRI MURTAZA HOSSEIN v. BECHUNNISSA*

[L. R., 3 I. A., 209; 26 W. R., 10]

205. ————— Application to file private award—Objection to award, Effect of—Power of Court—*Civil Procedure Code*, ss. 520, 521, 525, 526.—Held by the Full Bench (PETHERAM, C.J., and PRINSEP, PIGOT, MACPHERSON, and GHOSE, JJ.):—Where an application is made to a Court for filing a private award, and objections are raised in a verified written statement, and the objections are such as fall within s. 521 of the Code of Civil Procedure, the Court is not bound to hold its hand and reject the application, but it is the duty of the Court to inquire into the validity of the objections raised and thereupon determine whether the award should be filed or not. *Per PRINSEP, PIGOT, and MACPHERSON, JJ.*—Where on such an application an objection is taken that the matters in dispute were never referred to arbitration, and is therefore not on the grounds mentioned in s. 521, the Court has no jurisdiction to deal with it, but should reject the application and refer the parties to a regular suit. *SUREAN RAOT v. BHIKARI RAOT*. I. L. R., 21 Calc., 213

206. ————— Civil Procedure Code (1882), ss. 520, 521, and 526—Refusal by Court to file award—"Grounds shown."—In s. 526 of the Code of Civil Procedure the word "shown" is not equivalent to "alleged," but it is necessary that one of the grounds mentioned in s. 520 or s. 521 should be proved to the satisfaction of the Court before the Court is justified in refusing to file the award. *Dutto Singh v. Dosad Bahadur Singh*, I. L. R., 9 Calc., 575, and *Dandekar v. Dandekars*, I. L. R., 6 Bom., 663, followed. *Hurynath Chowdhry v. Nistarini Chowdhralee*, I. L. R., 10 Calc., 74, and *Ichamoyee Chowdhralee v. Prosunno Nath Chowdhry*, I. L. R., 9 Calc., 557, dissented from. *JAGAN NATH v. MANNU LAT*. I. L. R., 16 All., 231

207. ————— Civil Procedure Code (1882), ss. 525 and 526—Objection to application to file an award in Court that one party had not agreed to refer any matter to arbitration—Jurisdiction of Court to determine whether the parties had or had not referred the matter in question to arbitration.—An objection to an application made under s. 525 of the Code of Civil Procedure that the parties had not agreed to refer to arbitration any matter, or had agreed to refer some only of the matters determined by the award, or that the document alleged to be an award was not an award of the arbitrators, is an objection which must be considered and determined under s. 526 upon evidence by the Court to which the application is made. *Chowdhri Murtaza Hossein v. Bechunnissa*, L. R., 3 I. A., 209, *Samal Nathu v. Jaishankar Dalsukram*, I. L. R., 9 Bom., 254, *Fenkatesh Khando v. Chanapavada*, I. L. R., 17 Bom., 674, *Lala Iswari Prasad v. Bir Bhanjan Tewari*, 8 B. L. R., 315; 15 W. R., F. B., 9, *Hussaini Bibi v. Mohsin Khan*, I. L. R., 1 All., 156, *Surjan Raot v. Bhikari Raot*, I. L. R., 21 Calc., 213, and *Muhammad Nawaz Khan v. Alam Khan*, I. L. R.,

## ARBITRATION—continued.

## 9. PRIVATE ARBITRATION—continued.

18 Calc., 414 L. R., 18 I. A., 73, referred to.  
AMRIT RAM v. DASRAT RAM L. L. R., 17 All., 21

suit. Sa  
I. L. R.,  
Rao, I. 1  
v. Dasrat  
Tajpur I

OF THE AWARD. THE COURT HELD THAT  
neither the decree nor the award was binding. Held

REDDI

210. ———— *Civil Procedure Code (Act XIV of 1882), ss. 525 and 526—Arbitration award—Denial of reference to arbitration—Jurisdiction of Court to determine the factum of reference—Appeal.—Held by a majority of the Full Bench (MATHERSON, J., dissenting) that when an application has been made under s. 525 of the Code of Civil Procedure and notice has been given to the parties to the alleged arbitration, the jurisdiction of the Court to order the award to be filed and to allow proceedings to be taken under it is not taken away by a mere denial of the reference to arbitration on an objection to the validity of that reference. *Amrit Ram v. Dasrat Ram, I. L. R., 17 All., 21*, followed. *MAHOMED WAHIDUDDIN v. HAKIMAN**

[L. L. R., 25 Calc., 787  
3 C. W. N., 529

211. ———— *Application to amend an award—Civil Procedure Code, 1859, s. 327.—Upon a motion to amend an award filed under s. 327 of the Civil Procedure Code, on the ground of obvious errors contained in it, it was held that the Court had no power, under s. 327, to*

## ARBITRATION—continued.

## 9. PRIVATE ARBITRATION—continued.

JEHANGIR HORMASJI . . . 10 Bom., 391

212. ———— *Award in criminal matter—Civil Procedure Code, 1859, s. 327.—When complaint has been preferred to a Criminal Court, and the Magistrate has directed that the sub-*

213. ———— *Award decid-*

JUALA SINGH v. NABAIN DAS

[L. L. R., 3 All., 541

214. ———— *Award in excess of terms of submission—Civil Procedure Code, 1877, ss. 525, 526—Agreement as to management of devasam.—An award made under s. 525, which is partly within, and partly exceeds, the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526 as to such portion*

[L. L. R., 3 Mad., 68

215. ———— *Award, dealing*

DER ROX . . . 4 C. L. R., 93

216. ———— *Private award,*

Court to give judgment upon it and pass a decree; not to order execution before such decree has been passed. *SAHEB RAM JHA v. KASHEEPATH JHA*

[21 W. R., 295

217. ———— *Civil Procedure Code, s. 525—Loss of award, procedure on.—When an award has been lost, a Court acting under*

## ARMS ACT (XI OF 1878).

ss. 1, cl. (b), and s. 5—Attachment and sale of arms in execution of a decree by Nazir of the Court—Public servant, Sale of arms by.—The sale of arms by the Nazir of the Court, in execution of a decree in discharge of

(b).

XI of

such

[I. L. R., 8 Bom., 443]

1. ——— s. 4—Possession of unserviceable firearms without licence.—A gun rendered unserviceable does not fall within

n Arms

thout a

"id., 60

2. ——— A revolver with a

vice-regal commission as a public servant, *dappa*, I. L. R., 7 Mad., 60, dissented from. QUEEN-EMPRESS v. JAYARAMI REDDI

[I. L. R., 21 Mad., 360]

3. ——— Arms—Parts of arms—Serviceable gun-barrel.—As a gun-barrel and

punishable under s. 19 of the Arms Act, *VIAPURI KANGANI*, I. L. R., 7 Mad., 70

ss. 4 and 5—Manufacture or possession

ss. 5 and 19.—A, having obtained a

QUEEN-EMPRESS v. BODAPPA

[I. L. R., 10 Mad., 131]

ss. 15 and 19—Arms—Possession of arms—Badami Talukha—Act XXXI of 1860, s. 32, cls. 1 and 2.—Cl. 2, s. 32 of Act XXXI of

## ARMS ACT (XI OF 1878)—continued.

VI of 1860 are in force in Badami amongst other places, is not an order of disarmament under cl. (1), s. 32 of Act XXXI of 1860. In the absence, therefore, of a notification, under s. 15 of Act XI of 1878, extending, with the previous sanction of the Governor General in Council, the provisions of the section to Badami, the possession of arms without a licence in that talukha is not punishable under s. 19. GOVERNMENT OF BOMBAY v. DADYAMA BARAPA

[I. L. R., 9 Bom., 478]

1. ——— s. 19—Unlicensed possession of

QUEEN-EMPRESS v. KHAJIM

[I. L. R., 8 Mad., 203]

2. ——— s. 19 (a)—Sale of sulphur and ammunition by agent of a licence-holder.—Sale of

3. ——— s. 19—Going armed without licence—Licence to carry arms, Production of—Retainer carrying arms.—A servant of a person

[I. L. R., 20 Cal., 444]

IN THE MATTER OF THE PETITION OF KALI NATH SINGH 3 C. W. N., 394

4. ——— s. 19, cl. (c)—"Going armed"—Presumption as to persons found carrying arms.—Where a person is found carrying arms apparently in contravention of the provisions of the Arms Act, it must be presumed, in the absence of proof to the contrary, that he is carrying such arms with the intention of using them should an opportunity of using them arise. *Queen-Emress v. Williams*, Weekly Notes, 1891, p. 208, explained and approved. QUEEN-EMPRESS v. BHUCE I. L. R., 15 All., 27

## ARMS ACT (XI OF 1878)—continued.

6. ——— s. 10.—*Unlawful possession of arms—Temporary custody of arms not for use as such.*—The mere temporary possession without a licence of arms for purposes other than their use as such, as, for instance, where a servant is carrying his master's gun to a blacksmith for repairs, or where a blacksmith has a gun left with him for repairs, is not an offence within the meaning of s. 10 of the Indian Arms Act, 1878. *Queen-Empress v. Williams, Weekly Notes, 117, (1891), 298, and Queen-Empress v. Burke, I. L. R. 15 All. 27, referred to. QUEEN-EMPRESS v. TOTA RAM*

(I. L. R., 16 All., 276)

8. ——— ss. 19, 27.—*Exemptions from provision of Arms Act—Government Notification 518 of the 6th March 1879—Government Notification 458 of the 18th March 1898—"Personal use" of arms—Arms carried and used by servant of exempted person.*—By a notification under s. 27 of the Arms Act (XI of 1878) issued by the Government of India, certain persons, amongst them Rajas and members of the Legislative Council of the Lieutenant-Governor of the North-Western Provinces, were exempted from the operation of ss. 13 and 16 of the said Act; but with this proviso, that, "except where otherwise expressly stated, the arms or ammunition carried or possessed by such persons shall be for their own personal use, etc., etc." Held that the terms of this proviso would allow of a person exempted under the notification above alluded to sending a servant armed with a gun into a neighbouring district to shoot birds for him, and that a gun so carried and used by the servant of the exempted person was in the "personal use" of the exempted person within the meaning of the notification. *QUEEN-EMPRESS v. GANOA DIN*

(I. L. R., 22 All., 118)

7. ——— s. 19.—*Order extending time for renewal of licences—Conviction for offence during extended time.*—An order extending the time for renewal of licences has the effect of keeping a licence previously granted practically in force, and a person cannot be convicted of an offence under s. 19 (f) of the Arms Act for a breach of its provisions within the extended time. *IN THE MATTER OF THE PETITION OF KALI NATH SINGH . . . 3 C. W. N., 394*

8. ——— s. 19, cl. (f), and s. 25.—*Unlawful possession of arms—Search-warrant, Contents of—"Possession," What evidence of, necessary where arms are found in common room of joint family house.*—When a Magistrate issues a search-warrant under s. 25 of the Indian Arms Act, 1878, it is necessary that he should record the grounds of his belief that the person against whom the warrant is issued has in his possession arms, ammunition, or military stores for an unlawful purpose. Where proceedings under the Indian Arms Act, 1878, in respect of the unlawful possession of arms are taken against a member of a joint Hindu family not being the head of such joint family, and arms are found in a common room of the joint family house, it is incumbent upon the prosecution to give good evidence that such arms are in the exclusive possession and control of the particular member of the joint family

## ARMS ACT (XI OF 1878)—continued.

who is sought to be charged with their possession. *QUEEN-EMPRESS v. SANGHAM LAL*

(I. L. R., 15 All., 129)

9. ——— ss. 19, 20, 29.—*Possession of or control over—Search, Legality of—Sanction to prosecute—Code of Criminal Procedure (Act V of 1881), ss. 55, 103, and 165.*—The licence of the accused for the possession of firearms and ammunition was cancelled in August 1897. He was suspected of being in possession of arms after the cancellation of his licence. On the 23rd of April 1899, the Assistant Magistrate of Purneah, with a number of police, went to the house of the accused to search for arms. They surrounded it, arrested the accused, and then searched his house. The police had no search-warrants, nor was there anything to show upon what charge the accused was arrested. Two gun stocks, some ammunition, and implements for reloading were discovered in the house. There was nothing to show that the sanction required by s. 29 of the Arms Act was given before proceedings were instituted against the accused. Accused was convicted and sentenced under ss. 19 and 20 of the Arms Act. Held that the conviction under s. 20 was not sustainable, but that the accused must be taken to have had arms and ammunition as defined by the Arms Act within the meaning of sub-s. (f) of s. 19 of that Act, and the conviction under that section must be confirmed. Held, further, that with respect to the question of whether or not any previous sanction had been given under s. 29 of the Arms Act, the Court was not unmindful of the suggestion that the charge in this case was, in the first instance, in respect of an alleged offence under s. 20 and not of one under s. 19; but that ss. 19 and 20 were so interwoven that it was difficult to see how an offence could be committed under the first paragraph of s. 20 unless an offence under one of the enumerated sub-sections in s. 19 had also been committed. It was not suggested that the charge here was an offence under the second paragraph of s. 20. *AMJED HOSSEIN v. QUEEN-EMPRESS . . . I. L. R., 27 Calc., 692*

[4 C. W. N., 750]

10. ——— s. 19, cl. (f).—*Notification 458 of the 18th March 1898—Exemptions from the operation of the Arms Act—Volunteers.*—A volunteer, being a person exempted in virtue of Notification 458, dated 18th March 1898, of the Government of India, is not exempted merely with reference to his duties as a volunteer, but generally (subject to the exceptions mentioned in the said notification). It is therefore not unlawful for a volunteer to possess fire-arms and to use the same. *QUEEN-EMPRESS v. LUKE*

(I. L. R., 22 All., 323)

11. ——— s. 19, cl. (f), and ss. 25, 30.—*Arms in a temple—Confiscation of arms used for purposes of worship—Police Inspector specially empowered—Licence to possess arms—Criminal Procedure Code (Act X of 1872), s. 579 and sch. IV—"Offences against other laws."*—A collection of fire-arms, consisting of four small cannons, four pistols, and thirty-one muskets, had been kept as objects of worship in a Sikh temple in Patna for upwards of two centuries. The Mohunt of the

**ARMS ACT (XI OF 1878)—concluded.**

temple neglected to take out a licence in respect of these arms under Act XI of 1878. A Police Inspector, who was appointed to see that the

Police Inspector. On a reference from the Sessions

s. 22—Master and servant—  
Master's liability for the criminal acts of his

and consent. The principle—"whatever a servant does in the course of his employment with which he is entrusted and as a part of it, is his master's act"—is applicable to the present case. *Attorney General v. Siddon, 1 Cr. and J., 220*, followed. *QUEEN-EMPRESS v. TYAB ALI*

[I. L. R., 24 Bom., 423]

s. 39—Sporting Licence—Rules under Arms Act.—In a district where bison are notoriously in the habit of injuring crops, a licence under form XI, rule 16 of the Indian Arms Act (1878) Rules (to kill wild beasts which injure crops),

**ARMY DISCIPLINE ACT, 1879 (42 & 43 Vic., c. 33).**

See SOLDIER . I. L. R., 11 Mad., 475

s. 144—Decree against person subject to military law—Stoppage of pay, Order for.—Where a decree was made against the defendant,

**ARMY DISCIPLINE ACT, 1879 (42 & 43 Vic., c. 33)—concluded.**

who was an officer in the Indian Army, the Court, under s. 144 of the Army Discipline Act, 42 & 43 Vic., c. 33, directed that the amount of the decree should be stopped and paid out of the pay of the defendant not exceeding one half thereof. *RAMESAY v. ANDERSON* . . . 7 C. L. R., 336

ss. 144, 151.

See SERVICE OF SUMMONS.

[I. L. R., 10 Mad., 319]

I. L. R., 11 Mad., 475

See SMALL CAUSE COURT, MOFUSSIL—  
JURISDICTION—ARMY ACT.

[I. L. R., 10 Mad., 319]

**ARMY DISCIPLINE ACT, 1881 (44 & 45 Vic., c. 58).**

s. 145—Soldiers in Indian Forces  
—S. 145 of the Army Act, 1881, is not applicable to soldiers of Her Majesty's Indian forces. *NATHUD BI v. JAFAR HUSAIN* . . . I. L. R., 8 Mad., 365

See SMALL CAUSE COURT, MOFUSSIL—  
JURISDICTION—ARMY ACT

[I. L. R., 10 Bom., 218]

I. L. R., 13 Calc., 143

ss. 148, 151.

See SMALL CAUSE COURT, PRESIDENCY  
TOWNS—JURISDICTION—ARMY ACT.

[I. L. R., 13 Calc., 37]

s. 151.

See ATTACHMENT—SUBJECT OF ATTACHMENT—PENSION, SALARY, OR ANNUITY.

[I. L. R., 9 Mad., 170]

I. L. R., 24 Calc., 102

See SMALL CAUSE COURT, PRESIDENCY  
TOWNS—JURISDICTION—ARMY ACT.

[I. L. R., 18 Calc., 144, 372]

s. 158—Taking in pawn medal or military decoration from a soldier.—Under the Army Act, 1881 (44 & 45 Vic., c. 58), s. 158, any person who takes in pawn a military decoration from a soldier is liable to punishment. Held that this section of the Army Act, 1881, is applicable to a person who takes a medal in pawn from a sepoy in India. *QUEEN-EMPRESS v. NARAYANNAH*

[I. L. R., 10 Mad., 108]

**ARMY DISCIPLINE ACT, 1883 (51 Vic., c. 4), s. 7.**

See SMALL CAUSE COURT, PRESIDENCY  
TOWNS—JURISDICTION—ARMY ACT.

[I. L. R., 18 Calc., 144, 372]

**ARREST.**

1. CIVIL ARREST

2. CRIMINAL ARREST

See CASES UNDER ATTACHMENT—ARREST OF PRISONER.

See CASES UNDER WARRANT OF ARREST.

**ARREST—continued.****pending Appeal.**

See **APPEAL IN CRIMINAL CASES—APPEALS FROM ACQUITTAL** I. L. R., 1 Calc., 281  
[I. L. R., 2 All., 340, 386]

**of Native Subject.**

See **CASES UNDER BENGAL REGULATION III of 1818.**

**Validity or otherwise of—**

See **CASES UNDER ESCAPE FROM CUSTODY.**

See **JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.**

[I. L. R., 25 Calc., 20  
L. R., 24 I. A., 137]

**1. CIVIL ARREST.**

**1. ——— Arrest pending enquiry into insolvency—***Application of judgment-debtor to be declared insolvent—Subsequent proceedings in execution against him—Civil Procedure Code (Act XIV of 1882), ss. 245B, 336, 337A, 344, and 349.*—G obtained a money-decree against M, and in execution applied for his arrest and imprisonment. Before the warrant of arrest was issued, but after M had appeared in Court in obedience to a notice under s. 245B of the Civil Procedure Code, another judgment-creditor applied for execution of another decree against him. Thereupon M applied, under s. 344 of the Civil Procedure Code (Act XIV of 1882), to be declared an insolvent, and in his application mentioned G as one of his creditors (s. 345). The Subordinate Judge referred to the High Court the question whether, pending the inquiry into M's insolvency, he could be arrested in execution of G's decree against him. *Held* that there was no provision in the Code to prevent the Court from issuing a warrant of arrest against him. Where, however, such a judgment-debtor is brought before the Court under a warrant of arrest, or comes before it upon notice under s. 245B, the Court has a discretionary power not to put the warrant in force under s. 349 or not to issue it under s. 336 (where the requisite notification has been published by the Local Government) if the applicant furnishes security for his appearance when called upon. In such cases the Court can also act under s. 337A of the Civil Procedure Code. **GANPAT BHAGYAT v. MAHADEV HARI**  
[I. L. R., 22 Bom., 731]

**2. ——— Arrest of a lunatic in execution of a decree—***Discretion of Court to order the arrest—Ground for disallowing application for arrest of judgment-debtor—Civil Procedure Code (Act XIV of 1882), s. 337A.*—Under the Code of Civil Procedure (Act XIV of 1882), a Court is not bound to order the arrest of a lunatic in execution of a decree passed against him. The power to order his arrest is discretionary. The lunacy of a judgment-debtor is good cause within the meaning of s. 337A of the Code for disallowing an application for his arrest. **BHANABHAI v. CHOTABHAI**  
[I. L. R., 22 Bom., 961]

**ARREST—continued.****1. CIVIL ARREST—continued.**

**3. ——— Arrest of debtor in execution of money decree—***Civil Procedure Code, 1882, ss. 245B, 337A, 339—Subsistence allowance.*—A decree by consent was made on 6th May 1896, ordering the defendant within one year to pay to the plaintiff Rs. 4,842 with interest and costs. On 14th May 1898 a notice was issued to the judgment-debtor to show cause why this decree should not be executed by his arrest and imprisonment: he pleaded poverty and "other sufficient cause," and the matter was set down for inquiry under s. 337A. When it came on, the Court, after hearing the evidence of the judgment-debtor, held that no cause had been shown why he should not be arrested, and that it was bound to order his arrest at once under that section, and subsistence allowance was ordered under s. 339. **GUBBOY v. RAMDOYAL CHOWBAY** . . . 2 C. W. N., 588

**4. ——— Suit for damages for arrest in execution of decree—***Malice—Reasonable and probable cause, Want of.*—A suit to recover damages on account of injuries caused by an arrest in accordance with a decree of a competent Court can only be maintained under special circumstances,—viz., the plaintiff must show (i) that the original action, out of which the alleged injury arose, was decided in his favour; (ii) that the arrest was procured without reasonable and probable cause; (iii) that the injury sustained was something other than an injury which has been or might have been compensated for by an award of the costs of the suit,—e.g., that he has suffered "some collateral wrong." Where a plaintiff must show an absence of reasonable and probable cause, malice is not alone sufficient to entitle him to a verdict. **RAJ CHUNDER ROY v. SHAMA SOONDARI DEBI**  
[I. L. R., 4 Calc., 583]

**5. ——— Malice, Proof of.**—To maintain such a suit, legal not actual malice is sufficient. **GOUTIERE v. CHARRIOL**  
[I. N. W., Part 2, 32: Ed. 1873, 91]

**6. ——— Privilege from arrest—***Privilege of party morando.*—Where a native of Patna came from Calcutta to Madras on 24th October on account of a suit pending, in which he was plaintiff, and, the case having been adjourned on 27th October for seven weeks, remained in Madras on account of the suit, and was arrested on 10th November,—*Held* that he was privileged under s. 642 of the Code of Civil Procedure. **IN RE SIVA BUX SAYUNTHARAM**  
[I. L. R., 4 Mad., 317]

**7. ——— Party in contempt of Court.**—A party against whom a writ of attachment for contempt has been issued is not entitled to his right of privilege from arrest while proceeding to Court or leaving Court on the hearing of his suit. **JOHN v. CARTER** . . . 4 B. L. R., O. C., 90

**8. ——— Party to suit—***Summary Procedure—Arrest under writ of Small Cause Court—Act X of 1877, s. 642.*—The general rule that a party to a suit is protected from arrest upon any civil process, while going to the place of trial, while attending there for the purpose of the

**ARREST—continued.****1. CIVIL ARREST—continued.**

Calcutta, must be governed by the English law, and not by s. 642 of the Civil Procedure Code. It is not a deviation sufficient to forfeit the privilege if the shortest road home is deviated from and a less crowded and more convenient road adopted. **IN THE MATTER OF SURENDRO NATH ROY CHOWDHURY**

[**I. L. R.**, 5 Cal., 108

9. ——— *Civil Procedure Code, 1877, s. 642—Arrest in execution of process of Revenue Court.*—S. 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." *Held*, therefore, where a person, who had been convicted by a Magistrate and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay

[**I. L. R.**, 4 All., 27

10. ——— *Civil Procedure Code, s. 642—Insolvent Act (11 & 12 Vict., c. 21), s. 51—Exemption from arrest on civil process redounding.*—The Commissioner in Insolvency committed an insolvent to jail by an order under s. 51 of the Insolvency Act, and he was released by order

11. ——— *Protection of arresting officers—Penal Code, s. 78.*—The arrest

12. ——— *Defendant as witness for plaintiff.*—A defendant in a suit summoned by, and examined as a witness for, the plaintiff, is entitled to protection from arrest on civil process during the time reasonably occupied in going

**ARREST—continued.****1. CIVIL ARREST—continued.**

to, attending at, and returning from, the place of trial **ATTASANY PATTAR & GOVIND NAMBIAH**

[4 Mad., 145

13. ——— *Summary execution—Small Cause Court, Mofussil—Act XI of*

arrested before he reached home under an execution issued against his person by the Court, and paid the amount to obtain his discharge. **DEPENNING v. DEBENDRONATH MOITRO** 9 W. R., 549

14. ——— *Power of High Court to release party arrested in execution of decrees of Presidency Small Cause Court—Civil Procedure Code, 1877, s. 642.*—Where a defendant

direct his release from custody. *Small Cause Courts in the Presidency towns are subject to the order and control of the High Courts. In the matter of Omrito Lall Dey, I. L. R., 1 Cal., 78, followed. IN THE MATTER OF JUGGESSUR ROY*

[5 C. L. R., 170

15. ——— *Witness—Bond*

*See IN THE MATTER OF OMRITO LALL DEY*

[**I. L. R.**, 1 Cal., 78

16. ——— *Witness—Held* that on the facts shown in the affidavit the prisoner was privileged as a witness at the time of his arrest. **IN THE MATTER OF OMRITO LALL DEY**

[**I. L. R.**, 1 Cal., 78

17. ——— *Civil Procedure Code, s. 349—Court, Power of, to release judgment-debtor after he is "imprisoned"—"Arrest" and "imprisonment."*—"Arrest" as used in s. 349 of the Civil Procedure Code (Act XIV of 1882) does not include "imprisonment." Therefore the power conferred on the Court under that section to release a judgment-debtor arrested in execution of a decree on a security being given by him ceases after he has been imprisoned or put into jail. *In the matter of Hastie, I. L. R., 11 Cal., 451, disapproved from 10*

**ARREST—continued.****1. CIVIL ARREST—concluded.**

*re Quarren, I. L. R., 8 Mad., 503, followed. MAHOMED HUSEIN v. RADHI. I. L. R., 12 Bom., 49*

**18.** ——— Arrest on a Sunday—*Lord's Day Act*.—Arrest under civil process of a mafussil Court on Sunday is legal in this country. *ANONYMOUS v. . . . 4 Mad., Ap., 62*

*See ABRAHAM v. QUEEN. 1 B. L. R., A. Cr., 17*

*See GRASEMAN v. GARDNER*

[3 W. R., Rec. Ref., 2

*See PARAM SHOOK DOOS v. RASHEED OOD DOWLAH. 7 Mad., 235*

**19.** ——— Arrest of pilot brig—*Privilege from arrest Statute 21 & 22 Vic., c. 126*.—A Government brig employed in supplying pilots to vessels at the Sandheads was arrested under proceeding in rem. *Held* that the brig, by 21 & 22 Vic., c. 126, had become the property of the Crown, and as such was entitled to the same exemption from arrest as all other Queen's ships, and that the proceeding in rem was therefore illegal. *BROWN v. THE PILOT BRIG "KEDGERIE" . . . 1 Hyde, 253*

**20.** ——— Discharge from arrest—*Undertaking by prisoner not to sue*.—The prisoner was required before his discharge to give an undertaking that he would bring no action for damages for illegal arrest or false imprisonment against the Judges of the Small Cause Court, the bailiff, the Jailor, or the judgment-creditor. *IN THE MATTER OF OMIRTO LAH DNY . . . I. L. R., 1 Calc., 78*

**2. CRIMINAL ARREST.**

**21.** ——— Arrest without warrant—*Criminal Procedure Code, s. 54—Powers of the police to arrest without a warrant—Penal Code (Act XLV of 1860), ss. 220 and 342*.—S. 54 of the Criminal Procedure Code (Act X of 1882) authorizes the arrest by the police, not only of persons against whom a reasonable complaint has been made, or a reasonable suspicion exists of their having been concerned in a "cognizable offence," but also of persons against whom "credible information" to that effect has been received. *Semhle*.—Where the arrest is legal, there can be no guilty knowledge "super-added to an illegal act" such as it is necessary to establish against the accused to justify a conviction under s. 220 of the Penal Code. It is only where there has been an excess by a police officer of his legal powers of arrest that it becomes necessary to consider whether he has acted corruptly or maliciously, and with the knowledge that he was acting contrary to law. *QUEEN-EMPERESS v. AMARSANG JETHA . . . I. L. R., 10 Bom., 508*

**22.** ——— Offence against opium laws.—The arrest of a person accused of an offence against the opium laws without a warrant is generally illegal except under the circumstances specified in s. 108 of the Code of Criminal Procedure. *REG. v. NARAYAN GANGARAM . . . 9 Bom., 343*

**23.** ——— Finding person with stolen property.—The police may, without any

**ARREST—continued.****2. CRIMINAL ARREST—continued.**

formal complaint, apprehend any person found with stolen property. *QUEEN v. GOWREE SINGH [8 W. R., Cr., 28*

**24.** ——— *Criminal Procedure Code, 1861, s. 140*.—S. 140 of the Code of Criminal Procedure did not apply to a case of arrest for dacoity made without warrant by a subordinate police officer in the presence of a head constable who authorized him to make the arrest. *QUEEN v. EMOO. QUEEN v. SAGUE BEWAR . . . 11 W. R., Cr., 20*

**25.** ——— Re-arrest on same charge of prisoner who has been discharged.—A prisoner who had been sent up for trial and who was discharged by the Deputy Magistrate was subsequently re-arrested by a sub-inspector on the same charge and sent up for trial. The Deputy Magistrate considered the second arrest to be illegal, and prosecuted the sub-inspector for wrongful confinement, and fined him. *Held* that the Deputy Magistrate was right, the discharge from custody having been a useless procedure if the accused immediately became liable to be re-arrested without fresh material for prosecution of the charge. *RAMPAS SADHOO v. ANAND CHUNDER ROY [19 W. R., Cr., 27*

**26.** ——— Right to option of release on bail—*Criminal Procedure Code, s. 55*.—Where a person is arrested by the police under the provisions of s. 55 of the Code of Criminal Procedure, he should always be given the option of release on reasonable bail being supplied. *IN THE MATTER OF THE PETITION OF DOULAT SINGH . . . I. L. R., 14 All., 45*

**27.** ——— Omission to notify substance of warrant—*Criminal Procedure Code (Act V of 1898), s. 80—Penal Code (Act XLV of 1860), s. 225B*.—An arrest by a police officer without notifying the substance of the warrant to the person against whom the warrant is issued as required by s. 80 of the Criminal Procedure Code is not a lawful arrest, and resistance to such an arrest is not an offence under s. 225B of the Penal Code. *SATISH CHANDRA RAI v. JODU NANDAN SING . . . I. L. R., 26 Calc., 749 [3 C. W. N., 741*

**28.** ——— Arrest by police on an order in writing—*Whether police obliged to show authority under which they act to person arrested—Resistance to such arrest—Escape from custody—Code of Criminal Procedure (Act V of 1898), ss. 56 and 80—Penal Code (Act XLV of 1860), s. 224*.—There is nothing extending s. 80 of the Code of Criminal Procedure to an arrest made by the police on an order in writing under s. 56 of that Code, so as to require that any information as to the authority under which the police are acting must be given to the person arrested in order to make it an arrest warranted by law. It may be desirable or even obligatory that, if called upon, the police officer making such an arrest should show the person arrested the authority under which he is acting, but to hold that he is bound to do so before

**ARREST—continued.****2. CRIMINAL ARREST—continued.**

he can properly arrest and detain in custody such a

[I. L. R., 27 Cal., 320  
4 C. W. N., 311]

29. ——— Warrant of arrest directed to police officer—Endorsement of warrant by another police officer to process-serving peons—*Legality of such endorsement—Peons not police officers—Arrest by peons—Rescue of persons arrested—Whether lawful arrest—Code of Criminal Procedure (Act V of 1898), ss 68 and 79*—A warrant of arrest was endorsed over to a Court sub-inspector for execution

used were convicted under various sections of the Penal Code of rescuing the persons arrested and obstructing the execution of the warrant of arrest. Held that the endorsement of the warrant by the Court head-constable to the peons did not make them competent to execute the warrant, that even if the peons had been legally appointed, they could not have made the arrest, inasmuch as they were not police officers within the terms of s. 79 of the Code of

in  
off  
DURG CHARAN JEMADAR v. QUEEN-EMPRESS  
[I. L. R., 27 Cal., 457]

DURGA JEMADAR v. GUNA NATH 4 C. W. N., 823

30. ——— Criminal Procedure Code (Act V of 1898), s. 79—Warrant, Endorsement upon, without any name—Penal Code

obstruction or escape an offence punishable within the terms of s. 224 of the Penal Code. DURG TEWARI v. RAHMAN BUKAR . . . 4 C. W. N., 85

31. ——— Arrest made by excise officer—Bengal Excise Act (Bengal Act VII of 1874), ss. 59, 40—Breach of excise rules—Penal Code (Act XLV of 1860), ss. 147, 225, 353—Rioting—Assaulting a public servant in exe-

**ARREST—concluded****2. CRIMINAL ARREST—concluded.**

took them to the neighbouring village and asked

**ARREST OF JUDGMENT.**

1. ——— Act XVIII of 1862, s. 41—Act XIII of 1865—Charge.—It ought to appear upon the face of a charge that it had been delivered

pre, but it did not appear in the caption of any

**ARTICLES OF ASSOCIATION.**

See CASES UNDER COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

See COMPANY—MEETINGS AND VOTING.  
[I. L. R., 15 Bom., 184]

See STAMP ACT, 1879, sch. I, art. 8  
[I. L. R., 23 All., 131]

**ARTIFICERS.**

See ACT XIII of 1859.  
[3 B. L. R., A. Cr., 32; 13 W. R., Cr., 26]

**ARTIZAN.**

See MADRAS TOWNS IMPROVEMENT ACT (III of 1871) I. L. R., 1 Mad., 174

**ASCETICS.**

Succession to property of—

See HINDU LAW—INHERITANCE—RELIGIOUS PERSON . I. L. R., 4 Cal., 543  
[5 N. W., 50  
I. L. R., 23 Mad., 303]

**ASSAM.**

Law as to pykes in—  
See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—PERSONS BY WHOM RIGHT MAY BE ACQUIRED.  
[I. L. R., 15 Cal., 100]

# ASSAM FRONTIER TRACTS REGULATION (II of 1880).

s. 2.

See HIGH COURT, JURISDICTION OF—CALCUTTA—CRIMINAL.

[I. L. R., 26 Calc., 874

# ASSAM LAND AND REVENUE REGULATION (I of 1886).

ss. 2, prov. (b), 12, and ss. 39, 151, and 154—*Settlement-holder, his rights under a settlement—Nisf-kherajdar, his rights to a settlement.*—The effect of ss. 39 and 151 of the Assam Land and Revenue Regulation, 1886, is that a settlement made by a Settlement Officer, unless interfered with by the Chief Commissioner, is final; but the settlement-holder does not thereby acquire any right to the land so settled as against any person claiming rights to it. The effect of an order by the Government of India before the passing of the Assam Regulation in regard to the right of a nisf-kherajdar to hold lands found upon survey to be in excess of his nisf-kheraj estate, and to obtain a settlement thereof, considered. In 1881 S, a nisf-kherajdar, obtained a settlement for a year of certain lands which were found upon survey to be in excess of his nisf-kheraj estate. Subsequently a pottah was granted to S for a portion of the excess lands, while the other portion was settled by the revenue authorities under a kobala pottah with M, who entered into possession under his settlement. In a suit by S, the nisf-kherajdar, for a declaration of his right to a settlement of the portion settled with M and for possession,—*Held* that, having regard to the provisions of s. 2, prov. (b), s. 12 of the Regulation, and the order of the Government of India, the nisf-kherajdar was entitled to a declaration of his right to a settlement, but in view of s. 154 he was not entitled to a decree for possession. MADHUB NATH SURMA v. MYARANI MEDHI . I. L. R., 17 Calc., 819

s. 59—*Rent suit—Suit for arrears due before Regulation came into force.*—In a suit for the recovery of arrears of rent accrued due before the Assam Land and Revenue Regulation of 1886 came into force, which was instituted on the 7th of July 1886, where it appeared that the plaintiff's name had been previously registered, but that the Chief Commissioner had issued no notification under s. 48 of the Regulation directing that the registers then in existence should be deemed to be registers prepared under s. 59 of the Regulation, and that the plaintiff's name had not been registered under the last-mentioned section:—*Held* that s. 59 applies to rent accruing due after the Regulation came into force, and not to rent already due on the date on which it came into force, and that, therefore, the suit was maintainable. BROJO NATH CHOWDHRY v. BRIMONI SINGH MONIPURI . I. L. R., 15 Calc., 227

ss. 65, 68, 70 (sub-ss. 2 and 3), and 71—*Act XI of 1859, s. 37—"Estate"—"Property"—Shikmi haziram rights.*—A purchaser of a part of a permanently-settled estate is entitled to the benefit of s. 71 of the Assam Land and Revenue Regulation, inasmuch as in s. 71 the words used are "property sold under s. 70," and the property

# ASSAM LAND AND REVENUE REGULATION (I of 1886)—concluded.

to which reference is made in s. 70 includes both an estate as well as a share in respect of which revenue has been separately apportioned. The object of s. 37, Act XI of 1859, is the same as that of s. 71, Regulation I of 1886. Those sections cannot be said to have different meanings, for, if it were to be held that the incumbrance which could be set aside under s. 71 of the Regulation I of 1886 must be an incumbrance actively created by the previous holder, it would amount to this, that any acquiescence or laches, either wilful or arising from pure negligence on the part of the holder, by which the talukh or estate becomes incapable in the hands of the purchaser of yielding the Government revenue, would be outside the scope of this section. MAHOMED NASIM v. KASI NATH GHOSE

[I. L. R., 26 Calc., 194  
3 C. W. N., 108

ss. 96 and 154—

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

[I. L. R., 23 Calc., 514  
I. L. R., 24 Calc., 751

s. 154—*Right to obtain a settlement—Jurisdiction of Civil Court.*—The question as to the right of a party to obtain a settlement from the Revenue authorities is not excluded from the jurisdiction of the Civil Court by the provisions of s. 154 of the Assam Land and Revenue Regulation. PATAN MARIA v. BHABIRAM DUTT BARNIA

[I. L. R., 24 Calc., 239  
1 C. W. N., 94

# ASSAULT.

See COMPOUNDING OFFENCE.

[6 N. W., 302

See HURT—CAUSING HURT.

[7 B. L. R., Ap., 25: 16 W. R., Cr., 3

Suit for damages for—

See EVIDENCE—CIVIL CASES—CRIMINAL COURT, PROCEEDINGS IN.

[2 B. L. R., A. C., 31: 12 W. R., 477

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—DAMAGES.

[4 B. L. R., A. C., 31: 4 W. R., 7  
I. L. R., 10 All., 49

1. ——— Criminal force—*Threatening gestures—Words.*—Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or, in the language of the Penal Code, is "about to use criminal force" to the person threatened, constitute, if coupled with a present ability to carry such intent into execution, an assault in law. Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as to make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In order to have the latter effect, the words must be such as clearly to show the party

**ASSAULT—concluded.**

threatened that the party threatening has no present intention to use immediate criminal force. *CAMA v. MORGAN* . . . 1 Bom., 205

**2. — Joint assault—Cause of action.**

—An assault made by parties proceeding together and acting in conjunction as to time, place, and assault is a single act, and the cause of action is common to all parties. *RAMESWAR BHATTACHARJEE v. SHIBNARAIN CHUCKERBUTTY* . . . 14 W. R., 419

**ASSAULT ON PUBLIC SERVANT.**

110 W. R., 41, 42

**2. — Sepoy in Revenue Department—Penal Code, ss. 353 and 352—Rules or executive orders of Government published in Nairn's Revenue Handbook—Impressment of carts for the use of Government officers how far legal.**—The rules or executive orders of Government printed at pages 26 and 27 of Nairn's Revenue Handbook have not the force of law, and a public servant, acting in obedience thereto, cannot be considered as acting in execution of his duty as a public servant, if his act is otherwise illegal. Accordingly, where on a complaint by a sepoy in the Revenue

the accused to undergo twenty-one days' rigorous imprisonment,—*Held* that the conviction under s. 353 of the Penal Code should be set aside. The only offence of which, upon the evidence, the accused was guilty, was that of simple assault under s. 352 of the Penal Code. *IN RE THE PETITION OF RAKHMATI* . . . 1 L. R., 9 Bom., 558

**3. — Public servant acting under warrant of attachment—Deterring a public servant from discharge of his duty—Penal Code (Act XLV of 1860), s. 353—Non-production of the warrant at the trial.**—One of the

**ASSAULT ON PUBLIC SERVANT—concluded.**

was impossible to hold that the conviction was good. *TARAZZUL AHMED CROWDERY v. QUEEN-EMRESS* [1 L. R., 28 Cal., 630

*CHUNDER COOMAR SEN v. QUEEN-EMRESS*

[3 C. W. N., 605

**4. — Licensed vaccinator attempting to take lymph from child—Assaulting public servant in execution of duty or with intent to prevent him from discharging his duty—Penal Code (Act XLV of 1860), s. 353—Right of private defence.**—Where a licensed vaccinator attempted to take lymph from a child of one petitioner to vaccinate the child of the other, and was assaulted in consequence and received slight injuries,—*Held* that the vaccinator was not entitled to take lymph from the arm of any person who

10 C. W. N., 605

**ASSESSORS.**

*See CONVICTION* . . . 2 B. L. R., F. B., 23  
[10 W. R., Cr., 43

— in Land Acquisition cases.

*See LAND ACQUISITION ACT, 1870, s. 19.*  
[1 L. R., 8 Bom., 553  
1 L. R., 17 Bom., 299

*See LAND ACQUISITION ACT, 1870, s. 22.*  
[1 L. R., 17 Cal., 380, 383

*See LAND ACQUISITION ACT, 1870, s. 35.*  
[11 B. L. R., 230  
13 B. L. R., 300

— Acquittal without consulting—

*See CRIMINAL PROCEEDINGS.*

[1 L. R., 1 All., 610  
1 L. R., 10 All., 414

— Disqualification of—

*See LAND ACQUISITION ACT, 1870, s. 19.*  
[1 L. R., 17 Bom., 299

— Evidence not taken in presence of—

*See CRIMINAL PROCEEDINGS.*

[1 L. R., 15 All., 138

**1. — Necessity of—Opinion on whole evidence.**—No legal conviction can take place unless the opinion of the assessors is taken on the whole of the evidence in a case. *QUEEN v. BROWN LALL* [15 W. R., Cr., 3

**2. — Opinions of assessors—Trial on two charges—Criminal Procedure Code, 1872, ss. 255, 265.**—The intention of the Legislature in ss. 255 and 265 of the Criminal Procedure Code in a case in which the accused was tried on two charges, was that the assessors should give a definite opinion whether the prisoner is guilty of either of the offences charged, and, if so, of which of the charges

**ASSESSORS—continued.**

preferred against him; and that the Judge, on delivering judgment, should give it with adverting to the opinion of the assessors. *QUEEN v. MATAM MAL* [22 W. R., Cr., 34]

3. ——— **Grounds of opinion—Assessors differing from Judge.**—Assessors ought to give the grounds of their opinions, particularly when they differ in opinion from the Judge. *QUEEN v. BUSHMO ANENT* . . . . . 3 W. R., Cr., 21

4. ——— **Grounds for opinion—One assessor concurring with other.**—Where one of the two assessors says that he thinks it proved that a war was waged against the Queen, that there was a conspiracy to carry on that war, and that the prisoner is guilty of all the acts charged, and the other assessor concurs with him, it cannot be said that the assessors have given no reason for their opinion. *QUEEN v. AMIRUDDIN*

[7 B. L. R., 63 : 15 W. R., Cr., 25]

5. ——— **Grounds of opinion—Recording opinions.**—The grounds of each assessor's opinion should be distinctly recorded by the Judge. *QUEEN v. MINA NUGGERBHATIN* . . . . . 3 W. R., Cr., 6

6. ——— **Recording opinions of assessors.**—When a judgment of acquittal is recorded, it is not necessary to record the opinions of the assessors. *REG. v. PARBAT* . . . . . 7 Bom., Cr., 82

7. ——— **Omission of Judge to state grounds of decision—Material error.**—In a trial conducted with the aid of assessors, the Judge's omission to state the ground of his decision is not an illegality which invalidates the conviction. *REG. v. KALA KARSAN* . . . . . 6 Bom., Cr., 55

8. ——— **Summing up by Judge—Criminal Procedure Code (Act XXV of 1861), s. 379.**—Although the old Criminal Procedure Code did not expressly provide for summing up of the evidence in a trial with the aid of assessors, it was held that there was nothing in the Code to prevent a Judge from summing up the evidence to the assessors. *QUEEN v. AMIRUDDIN*

[7 B. L. R., 63 : 15 W. R., Cr., 25]

*Contra, QUEEN v. JOGE POLY*

[7 B. L. R., 67 note : 11 W. R., Cr., 39]

9. ——— **Summing up evidence—Criminal Procedure Code, 1882, s. 309—Delivery of opinions of assessors—Sessions Judge, Duties of.**—The power of summing up the evidence given by s. 309 of the new Code of Criminal Procedure, Act X of 1882, is intended to be exercised in long or intricate cases, and the Sessions Judge should confine himself to summing up the evidence, and should not obtrude on the assessors his opinion of the worthlessness or otherwise of certain portions of the evidence. The Sessions Judge should also conform strictly to the words of s. 309, and require each assessor to state his opinion orally. The Sessions Judge should not utilize the services of the pleader for the prosecution for the purpose of recording his summing up to the assessors. If he is not capable of recording the substance of it himself, he should employ an

**ASSESSORS—continued.**

independent person for that purpose. *SHADULLA HOWLADAR v. EMPRESS*

[I. L. R., 9 Calc., 875 : 12 C. L. R., 506]

10. ——— **Trial with assessors where no evidence offered by prosecution.**—In a trial before a Sessions Judge with assessors, when the prisoner pleads not guilty and the public prosecutor does not offer evidence in support of the charge, the Judge ought to instruct the assessors that they are bound to find the prisoner not guilty. *ANONYMOUS* . . . . . 4 Mad., Ap., 39

11. ——— **Inspection of place of offence—Personal inspection by Judge, Time for—Notice of intention to view.**—If a Sessions Judge should think it necessary to visit the place of the alleged occurrence of an offence under trial, he should give notice to the parties and the assessors. He should not go without such notice and after the trial has been completed by delivery of the opinion of the assessors. *IN RE OUDH BEHARI NARAIN SINGH* . . . . . 1 C. L. R., 143

12. ——— **Assessors viewing scene of offence—Power of Judge to delegate examination of witnesses.**—In case of a view of the scene of an alleged offence, it is the duty of the officer conducting the jury or assessors to the spot not to suffer any other persons to speak to or hold any communication with any of the jury or assessors. The Judge therefore cannot delegate to the assessors his own function of examining witnesses on the spot. *QUEEN v. CHUTTERDHAREE SINGH*

[5 W. R., Cr., 59]

13. ——— **Trial without assessors—Prisoner admitting offence, but pleading insanity at time of committing it—Criminal Procedure Code, 1861, s. 324.**—The prisoner having admitted before the Court of Session that he had killed his wife, no assessors were empanelled. At the end, however, of his confession he pleaded that he was not in his right mind at the time. The Judge, therefore, proceeded to record medical and other evidence on the point, and having come to the conclusion that there was no reason to doubt from the prisoner's conduct, either prior or subsequent to the murder, that in committing the murder he knew that he was doing a wrongful act, convicted the prisoner. *Held* that the plea was in effect one of not guilty, and that the trial should not have proceeded without assessors, and that it should be quashed. *QUEEN v. CHEIT RAM*

[5 N. W., 110]

14. ——— **Trial by jury of a case properly triable by assessors—Appeal on facts.**—*Per MACLEAN, J. (MITTER, J. dubitante)*—The trial by a jury of an offence triable with assessors is not invalid on that ground, but an accused who would have been entitled to an appeal on the facts, if the case had been tried with assessors, is not debarred from that right merely by the fact that the trial by jury is not invalid. *EMPRESS v. MOHAM CHUNDER BAI* . . . . . I. L. R., 3 Calc., 765

15. ——— **Trial with the aid of assessors—Commencement of the trial—Criminal**

**ASSESSORS—concluded.**

*Procedure Code (Act X of 1882), ss. 268, 272, 284, 285.*—The accused was committed for trial to the Sessions Court on a charge of murder. He pleaded not guilty to the charge, and claimed to be tried. Thereupon the Sessions Judge chose two assessors; but as one of them was ill, his attendance was at once dispensed with, and the Sessions Judge proceeded with the trial with the aid of the other assessor only. *Held* that this procedure was illegal and contrary to ss. 234 and 285 of the Code of Criminal Procedure (Act X of 1882). The attendance of one of the assessors having been dispensed with before the commencement of the trial, the

or claims to be tried. *QUEEN EXPRESS v. BASTIANO*  
[I. L. R., 15 Bom., 614]

16. — Assessors prevented by death or illness from attending a trial—*Criminal Procedure Code, ss. 268, 285.*—During the course of a trial before a Sessions Court with

[I. L. R., 13 All., 337]

17. — Effect of incapacity of

**ASSETS.**

*See ADMINISTRATOR GENERAL*  
[3 Mad., 255  
Cor., 67  
I. L. R., 23 Bom., 428  
*See ADMINISTRATOR GENERAL'S ACT, 1857.*  
s. 33 6 Mad., 848]

**ASSETS—concluded.**

*See ADMINISTRATOR GENERAL'S ACT, 1874.*  
s. 35 I. L. R., 25 Calc., 54, 65  
[C. W. N., 500]

*See CASES UNDER COMPANY—WINDING UP*  
—COSTS AND CLAIMS ON ASSETS.

*See CASES UNDER COMPANY—WINDING UP—*  
DUTIES AND POWERS OF LIQUIDATORS.  
[I. L. R., 18 Calc., 31]

*See CASES UNDER REPRESENTATIVE OF*  
DECEASED PERSON.

*See CASES UNDER SALE IN EXECUTION OF*  
DECREE—DISTRIBUTION OF SALE-PRO-  
CEEDS

**ASSIGNMENT.**

*See CASES UNDER DEBTOR AND CREDITOR.*

*See CASES UNDER EQUITABLE ASSIGNMENT.*

*See CASES UNDER INSOLVENCY—ASSIGN-*  
MENTS BY DEBTOR.

**ASSIGNMENT OF CHOSE IN ACTION.**

*See CHAMPERTY* I. L. R., 3 Bom., 403

*See CONTRACT ACT, s. 23*  
[I. L. R., 5 Calc., 4  
I. L. R., 13 Bom., 43]

*See PROMISSORY NOTE.*  
[3 B. L. R., O. C., 130  
I. L. R., 11 Mad., 290]

1. — Practice of Courts in India—*Right of assignee to sue.*—In the practice of the Courts of India, it is lawful to assign choses in action when there is neither fraud against individuals nor special violation of the rule of public policy. The assignee of a claim for rents can sue under Act X of 1859. *HURBINATH MUZOOMDAR v. MORAN & Co.*  
[W. R., 1884, Act X, 127]

2. — Rule in equity.—*Semble*—*There is nothing in equity which prevents a assignee*

*See RAMLAL MOOKERJEE v. HARAN CHANDRA*  
*Dutta*

[3 B. L. R., O. C., 130; 12 W. R., O. C., 9]

3. — Right of assignee to sue—*Change in action assignable*

## ASSIGNMENT OF CHOSE IN ACTION —continued.

if the thing purchased have no actual existence, but rests on mere possibility; if legally saleable, it was equitably an assignable cause of action. *MUSUNJES SINGH v. LEEBA NUND SINGH* . . . 11 W. R., 5

5. ———— *Hindu Law—Promissory note—Small Cause Court, Madras.*—According to Hindu law, not only is the beneficial interest in the subject-matter of the contract, but the contract itself, assignable; the assignee therefore may sue in his own name. This doctrine is applicable to suits brought in the Madras Small Cause Court. *VENMAKUM SOMAYAJEE JANAKKE AMMAI v. MOONESAWMY CHETTI* . . . 4 Mad., 178

*KADARBACHA SAHIB v. RANGASTAMI NAYAK*  
[1 Mad., 150]

6. ———— *Assignment of bond—Obligor's consent.*—The obligor's consent is not necessary to the assignment of a common money-bond. *KRISTA CHETTI v. BALARAMA CHETTI* . . . 1 Mad., 139

7. ———— *Right of assignee to sue—Promissory notes not made negotiable—Assignee's right of suit.*—Held, where a promissory note made payable simply to the payee without the addition of the words "order" or "bearer," and therefore not negotiable, was assigned to a third person, that the assignee could sue upon such note, a chose in action being by the law of India assignable, and that the assignee could sue in the Courts of India in his own name. *KANHAIYA LAL v. LOMINGO*  
[I. L. R., 1 All., 732]

8. ———— *Purchaser of moiety of right to damages.*—Where the plaintiff purchased from a certain person a moiety of whatever the latter might obtain as damages from the defendants for the breach of a contract,—Held that such a transfer did not confer on the plaintiff a right to sue the defendants for a moiety of the damages. *BHEKABEE SINGH v. MUHOSSEIN ALLY*  
[1 Hay, 482]

9. ———— *Amalgamation of joint debt and personal debt.*—A joint debt cannot be amalgamated by a colourable assignment with a personal debt, so as to give the assignee the right to sue in respect of both debts. *SREENURRY PAUL v. NIMMONS SEN* . . . 1 Hyde, 169

10. ———— *Order directing servant to pay money on account of advance.*—An order directing a servant to pay at an uncertain time a certain sum of money to the payee on account of advance is not a cheque, and the payee cannot transfer the same to a third party so as to give such third party a right of action against the drawer of such order. Nor is such a document evidence of a debt, enabling the person to whom the same is transferred to contend that by the sale to him he acquired the interest in a debt due by the writer of the order to the payee. *BULLOO v. DEBRETON* . . . 2 N. W., 335

11. ———— *Suit to recover possession of land and for damages.*—In a solemnah between B, the assignee of the plaintiff, and the defendant and a third party, it was agreed that, as B

## ASSIGNMENT OF CHOSE IN ACTION —continued.

held less acer land than the other two, there should be an equal division between the shareholders within a certain time, and, in case no division took place, that B should be entitled to damages. In a suit by the plaintiff to recover possession of certain acer land and a certain sum as damages for breach of the contract,—Held, if it was a suit to enforce a contract made with B, which contract did not convey any right in specific lands, the cause of action was one not legally assignable. *JURBUNDHUN SING v. SHEORAJ SINGH*  
[5 N. W., 184]

12. ———— *Sale of patnidari rights.*—When a patnidar's rights and interests in a patni are sold during the pendency of a suit brought by him against his tenants, the purchaser acquires the patnidar's privilege to carry on the suit. *WILSON v. THE GOVERNMENT*  
[12 W. R., 122]

13. ———— *Wrongful attachment of property—Assignment of right to sue for compensation.*—The mere right to sue for compensation for the wrongful attachment of moveable property in execution of a decree is not transferable by sale. *PRAGI LALL v. FATEH CHAND*  
[I. L. R., 5 All., 207]

14. ———— *Sale of decree.*—Where A has sold his decree to B, the purchaser, B can sue on it. *SUNNOOBUNESSA KHANUM v. MEHER CHUND* . . . W. R., 1864, 313

But the decree-holder should apply to the Court to certify any transfer of his interest in the decree, otherwise the Court may take no notice of the transfer. *KHETTER MOHUN CHUTTAPADHYA v. ISSAR CHUNDER SERMA* . . . 11 W. R., 271

15. ———— *Right of assignee to execute decree—Assignment of decree.*—When a decree is assigned to A for his benefit in the name of B, B, the ostensible decree-holder, may take out execution. *PURNA CHANDRA ROY v. ABHAYA CHANDRA ROY*  
[4 B. L. R., Ap., 40]

16. ———— *Assignment of decree.*—A Court is not bound to admit the assignee of a decree to execution thereof. If there is no dispute, it may admit him, or, if the dispute is one which it can decide, it may try the point in dispute, and upon the result of that trial admit the assignee to carry on the decree. *BISHTOO CHURN BROOSTUN v. KISHEN GOPAL MISSEER* . . . 18 W. R., 207

17. ———— *Assignment of ex-parte decree for rent.*—When an ex-parte decree for rent has been sold by the decree-holder, there is no rule of law in Bengal which forbids the assignee from carrying on the suit instead of the landlord. *BINODE BEHABEE MOOKERJEE v. BEER NARAIN ROY*  
[5 W. R., Act X, 52]

18. ———— *Assignee of decree under Act X of 1859.*—The purchaser of a decree under Act X of 1859 is entitled to ask the holder for a power-of-attorney to proceed with the execution. *BROJO COOMAR MULLICK v. MON-MOHINEE DEBIA*  
[16 W. R., 55]

## ASSIGNMENT OF CHOSE IN ACTION

—continued.

If the thing purchased have no actual existence, but rests on mere possibility; if legally saleable, it may equally be assigned to another. *MURUGESAN SINGH v. LAKSHI NUDU SINGH*. 11 W. R., 5

5. — *Held in Law*.—*Power of a small Court Clerk*. *Mahomed Ali v. Hoda Bai*, not only is the defendant interested in the subject-matter of the contract, but the contract is assigned to him, and he may sue in his own name. This doctrine is applicable to suits brought in the *Mahomed Ali Court*. *YUSUF ALI MOHAMMAD JAMAL AHMED v. MOHAMMAD CHUTTA*. 4 Mad., 170  
KANDASABAI SINGH v. HANUMANT NAYAK  
[1 Mad., 130]

6. — *Assignment of bond*.—*Only a few words*.—The Court's consent is necessary to the assignment of a bond to a third party. *MURRAY CHURCH v. BULLOCK CHURCH*. 1 Mad., 190

7. — *Right of assignee to sue*.—*Particular interest under negotiable instrument*.—*Assignee's right of suit*.—*Held*, where a promissory note is made payable simply to the payee, without the addition of the words "order" or "bearer," and therefore not negotiable, was assigned to a third party, so that the assignee could sue upon such note, such as in action brought by the law of India assigned, and that the assignee's suit lies in the Courts of India in his own name. *KANHAIYA LAL v. LAKHMOO*.  
[I. L. R., 1 All., 732]

8. — *Particular use of words*.—*Right of assignee to sue*.—*Where the plaintiff purchased from a certain person a moiety of whatever the latter might obtain as damages from the defendants for the breach of a contract*.—*Held* that such a transfer did not confer on the plaintiff a right to sue the defendants for a moiety of the damages. *BURKHARDT SINGH v. MURUGESAN ALAY*.  
[1 Hay, 482]

9. — *Assignment of joint debt and personal debt*.—A joint debt cannot be amalgamated by a valuable assignment with a personal debt, so as to give the assignee the right to sue in respect of both debts. *SANMUKH PATEL v. NIRMALY SEN*. 1 Hydr., 180

10. — *Order directing servant to pay money on account of advance*.—An order directing a servant to pay at an uncertain time a certain sum of money to the payee on account of advance is not a cheque, and the payee cannot transfer the same to a third party so as to give such third party a right of action against the drawer of such order. Nor is such a document evidence of a debt, enabling the person to whom the same is transferred to contend that by the sale to him he acquired the interest in a debt due by the writer of the order to the payee. *BULLOCK v. DEBBERON*. 2 N. W., 335

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## ASSIGNMENT OF CHOSE IN ACTION

—continued.

held less or more than the other two, there should be an equal division between the share-holders within a certain time, and, in case of division of 2 paces, that B should be entitled to damages. In a suit by the plaintiff for recovery of land and certain rent and interest due under a contract, *Held*, if it was not a contract made with B, and if the plaintiff in any way any right in specific land, the same of which he was not legally assigned. *INDRANATH SINGH v. SURANATH SINGH*.  
[5 N. W., 184]

12. — *Sale of plaintiff's rights and interests in a part sold during the pendency of a suit*.—*When a plaintiff's rights and interests in a part sold during the pendency of a suit are sold by him without his trustee, the purchaser acquires the plaintiff's privilege to carry on the suit*. *Witness v. The Government*.  
[12 W. R., 122]

13. — *Wrongful attachment of property*.—*Assignment of right to sue*.—*The mere right to sue for compensation for the wrongful attachment of movable property in execution of a decree is not transferrable by sale*. *PARROT LALL v. PARROT CHAND*.  
[I. L. R., 5 All., 207]

14. — *Sale of decree*.—*When A has sold his share to B, the purchaser, B can sue on it*. *SUNMOODHUSSEIN KHANUM v. MURTA CHAND*. W. R., 1884, 313

But the decree which B has sold apply to the Court to certify any transfer of his interest in the decree, and also the Court may take notice of the transfer. *KHURRAN MOHUN CHUTTARADHYA v. ISHAR CHUTTARADHYA*. 11 W. R., 271

15. — *Right of assignee to execute decree*.—*Assignment of decree*.—*When a decree is assigned to A for his benefit in the name of B, B, the assignor, may take out execution*. *PURNA CHANDRA ROY v. ABHAYA CHANDRA ROY*.  
[4 B. L. R., Ap., 40]

16. — *Assignment of decree*.—A Court is not bound to admit the assignee of a decree to execution thereof. If there is no dispute, it may admit him, or, if the dispute is one which it can decide, it may try the point in dispute, and upon the result of that trial admit the assignee to carry on the decree. *BHARTOO CHURN BHOSLEY v. KISHEN GOPAL MISSEN*. 13 W. R., 207

17. — *Assignment of ex-parte decree for rent*.—*When an ex-parte decree for rent has been sold by the decree-holder, there is no rule of law in Bengal which forbids the assignee from carrying on the suit instead of the landlord*. *BINODE BEHARIE MOOKERJEE v. BEER NARAIN ROY*.  
[5 W. R., Act X, 52]

18. — *Assignee of decree under Act X of 1859*.—The purchaser of a decree under Act X of 1859 is entitled to ask the holder for a power-of-attorney to proceed with the execution. *BHOJO COOMAR MULLICK v. MON MOHENSE DEBIA*.  
[16 W. R., 55]

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

ment under a decree of a Civil Court by s. 11 of the Pensions Act of 1871. SECRETARY OF STATE v. KHEMCHAND JEYCHAND

[I. L. R., 4 Bom., 432]

of a decree. Tuffcozzool Hossein Khan v. Rughoonath Pershad, 14 Moore's I. A., 40 7 B. L. R., 156, cited and followed. BHORYUB CHUNDER ROY v. MADHUB CHUNDER SEN 6 C. L. R., 19

10. ————— Civil Procedure

execution of a decree against him. JANKI DAS v. EAST INDIAN RAILWAY COMPANY

[I. L. R., 6 All., 634]

## (b) BOOKS OF ACCOUNT.

11. ————— Account Books.—Books of account cannot be attached in execution of a decree. IN RE PESTANJHI CURSETJI 3 Bom., O. C., 42

ADJOODHYA PERSHAD v. MIDDLETON, COHEN & CO. 3 N. W., 334

12. ————— Order for production in Court by Court executing decree.—Although a Court will not allow account books to be attached

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

applied for by attachment of debts, to require the judgment-debtor to produce his books in Court and have them in the custody of the Court. ADJOODHYA PERSHAD v. MIDDLETON, COHEN & CO.

[3 N. W., 334]

## (c) BUILDING AND HOUSE MATERIALS.

## 13. ————— Materials of house—Pro-

albeit that the property be materials of a house belonging to or occupied by an agriculturist. BHAGVANDAS v. HATHIBHAI I. L. R., 4 Bom., 235

14. ————— Building materials—Civil Procedure Code, s. 266, cl. (c), and Explanation (a) and s. 295—Attachment and sale of building materials—Rateable distribution of proceeds of sale. By cl. (c) of s. 266 of the Civil Procedure Code (Act X of 1877), an ordinary judgment-creditor is precluded from attaching or selling the materials of a house or other building belonging to his judgment-debtor, but by Explan. (a) of the same section, this prohibition does not extend to a creditor whose decree is for rent. Held that ss. 266 and 295 must be read together, and that an ordinary judgment-creditor is not entitled, under s. 295, to a rateable proportion of the assets realized by the sale of such house or building, under a decree obtained by another creditor for rent due to him in respect of the said house or building. MANIKEL VENTILAL v. LAKHA I. L. R., 4 Bom., 429

15. ————— Houses and buildings occupied by agriculturists—Representatives of an agriculturist—Exemption from attachment and sale—Civil Procedure Code, s. 266, cl. (c)—The

house dwelt in by an agriculturist as such and the farm buildings appended to such dwelling. The exemption does not extend to other houses not in the

creditor RADHAKISHAN HAKUMJI v. BALYANT RAMJI [I. L. R., 7 Bom., 530]

16. ————— Execution against bhag—Civil Procedure Code, 1842, s. 266 (c)—Building site—Agriculturist Bhagdar—Bhagdari Act (Bom. Act I of 1862)—Decree.—A, having obtained a decree against B, who was a bhagdar, attached his bhag in execution, including the gahban or site upon which B's house was built. B applied to have the attachment removed from the gahban on the ground that he was an agriculturist, and that,

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

therefore, the gabbhan of his house was protected from attachment by cl. (c) of s. 266 of the Civil Procedure Code (Act XIV of 1882). *Held* that the gabbhan was subject to attachment, and was not protected by the above clause. *B* did not hold as an agriculturist. He could not have occupied the house except as a bhagdar, and it was as part of a bhag that the site was attached. The protection of s. 266, cl. (c), was intended for agriculturists in the strictest sense, and for agriculturists in that sole character.

JIVAN BHAGA v. HIRA BHAIJI

[I. L. R., 12 Bom., 363]

17. ———— *Bhagdari Act (Bombay Act V of 1862), ss. 1, 3, and 5—Civil Procedure Code (1882), s. 662 (c)—Bhagdari village—Bhag—"Homestead," Meaning of.—Per FARRAN, C.J., and JARDINE, PARSONS, and RANADE, JJ.—The superstructure of a house belonging to a bhag in a bhagdari village is exempt from attachment under the provisions of the Bhagdari Act (Bombay Act V of 1862). Per CANDY, J.—Having regard to the decision in *Pranjan v. Jaishankar*, 4 Bom., A. C., 46, and the object of the Bhagdari Act, it is doubtful whether the Legislature intended to exempt from attachment the materials of a house belonging to a bhag.*

COLLECTOR OF BROACH v. VENILAL KESHAJBHAI

[I. L. R., 21 Bom., 588]

## (d) DEBTS.

18. ———— *Proclamation as to nature and value of property—Civil Procedure Code, 1877, ss. 268, 278, 287.—A decree-holder, by a prohibitory order issued under s. 268 of the Civil Procedure Code, attached a debt due to his judgment-debtor. The person served with the order applied under s. 278 to have the attachment removed. Held that the application could not be entertained under s. 278, that section having no application to the case; but that, before issuing a proclamation of sale in execution of a decree of the debt so attached, it is the duty of the Court, under s. 287 of the Code, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property of which sale is sought is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence or otherwise of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.*

HARILAL ANTHABHAI v. ABHESANG MERU

[I. L. R., 4 Bom., 323]

19. ———— *Right and interest of vendor in purchase-money—Civil Procedure Code, 1877, s. 266—Vendor and purchaser.—The right or interest which the vendor of immovable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, is not, so long as the conveyance has not been executed, a debt, but a merely possible right or interest, and as such, under s. 266 of Act X of 1877,*

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

is not liable to attachment and sale in the execution of a decree. The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase. *AHMAD-UD-DIN KHAN v. MAJLIS RAI* . I. L. R., 3 All., 12

20. ———— *Claims over which British Courts have no jurisdiction—Civil Procedure Code, s. 266—Subject of the Gaikwar—Subject of a Kathiawar State—Rajkot.—Debts due to a British subject by the Gaikwar Government or by a subject of that Government or of a State in the province of Kathiawar are not debts which, under s. 266 of the Code of Civil Procedure (Act X of 1877), are liable to attachment in execution of a decree. Claims over which no Court in British India has jurisdiction are not debts liable to be attached under s. 266 of the Civil Procedure Code (Act X of 1877). The mere circumstance that the garnishee is at the time of the application for attachment beyond the limits of British India would not of itself render the debts not liable to be attached. GHANSHAMMAL v. BHANSALI . I. L. R., 5 Bom., 249*

21. ———— *Debt secured by mortgage of immoveable property—Civil Procedure Code (X of 1877), s. 266.—A debt secured by mortgage of immoveable property cannot be sold in execution of a decree under the provisions of the Civil Procedure Code applicable to moveable property. SRINATH DUTT v. GOPAL CHUNDER MISHRA*

[I. L. R., 9 Calc., 511: 12 C. L. R., 445]

22. ———— *Debt creating charge on immoveable property—Interest in immoveable property—Civil Procedure Code, 1882, s. 266.—Where a judgment-debtor is entitled to a debt secured by a collateral hypothecation of land and the decree-holder attaches and sells the judgment-debtor's interest in the bond, such interest is immoveable property for the purpose of attachment and sale under the Code of Civil Procedure, 1882. Per TURNER, C.J.—Quare—Whether the decree-holder could not sell the debt apart from the security as moveable property. APPASAMI v. SCOTT*

[I. L. R., 9 Mad., 5]

23. ———— *Attachment of debt—Civil Procedure Code (1882), s. 268—Payment of debt attached out of Court.—Where a debt, which had been attached under s. 268 of the Code of Civil Procedure, was paid out of Court to the only person who, had the money due been paid into Court as required by the terms of the said section, would have been entitled to withdraw the said money from Court, and such payment was certified to the Court, it was held that this amounted to a sufficient compliance with the requirements of s. 268. FIDA HUSAIN v. MAULA BAKHSI . I. L. R., 21 All., 145*

24. ———— *Attachment of maintenance allowance—Civil Procedure Code (XIV of 1882), s. 266—Meaning of the word "debt"—Attachment in execution of decree—Prohibitory order.—The word "debt" in s. 266 of the Civil Procedure Code means an actually existing debt, that is, a perfected and absolute debt, not merely a sum of*

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

to 1 of a date anterior to the time when the same falls due to B. HARIDAS ACHARJIA CHOWDHRY c. BARODA KISHORE ACHARJIA CHOWDHRY

[I. L. R., 27 Cal., 38  
4 C. W. N., 87

25. — Attachment of partnership debt—Execution of decree.—An uncertain sum which may or may not be payable by one member to another of a partnership, not shown to have been wound up, cannot be attached or sold in execution of a decree. DWARIKA MOHUN DAS c. LUKHIMONI DASI . . . I. L. R., 14 Cal., 384

26. — Attachment of a debt due

the Civil Procedure Code, call on a person subject to a prohibitory order to pay or show cause why he should not pay his debt into Court. The Court is bound to satisfy itself that a debt is due; the debt must then be sold and delivery made under ss. 281 and 301 of the Code of Civil Procedure. SIRIAH c. MUCKANACHARY . . . I. L. R., 10 Mad., 184

27. — Attachment by a judgment creditor of a debt due to judgment-debtor by a third party—Civil Procedure Code, 1882, ss. 267, 268, and 503—Execution—Practice—Garnishee—Order upon third party to pay where debt

the former admits it to be due to the judgment-debtor. Where, however, the garnishee denies the debt, there is no other course open to the judgment creditor than to have it sold, or to have a receiver appointed under s. 503 of the Code. TOOLSA GOOLAL c. ANTONS . . . I. L. R., 11 Bom., 448

the debtor to the creditor. *Seemle*—An order of

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

attachment under s. 208 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s. 15 of the Limitation Act (XV of 1877). SHIB SINGH t. SITA RAM

[I. L. R., 13 All., 78

29. — Debt of which the amount

510, Abbott v. Abbott and Crump, 5 B. L. R., 382, and Hill v. Boyle, L. R., 4 Ex., 260, considered. MADHO DAS c. RAMJI PATAK

[I. L. R., 18 All., 286

## (c) DECREES.

30. — "Other property"—Act VIII of 1859, s. 205—Decree—A decree of Court fall within the description of "other property" in s. 205 of the Civil Procedure Code, and was, therefore, liable to attachment, which should be made under s. 237. GHOLAM MAHOMED c. INDIRA CHAND JAHURI . . . 7 B. L. R., 318; 15 W. R., 34

31. — Immoveable property—Execution of decree, Sale in.—A decree is held to be part of a judgment-debtor's effects, and not to fall under the head of immoveable property. BHANKE-MOHUN DOSS c. HIRUCHANDER DOSS CHOWDHRY [W. R., 1864, Mts., 29

32. — Decree for mesne profits—Civil Procedure Code, 1859, s. 232—Decree for money—Attachment pending ascertainment of mesne

33.  
by  
Code  
money;  
which  
Price

holder desires to render a decree obtained by his judgment-debtor available for the satisfaction of his own decree, the procedure laid down by s. 273 of the Code of Civil Procedure must be followed. TIRU-VENGADA CHARI c. VITHILINGA PILLAI

[I. L. R., 6 Mad., 418

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

34. ———— *Monoy-decreo—Civil Procedure Code, 1877, s. 273.*—*Held* that Act X of 1877 does not contemplate the sale of a decree for money at the result of its attachment in the execution of a decree, and the attachment of a decree for money in the mode ordained in s. 273 cannot lead to its sale. *Held*, also, that the last clause but one of s. 273 applies to other than money-decrees. Where two decrees for money, although they were not passed by the same Court, were being executed by the same Court, *Held* that the provisions of the first clause of s. 273 of Act X of 1877 were applicable on principle.

SULTAN KUAR v. GULZARI LAL. [I. L. R., 2 All., 290]

35. ———— *"Saleable property"*—*Civil Procedure Code (Act XIV of 1882), ss. 266 and 273.*—*Adjustment of decree after attachment.*—The particular procedure prescribed by s. 273 of the Civil Procedure Code (Act XIV of 1882) is clearly confined to money-decrees, and therefore such decrees cannot be sold after being attached; all other decrees are both attachable and saleable as "saleable property" under s. 266 of the Code. A decree being attached as directed by s. 273 of the Civil Procedure Code, its adjustment subsequent to such attachment cannot be recognized by the Court.

GOPAL NANASHER v. JOHARIMAL. DADA BALSHER v. JOHARIMAL. I. L. R., 18 Bom., 522

36. ———— *Sale of decree for money—Suit in forma pauperis—Court-fees recoverable by Government—Civil Procedure Code (Act XIV of 1882), ss. 273, 281, 411.*—*Execution in forma pauperis* obtained a decree for money, and the Collector, in pursuance of an order made in his favour at the time when such decree was passed, attached it under s. 273 of the Code of Civil Procedure, and subsequently sold the same under s. 284, *held*, upon the application of the decree-holder for execution of his decree, that the provisions of s. 273 did not contemplate the sale of a decree for money, but they showed in what manner the attachment of decrees should be made available on behalf of the attaching person. *Sultan Koer v. Gulzari Lal, I. L. R., 2 All., 290, and Tiruvenguda Chari v. Futhilinga Pillai, I. L. R., 6 Mad., 418, followed.*

*Semble*—The provisions of s. 411 of the Code of Civil Procedure do not justify the Court in selling a decree upon the application of the Collector, inasmuch as that section provides that persons who have been successful as paupers shall, so far as the subject-matter of their success is concerned, be liable to satisfy out of what they recover the amount of the fees which have been for a time, pending the decision of their suit, remitted to them. JOTINDRO NATH CHOWDHURY v. DWARKA NATH DEY. I. L. R., 20 Calc., 111

37. ———— *Decree for possession of land—Immovable property.*—A decree for possession of land is of the nature of immovable property, and a Judge has no jurisdiction to interfere with the order of a lower Court setting aside the sale of such a decree. MOBKOOONISSA v. DEWAN ALI [4 W. R., Mis., 22]

## DIGEST OF CASES.

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

38. ———— *Decree for redemption—Mode of attachment—Civil Procedure Code, ss. 273, 274, 316.*—*Sale of a decree for redemption.*—S. 273 of the Civil Procedure Code (Act X of 1877) having expressly provided a mode for the attachment of decrees, the procedure laid down in s. 274 relating to immovable property has no application to the attachment of a decree for redemption. NAIGAR TIMAPA v. BHASKAR PARMAYA. I. L. R., 10 Bom., 444

39. ———— *Attachment of decrees of Revenue Court in execution of a Civil Court decree—Civil Procedure Code (1882), ss. 266, 268, 273.*—*Held* that, though a decree of a Court of Revenue is not liable to attachment and sale in execution of a decree of a Civil Court under s. 273 of the Civil Procedure Code, such decrees stand in the position of an ordinary debt, and may be dealt with under s. 268 of the Code. *Onkar Singh v. Bhup Singh, I. L. R., 16 All., 496, and Ghulam Mahomed v. Indra Chand Jahuri, 7 B. L. R., 318, referred to. Takiga Begam v. Siraj-ud-daula, Weekly Notes, All., 1885, p. 123, and Sultan Kuar v. Gulzari Lal, I. L. R., 2 All., 290, distinguished.* AULLA BIDI v. ABU JAFAR. I. L. R., 21 All., 405

## (f) EQUITY OF REDEMPTION.

40. ———— *Civil Procedure Code (1882), ss. 266 and 274.*—*Transfer of Property Act (IV of 1882), s. 60.*—*Immovable property.*—The equity of redemption of the mortgagor is in moveable property, and is, as such, liable to be attached and sold in execution of a decree under s. 266 of the Civil Procedure Code (Act XIV of 1882). Its attachment can be effected under s. 274 of the Code by an order prohibiting the judgment-debtor from dealing with it in any way and all persons from receiving it, such order being proclaimed and notified as therein directed. PARASHRAM HARLAL v. GOVIND GANESH PORGAUMKAR [I. L. R., 21 Bom., 226]

## (g) EXPECTANCY.

41. ———— *Quere*—Whether a mere expectancy is liable to attachment and sale in execution of decree. DOOLI CHAND v. BRIJ BHUKAN LAL AWASTI. 6 C. L. R., 528 [10 C. L. R., 61]

42. ———— *Sum to be paid in future—Civil Procedure Code, 1859, s. 205.*—A sum receivable by way of assignment is not liable to be attached and sold in execution of decree. SHAM CHUNDER BABOO v. TEELUCK CHUNDER BABOO. 2 Hay, 143

43. ———— *Claim under pending award—Property, Definition of.*—Under s. 205 of the Civil Procedure Code, sums to be attached must not be inchoate, but existing and definite; and although liquidated demands in their nature definite and certain, though *sub lite* and unproved, may be seized, a mere expectancy or a mere right of suit cannot be attached; the attachment must operate at the time of attachment, and not be anticipatory, so as to fasten on some future state of property in which the



## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

RAM CHANDRA TANTRA DAS v. DHARMO NARAYAN  
CHUCKERBUTTY

[7 B. L. R., 341: 15 W. R., F. B., 17

KORAJ KOONWAR v. KOMAL KOONWAR

[6 W. R., 34

But see GAUR HARI DUTT v. RADHA GOBIND  
SHANA

[7 B. L. R., 343 note: 12 W. R., 54

51. ——— Interest of grandson in Mitakshara family—*Sale in execution of decree—Civil Procedure Code, 1882, s. 266—Interest of grandson in ancestral property.*—The interest of a grandson in the ancestral property of a joint Hindu family governed by the Mitakshara law can be attached and sold in execution of a decree. JOGUL KISHORE v. SHIB SAHAI . I. L. R., 5 All., 430

52. ——— Interest of undivided member of joint family—*Death of judgment-debtor—Avoidance of right of survivorship by the attachment.*—In the Madras Presidency, where the interest of an undivided member in the joint property of a Hindu family has been attached in execution of a decree for the personal debt of such member, and the judgment-debtor dies pending attachment, a valid charge is constituted in favour of the judgment-creditor which will prevent the accrual to the other co-parceners of the right of survivorship. BAILUR KRISHNA RAO v. LAKSHMANA SHANBHOGUE

[I. L. R., 4 Mad., 302

53. ——— Right of son to succeed by survivorship—*Civil Procedure Code, 1859, s. 205.*—The right of a son to succeed by survivorship to his father's specific share of property cannot be sold in execution of decree, such right being too remote. S. 205 of the Code of Civil Procedure, which specifies the kinds of property which are liable to attachment and sale in execution of decree, makes no mention of contingent interests. The property must belong at the time to the defendants. GOUR SURUN DOSS v. RAM SURUN BRUKUT . 8 W. R., 253

54. ——— Son's interest in ancestral estate—*Reversionary rights—Death of son between attachment and sale.*—The rights of a Hindu son during his father's lifetime in ancestral property, viz., a right of joint enjoyment thereof under the father's management, and a right of partition under certain circumstances, together with the right of succeeding the father in the management after his death, may be vested rights, and are undoubtedly rights of an incipient proprietary character, but they do not constitute a transferable or inheritable property, and they cannot survive the person in whom they are vested. GOOR PERSHAD v. SHEODEEN

[4 N. W., 137

55. ——— Property liable to attachment and sale—*Grant to Hindu widow for maintenance for life—Reversionary right of grantor—Act VIII of 1859, s. 205—Civil Procedure Code, s. 266 (k).*—One N, the sole owner of a certain village, had a son J, and J had two wives.

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

By his first wife he had a son U. J's second wife was G, by whom he had a son, whose widow was K, the defendant in the suit. J died, leaving U his son, G his widow, and K his son's widow, and on his death U inherited the village. Prior to the year 1874 U had made a gift to G of 105 bighas situate in the village. In 1874 the rights and interests of U in the village were sold by auction and purchased by T, the ancestor of the plaintiffs. G, by a deed of gift, conveyed the 105 bighas to K, and ultimately died on 26th January 1883. Plaintiffs then sued to set aside the gift and for possession of the land. The learned Judge found that the land was given to G in lieu of her maintenance, which she was to hold rent-free for her life, and that she had been in possession thereof for twenty years. Further, that U had the right to resume the land and assess it to rent on the death of G, and that all the rights and interests of U in the land were attached and sold in 1874. On second appeal it was contended that the interest of U in the land at the time of the sale of the village by auction was in the nature of a mere expectancy, and therefore could not be sold and was not sold. Held that U gave to G the usufruct of the land for her life in lieu of her maintenance; that after the gift the interest of U in the land was of the same character and carried with it the same consequences as the reversion which the lessor would have for land leased for life or years, and analogous to the right which a mortgagor who had granted a usufructuary mortgage would have; that U had a vested right in the land which was capable of being sold, and that right passed to the auction-purchaser at the sale of 1874. Koraj Koonwar v. Komal Koonwar, 6 W. R., 34, Ram Chander Tanta Doss v. Dhurmo Narain Chukarbatty, 7 B. L. R., 341: 15 W. R., F. B., 17, and Tuffuzzool Hussain Khan v. Raghunath Pershad, 7 B. L. R., 186: 14 Moore's I. A., 40, distinguished. KACHWAIN v. SABUR CHAND

[I. L. R., 10 All., 462

56. ——— Vested remainder—*Civil Procedure Code, 1882, s. 266—Attachable interest.*—The plaintiff sued to have it declared that a certain house was liable to be attached and sold in execution of a decree obtained by him against the defendant's son. The defendant, who was 80 years of age, claimed the house as her absolute property, alleging that her son by a deed had given it to her as a provision for her maintenance. The deed stated that she had been made the owner of the house, that the donor had no right to it, and that it wholly belonged to her. Held that the plaintiff was entitled to the declaration prayed for. The surrounding circumstances showed that the house was revertible to the donor on the defendant's death. He had what in English law would be termed a vested remainder on her death, and he had, therefore, a saleable interest during her life. He had an interest which could be attached and sold under s. 266 of the Civil Procedure Code (Act XIV of 1882). ANNAJI DATTATRAYA v. CHANDRABAI . I. L. R., 17 Bom., 503

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

## (j) LETTERS IN POST OFFICE.

57. ——— Civil Procedure

and accordingly liable to attachment on the application of the decree-holder. *NARASIMHULU v. ADIAFFA*

[I. L. R., 13 Mad., 242]

## (k) MAINTENANCE.

and a contingency of this kind. VIII of 1859, s. 205, as something capable of attachment. *MOHESSEE DOSS v. KISHEN PROTAP SHANEE*

23 W. R., 427

59. ——— Act VIII of

60. ——— Right to appeal.—A decree-holder cannot attach his judgment-debtor's right to appeal, or his right to future main-

[3 W. R., Mis., 16]

*KASHESHUREE DEDIA v. GREESE CHUNDER LAHOOREE*  
6 W. R., Mis., 84  
*DULOON KOONWAR v. SUNGUM SINGH*

[7 W. R., 311]

*CHUKOWREE MISSEER v. NUMOODAR KOOR*

[24 W. R., 5]

61. ——— Money allowance for maintenance.—A was liable to pay B, a widow, a monthly allowance for maintenance. B obtained a decree against A as heir of her husband for a debt of her husband. Held, without deciding as to whether a money allowance for maintenance can be attached in execution of a decree, that under the circumstances of this case he was not entitled to attach the maintenance under the decree. *KOMAREE DABEE v. GREESE CHUNDER LAHOOREE*

[Marsh., 200; 1 Hay, 583]

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

But arrears of maintenance are capable of being attached as a debt due to a widow in execution of the decree against her. *HOYMOBETTY DEBIA CHOWDHRAIN v. KOROONA MOYEE DEBIA CHOWDHRAIN*

[8 W. R., 41]

62. ——— Money allowance charged on land.—A Hindu widow's right to maintenance husband and personal right a decree or *DEB CHOWSE*  
W. R., 111

assigned in lieu of a share of landed property is not a mere right to maintenance or anything else exempted by the proviso to s. 206 of the Civil Procedure Code, and is saleable in execution of a decree. *SALAMAT HOSSEIN v. LUCKRI RAM*

[I. L. R., 10 Cal., 531]

64. ——— Attachment of

*maine*  
XIV c  
The word means and ab may or or the which is bound during

valid attachment of any portion of the of a debt anterior  
*HARIDAS*  
*ACHAR*  
alc., 38

## (l) PARTNERSHIP PROPERTY.

65. ——— Share in partnership assets.—Act VIII of 1859, s. 205, and ss. 233, 234.—A decree-holder, who was also a partner of the debtor sought to attach, in execution of

Held that such share of the not "property" within the meaning of s. 205 of Act VIII of 1859, and, therefore, not liable to attachment in execution. *ABBOTT v. ABBOTT AND CRUMP*  
5 B. L. R., 383

66. ——— Attachment of 1859 attaches to the person, who alone, at the time of attachment, was in actual possession Held that such property was the

ATTACHMENT—continued.

**1. SUBJECTS OF ATTACHMENT—continued.**

(4) PROPERTY AND INTEREST IN PROPERTY OF  
VARIOUS KINDS.

71. ——— Service Tenure—Interest in property—Held: Procedure Code, 1859, s. 205.—Where a tenant had an hereditary interest in property, paying a small premium for it, and holding it subject only to the duty to the landlord of furnishing a few men in aid of the regular police.—Held that the interest was a beneficial one, which could be attached and sold by the tenant's creditor. *RAMESH CHANDRAN v. GOLVENA SANKU*

[illegible][illegible]

11. L. L. & Son, 217 nolo

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U. L. L. & Nov. 220 note

33. **Unascertained interest in a partnership.** *Rights of ex-flores Proce-  
dure.* Held that by the purchase at an ex-  
cessive rate of the interest of the judgment debtor in  
a partnership of which the said father  
possessed the interest of a partner a creditor  
against the other partners paying that an account  
be taken and that the scope of the judgment debtor  
be paid to him. It was concluded that the share in  
the partnership was liable to be attached and sold  
in execution. Held that a share in a partnership  
could be the subject of attachment under a writ of  
the writ Procedure Code, that the writ made  
was a writ of attachment, and that the present writ was  
materially as amended. *In re Johnathan Jones,  
Lutken, as Trustee, v. L. L. R. & Co., Ltd.* (1911) 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882,

U. L. R. 13 Mar. 1947

60. **Share of partner in partnership business**—*Civil Procedure Code* (Act XIV of 1908, s. 246)—*Salable property*.—The share of a partner in a partnership business is "salable property" within the meaning of those words in s. 246 of the Code of Civil Procedure, and can therefore be attached and sold by an execution creditor in execution of a decree against that partner. *Dominic Mohan Das v. Lakshmin Das, I. L. R., 14 Caln. 584; Tufazzul Hussain Khan v. Raghu Nath Pershad, 7 I. L. R. 166; 14 Moo. I. A. 40; Dandyal Lal v. Jyeeswar Narain Singh, I. L. R., 3 Caln., 198; L. R., 4 I. A., 247, and Parothasani v. Rangana, I. L. R., 13 Madn., 447, referred to.* **JAGAT CHUNDER ROY v. ISWAR CHUNDER ROY**

[I. L. R., 20 Cal., 603]

(14) PUNISHABLE ARTICLES.

70. ————— Articles of perishable nature.—Articles of such a perishable nature that they cannot be kept for fifteen days and sold, according to the Civil Procedure Code, ought not to be taken in execution. SADASHIV MONEBHAV v. HANZO NIN SUNAVAS . . . . . 5 Bom. A. C. 158

72. *Ship-owner, Interest of, in mortgaged ship—Sale as to prior mortgage.*—A ship-owner having mortgaged his ship has still an interest in her eligible in attachment under the Civil Procedure Code. An attachment on a vessel in respect of the mortgagee's right and interest does not affect the validity of a sale under a prior mortgage. *Attor v. Anand Manab*

[1 Ind. Jur., N. S., 241

73. ——— Profits of property. — When a party attaches property, he also attaches the profits thereof. *RAM COMAR GUIN v. GERARD CHENDE*  
*SABOT* . . . . . 12 W. R. 301

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74. ----- Profits already realized.—  
But if, when attaching the property, he allows the  
original owner to remain in possession and enjoy the  
profits, these profits come, from the moment they  
find their way into the pockets of the owner, to be  
specifically liable for the judgment-debt under the  
attachment. **HAM COOMAN GHOSE v. GURINDO**  
**CHUNDERA SARDAR** 13 W. R., 391

**75. — Attachment of property of tenant for rent.**—A landlord may have a right to receive a share of the produce as rent; and if the share is not made over, to compel it to be done or to recover damages; but the property in the crops is in the raiyat until transferred by some act of his own. It is illegal for the landlord to attach everything in the possession of the raiyat which he considers may be liable to satisfy the rent: all that he can do by way of attachment is to treat the rent as a debt due from the raiyat to the landlord and to attach it as such. **PRITUS KUMAR v. DEVI SINGH** . . . 18 W. R., 484

70. ——— Doors and window-shutters—Execution of decree—Attachable property—Doors and windows—Inalienable property.—The doors and window-shutters of a pucca building cannot be separately attached in execution of decree, forming as they do part of an immovable property and having no separate existence. **PERU BEPANI v. RONCO MAIPARASH**. I L R., 11 Calc., 184

77. ————— Property which is the subject of a suit—*Interest in property contingent on suit.*—The fact of a judgment-debtor's property being the subject of an existing suit is no hindrance to its being attached in execution, but it is in the discretion

**ATTACHMENT—continued.****1. SUBJECTS OF ATTACHMENT—continued.**

of the Court to order its sale at the fittest and most proper time. *RAM CHUNDER v. NUND LALL BHOSE* 19 W. R., 132

the land reserved by measurement and division. — *Held* that the claim of the judgment-debtor to the land was a transferable claim, and therefore capable of being attached and sold in execution under s. 268 of the Civil Procedure Code. *RUDRA PERKASH MISSEER v. KRISHNA MOHUN GHATUCK*

[L. L. R., 14 Cal., 241]

79. — Property in zenana. — There is nothing in Act VIII of 1859 which exempts from attachment property to be found in the zenana of a judgment-debtor. *DOONGA CHURN MITTER v. HURER MOHUN GOCHO* 17 W. R., 88

express its opinion that such property is necessary to enable the execution-debtor to earn his livelihood, and the Court which must decide this point is the Court which issues the execution. S. 14 (a), Part II, Chapter V, of the General Rules and Circular Orders of the High Court commented on. *BAKHIR MOHAMMED v. DOONGA CHURN SHANA*

[L. L. R., 10 Cal., 39; 13 C. L. R., 200]

81. — Property in hands of the Receiver. — Order on Receiver to sell. — Attachment in *mofussil*. — Execution of decree. — By a decree of the High Court obtained by *D M* in November 1871 in a suit on a mortgage brought by him against *B C* and *P C*, it was ordered that the suit should be dismissed against *P C*; that the amount found due on the mortgage should be paid to *D M* by *B C*; that the mortgaged property, some of which was in Calcutta and some in the *mofussil*, should be sold in default of payment, and any deficiency should be made good by *B C*. The property in Calcutta was sold under the decree, and did not realize sufficient

**ATTACHMENT—continued.****1. SUBJECTS OF ATTACHMENT—continued.**

the suit was revived. The decree, however, was returned to the High Court unexecuted. In a suit for partition of the estate of *R C*, deceased, brought by *P C* was made restrain *B* the accuser Receiver were to give up quiet possession. *B C* was in that suit declared entitled to a moiety of the property in suit. *Held*, on application by *D M* to the High

proceed to sell the same. Property in the hands

82. — Government promissory notes in the Bank of Bengal. — Civil Procedure

not in the possession of the judgment-debtor, but of the Bank. *Held* also that ss. 272 and 268 apply to

sought to be attached had been declared to belong to the plaintiff. The only remedy open to a plaintiff to recover possession of moveable property decreed to belong to him, and not in the possession or power of the defendants, is to proceed by suit against the person in whose possession or power it is. *PURMANUND SINGH v. CHUNDI DAT JHA*

[C. W. N., 170]

83. — Malikana rights payable for ever. — Civil Procedure Code Act VIII of 1859, s. 237. — *A* and *B* were entitled to receive annually and for ever a specified amount by way of malikana rights from the Collector as compensation for their extinguished rights in *lakhiraj* lands. In execution of a decree, *C*, on 13th September, purported to attach, under s. 237 of Act VIII of 1859, *A*'s share in such specified amount. Subsequent to this attachment, — namely, on 23rd September 1873, — *A* and *B* mortgaged their rights to the plaintiff. In a suit brought by him against *A* and *B* and *C*, — *Held* that attachment under

ATTACHMENT - continued.

1. SUBJECTS OF ATTACHMENT - *continued.*

**91. ——— Lease-Saleable interest—**  
*Alienation by operation of law—Condition*  
*restraining alienation—Civil Procedure Code (Act*  
*XIV of 1882), s. 206.—A and to recover possession*  
*of certain land which was leased in cashwola by his*  
*father to B. The lease expressly prohibited the*  
*lessee and his heir from making any assignment of*  
*the property either by sale or gift, but it did not*  
*contain any provision for forfeiture or for re-entry*  
*by reason of an assignment in violation of its terms,*  
*nor was there any provision restricting a sale in*  
*execution of a decree. The cashwola passed to*  
*B's executor, and was sold in execution of a decree*  
*against B. Held the sale passed a good title. B,*  
*and also his executor at the time of the sale, had*

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

(L. L. R., 20 Calc., 273)

92. — Interest taken under will—*Bequest to wife with obligation of maintaining and educating children—Interest taken under such bequest—Decree against wife—Attachment of interest under will—Civil Procedure Code (Act XIV of 1882), s. 266, 274, 276—Assignment of interest while under attachment.*—B died in 1891, leaving a widow (defendant No. 1) and two sons, P and D (defendants Nos. 4 and 5). By his will he bequeathed the residue of his property to trustees

when D should attain the age of twenty-five. He attained majority in October 1895. At the date of suit, D was eighteen years old and P was twenty-five. It was contended that the widow was only a

under s. 274 of the Civil Procedure Code (Act

that by an assignment dated the 20th February 1896 she had assigned and surrendered her life-interest to her son D, and that such interest was, therefore, not available to satisfy the plaintiff's decree

the effect of the assignment above referred to, the widow had an attachable interest in the property. (2) That her interest was an interest in immovable property, and was validly attached under s. 274 of the Civil Procedure Code. (3) That her assignment of the 20th February 1896 was invalid as against the plaintiffs under s. 276 of the Civil Procedure Code. *NATHA KERRA v. DRUGGALI*

(L. L. R., 23 Bom., 1)

93. — Right of personal service—*Civil Procedure Code, s. 206—Vritti—Liability*

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

gious ceremonies are performed on the River Godavari on behalf of pilgrims who pay fees to the holders of such priestly offices for performance of such religious ceremonies at or about the time of their performance.

of s. 266 of the Code of Civil Procedure (XIV of 1882), and, therefore, protected from attachment. *GANESH RAMCHANDRA DATE v. SHANKAR RAMCHANDRA* . L. L. R., 10 Bom., 395

s. 206 of the Code of Civil Procedure (Act XIV of 1882). *Semble*—Under the Hindu law, vrittis are to be regarded as generally *extra commercium*. *GOVIND LAKSHMAN JOSHI v. RAMKRISHNA HARI JOSHI* . L. L. R., 12 Bom., 366

95. — Vritti or religious office—*Alienation of religious office—Civil Procedure Code, 1882, s. 266.*—A vritti cannot be sold in execution of a decree. Such a compulsory alienation is not only opposed to the Hindu law and public policy, but is also against the provisions of s. 266 of the Code of Civil Procedure (Act XIV of 1882). But private alienations are not absolutely prohibited. No general rule can be pleaded in such matters. The rules of succession depend upon each particular foundation or office, and in respect of it, custom and practice must govern and prevail over the text law which prohibits both partition and alienation. *RAJARAM v. GANESH* . L. L. R., 23 Bom., 131

## (c) RIGHT OF SUIT.

96. — Right to bring a suit. A right to bring a suit cannot be attached under the Civil Procedure Code, 1882. *CARAFIER v. PANVA* . L. L. R., 14 W. R., 153

*DRURY v. HARADEN BRITTACHARIER* . 13 W. R., 118, G

*MAHOMED HADEL v. SHEO SRYEN DOBBY* . 10 N. W., 95

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

97. ——— Right to sue for damages—*Mesne profits—Civil Procedure Code (1877), s. 266, cl. (c).* The right to sue for mesne profits is a "right to sue for damages" within the meaning of s. 266, cl. (c), of the Code of Civil Procedure, and therefore cannot be sold in execution of decree. Where, therefore, the plaintiff purchased the right to sue for mesne profits at a sale in execution of a decree,—*Held* that a suit by him to enforce the right was not maintainable. *SHYAM CHAND KOONDOR v. LAND MORTGAGE BANK OF INDIA*

[I. L. R., 9 Cal., 695; 12 C. L. R., 440

98. ——— Right to appeal.—A judgment-debtor's right to appeal cannot be attached in execution of a decree. *BIRHO PRATAP SAHU v. DEO NARAIN ROY* . . . 3 W. R., 118

## (p) SALARY.

99. ——— Salary of officer of Small Cause Court, Calcutta—*Execution of decree of High Court.*—The pay of an officer of the Small Cause Court will be set aside by an order of the High Court, in satisfaction of judgment obtained in that Court. *KOOMKUTERN v. MICHAEL*

[Bourko, O. C., 359

100. ——— Salaries of Railway Company's servants—*Jurisdiction of Mofussil Small Cause Courts—Act VIII of 1859, ss. 236, 239.*—Salaries or other debts due from the Railway Company to any of its servants can be attached in satisfaction of a Small Cause Court decree under Act VIII of 1859, s. 236. The attaching Court must make a written order to be fixed up in some conspicuous part of the Court-house, and a copy is to be delivered or sent registered by post to the debtor. The registered letter should be addressed to the Agent of the Railway Company at the head office of the Company. It need not be sent through the High Court, although the head office is within the jurisdiction of the High Court. *IN THE MATTER OF HOL-LICK* . . . 2 B. L. R., A. C., 109; 10 W. R., 447

101. ——— Salary of telegraph officer.—The salary of a telegraph officer which is due for past services is a debt which may be attached under s. 236, Act VIII of 1859. *HUSSEN BHANJEH v. HICKS* . . . 18 W. R., 124

102. ——— Salary of peon of mamladar.—The whole salary of a peon in the service of a mamladar under Government is liable to attachment as it becomes due. *TEJRAM JAGRUPAJI v. KUSAJI BIN GANGJI* . . . 7 Bom., A. C., 110

103. ——— Percentage received by khot—*Civil Procedure Code, 1882, s. 266, cl. (f)*—Percentage received by a khot.—A percentage received by a khot for collecting the assessment on dhara lands is not "salary," nor is such a khot a "public officer" within the contemplation of s. 266, cl. (h), of the Civil Procedure Code (Act XIV of 1882). The Collector, therefore, cannot object to

## ATTACHMENT—continued.

## 1. SUBJECTS OF ATTACHMENT—continued.

the attachment of such percentage in execution *RAVJI MORESHVAR v. SAYAJIRAO GANPATRAO*

[I. L. R., 13 Bom., 673

104. ——— Salary of hereditary officer—*Act XI of 1843.*—The official remuneration of the officiating hereditary officer is not liable to civil process so long as it is in the hands of the Collector or other disbursing officer; but as soon as it is in the hands of the hereditary officer himself, it is deprived of any special protection. *GANPATLAL ANUPHAM v. SAMPATRAM GHELADHAI*

[10 Bom., 400

105. ——— Salary already due—*Civil Procedure Code, 1859, ss. 236, 237.*—A judgment-debtor's salary, which has become due, is a debt within the meaning of Act VIII of 1859, s. 236, which indicates the remedy open to the judgment-creditor. S. 237 has no bearing on such a case. *KALU SHAIKH KHANSAMA v. BEATSON* . . . 24 W. R., 446

106. ——— Wages of private servant—*Civil Procedure Code (Act XIV of 1882), s. 266.*—The wages of a private servant cannot be attached in whole or in part before they become due and a debt exists. *ATTAVAYAR v. VIJASAJI MUDALI*

[I. L. R., 21 Mad., 393

107. ——— Moiety of salary of officer on half-pay—*Civil Procedure Code, 1877, s. 266 (h)*—Attachment of moiety of salary of officer on half-pay.—Under cl. (h) of s. 266 of the Code of Civil Procedure, 1882, a moiety of the salary of a public officer drawing half-pay (exceeding ₹20 per mensem) on sick leave is liable to attachment. *BEARD v. EGERTON* . . . I. L. R., 6 Mad., 179

108. ——— Moiety of salary of military officer—*Civil Procedure Code, s. 266, expl. (b)*—Debtor subject to military law—Attachment of moiety of salary under ₹20 per mensem—*Army Act, s. 151.*—S. 151 of the Army Act, 1881, not being affected by the provisions of s. 266 of the Code of Civil Procedure, the attachment by a Civil Court of a moiety of the monthly salary of a debtor subject to military law, not exceeding ₹20, is legal. *VIRABAGAYA v. RAMUDU* . . . I. L. R., 9 Mad., 170

109. ——— Pay of Military Officer in Indian Staff Corps—*Officer not officer of regular forces—Civil Procedure Code (1882), s. 266, cl. (h)*—*Army Act, 1881, s. 151*—Public officer.—An officer of the Indian Staff Corps is a "public officer" within the meaning of cl. (h) of s. 266 of the Civil Procedure Code, read with the interpretation clause (s. 2) of the Code. His pay is therefore subject to attachment in execution of a decree against him, but the operation of the attachment must be restricted to pay received from the Indian Government. The pay of an officer of the regular forces is not so subject to attachment. The attachment in this case was allowed subject to a decree previously passed against the defendant, by which, under s. 151 of the Army Act, half his pay was ordered to be deducted and applied in payment of the amount due under that decree—the repeal of that section not affecting a decree previously passed under it, and the right to enforce such

**ATTACHMENT—continued.****1. SUBJECTS OF ATTACHMENT—continued.**

a decree continuing until satisfaction has been obtained. CALCUTTA TRADES ASSOCIATION v. RYLAND  
[L. L. R., 24 Calc., 102; 1 C. W. N., 138]

of a moiety of such officer's pay.—*Held* that the decree-holder could not obtain satisfaction of the decree by attachment of such officer's moveable property. MERCER v. NARPAT RAI

[L. L. R., 1 All., 730]

c. MERCER . . . . . 7 N. W., 331

112. ——— Pay of non-commissioned officer in civil employ.—Execution of a decree against the pay of a non-commissioned officer in civil employ is entirely in conformity with law. COHEN v. MCCARTHY . . . . . 14 W. R., 231

113. ——— Military pay attached, Refund of.—Where a part of the military pay of a sergeant employed under the Executive Engineer was erroneously remitted by his superior to a Small Cause Court, which had directed execution against the sergeant's pay, it was *held* that the sum remitted should be refunded to the Executive Engineer. COHEN v. MCCARTHY . . . . . 14 W. R., 441

**(g) TRUST PROPERTY.**

of the deed of assignment have been carried out. RAMANJI MANICKJI v. NAGROJI PALANJI  
[1 Bom., 232]

[19 W. R., 226]

ution of the decree against him, because a surplus

**ATTACHMENT—continued.****1. SUBJECTS OF ATTACHMENT—continued.**

of income is in his hands for his own benefit after due performance of the trusts; nor does such cor-

to him personally after the performance of the trusts. BISHEN CHAND BASAWAT v. NADIR HOSSEIN

[L. L. R., 15 Calc., 329; L. R., 15 L. A., 1]

**(r) WAGES.**

117. ——— Money paid to sirdar as wages of coolies—*Act VIII of 1859*, s. 236,

account of on account of the coolies were sirdars." *Held* the attachment could not be maintained. The wages of the coolies were not liable to attachment under s. 236 or 237 of Act VIII of 1859. SASHIWAN v. GOPAL . . . . . 1 B. L. R., 8 N., 15  
[10 W. R., 149]

118. ——— Money paid for spinning cotton—*Civil Procedure Code, Act X of 1877*, s. 266, cl. (f)—*Labourer—Wages—Persons who*

cl. (f) of the section, cannot be attached by execution of a decree. JECHAND KHUSAL v. ABA  
[L. L. R., 5 Bom., 132]

**(s) WEARING APPAREL AND ORNAMENTS.**

119. ——— Wearing apparel—*Civil Procedure Code, 1859*, s. 205.—Necessary wearing apparel is not liable to attachment under s. 205 of the Code of Civil Procedure. GANGARAM VELAT v. PARSHU DAYARAM . . . . . L. L. R., 9 Bom., 272

**ATTACHMENT—continued.****1. SUBJECTS OF ATTACHMENT—concluded.**

**130. ———— Ornaments—Civil Procedure Code, 1882, s. 266—Attachment—Wearing apparel—Mangalsutra (a neck ornament).—**The mangalsutra, a neck ornament which is worn by a Hindu married woman during the lifetime of her husband and never removed, is a part of her necessary wearing apparel, and is exempt from execution under s. 266 of the Code of Civil Procedure (Act XIV of 1882). *APPANA P. TANGAMMA* . . . **I L. R., 9 Bom., 108**

**131. ———— Ornaments on person of Hindu wife—Execution against husband.—**Ornaments on the person of a Hindu wife, if forming part of her stridhan, cannot be taken under an execution against her husband. On certain occasions, however, the husband may take them, but the right is personal to him. *TUKARAM BIV RAMKRISHNA P. GUNAJI BIV MHALOJI* . . . **8 Bom., A. C., 129**

**2. ATTACHMENT BEFORE JUDGMENT.**

**132. ———— Attachment before judgment, Effect of.—**An attachment before judgment places the property in the custody of the law, but does not alter the right to it. *IN THE MATTER OF GOCOOZ DASS SOONDERJEE. PETUMBER MUNDLE V. GOCOOZ DAS SOONDERJEE* [1 Ind. Jur., N. S., 32 : Bourke, O. C., 24

**133. ———— Civil Procedure Code, 1859, ss. 83 and 84.—**In attachment before judgment under ss. 83 and 84 of Act VIII of 1859, the Court does not interfere with the legal disposal of the property attached, beyond declaring that possession shall not be taken without its previous sanction, undertaking only that, if no subsequent order to the contrary be made, the property shall be forthcoming at the time of pronouncing the decree to abide whatever order it shall make about it. *JAVA RAMJI V. JADHAVJI NATHU* . . . **1 Bom., 224**

*SAVA RAMJI V. JADHAVJI NATHU: EX-PARTE GAMBLE* . . . **2 Bom. Rep., 150: 2nd Ed., 142**

**134. ———— Civil Procedure Code, 1859, s. 89.—**S. 89 of the Code of Civil Procedure renders an attachment before judgment ineffectual as a bar to process of execution against the property attached in satisfaction of a decree in another suit, whether obtained before or after the attachment. *ANONYMOUS CASE* . . . **6 Mad., 135**

**135. ———— Attachment before judgment, operation of, where there are no conflicting attachments.—**If there are no conflicting attachments, a sale of property under a decree may legally follow upon an attachment made before decree. *MUSTAN SAIB V. BROOKS* . . . **7 Mad., 347**

**136. ———— Subsequent attachment—Civil Procedure Code, 1859, s. 89.—***Semble*—S. 89 of the Code of Civil Procedure was introduced, not for the purpose of restraining the ordinary effect of attachment, but for the purpose of preventing the same view being taken of attachments before judgment as had been taken by the Indian Courts of the

**ATTACHMENT—continued.****2. ATTACHMENT BEFORE JUDGMENT—continued.**

writ of sequestration. When attachment of property has preceded decree, no fresh attachment is necessary subsequent to decree. *SARKIES V. BUNDHOO BABB* [1 N. W., Part 6. p. 81 : Ed. 1873, 172

*Contra. See SATBHAWAN V. SAHOO BANARASEE Doss* . . . **2 N. W., 365**

**137. ———— Writs of execution, priority of—Lodging writ in office of Sheriff.—**In considering which of two writs of attachment in execution of a decree is to have priority over the other, the time when the writs are lodged in the office of the Sheriff is the criterion by which priority is to be determined, and not the time when such writs reach the hands of that officer. *NARSINGDAS MULTANCHAND V. NAHUNURAI. SUMARMAL JOHARIMAI V. NAHANURAI* [7 Bom., O. C., 183

**138. ————**Where one of several writs first reaches the Sheriff, it has priority, and he has no power to deprive it of such priority and transfer it to another by first executing a writ delivered to him later. *DWARAKANATH SHAW V. PRANKRISTO PAUL CHOWDHRY* . . . **Bourke, O. C., 260**

**139. ———— Priority—Civil Procedure Code, 1859, s. 81.—***N S*, and subsequently *J S*, filed plaints and obtained attachment orders against *J P's* property. *J S*, who got a decree on the 13th and an order for sale on the 16th of February, claimed priority. Claim disallowed. *Held* that, of several creditors who have attached a debtor's property under s. 81 of Act VIII of 1859, the one who first obtains judgment is entitled to priority. *JUGGURNATH SHAW V. ISSURCHUNDER ROY*

[Bourke, O. C., 146

*LUTCHMEERPUT DOGAREE V. KENARAM SEN* [1 Ind. Jur., N. S., 393

*SHUMBHOONATH GHOSE V. NOBINMONEY DOSSEE*  
*ROBERT AND CHARRIOL V. NOBINMONEY DOSSEE*  
[Bourke, O. C., 92

**130. ———— Suit against one member of undivided Hindu family—Death of defendant before decree—Right of survivorship.—**Where, in a suit against one member of an undivided Hindu family, not as representing the family, there is an attachment before judgment of family property and the defendant dies before decree is passed, the right of survivorship takes effect before that attachment becomes effectual for the purpose of execution. Principle of decision in *Sadayappa V. Ponnama, I. L. R., 8 Mad., 554*, followed. *RAMANAYYA V. RANGAPPAYYA* [I. L. R., 17 Mad., 144

**131. ———— Suit on hypothecation-bond—Civil Procedure Code (1882), s. 483—Attachment of non-hypothecated immoveable property—Sale not necessary to satisfy Court that hypothecated property may prove insufficient.—**S. 483 of the Code of Civil Procedure does not refer exclusively to moveable property. Where in a suit on an hypothecation-bond the plaintiff sought to attach before judgment immoveable property of the defendant other than

## ATTACHMENT—continued.

2. ATTACHMENT BEFORE JUDGMENT  
—continued.

that hypothecated:—*Held* that it was not necessary, in order that the Court might be satisfied that the

*PROPERTY* *DEPOSITED* *IN COURT* *IN* *ORDER* *TO* *PRODUCE* *AND* *PLACE* *AT* *THE* *DISPOSAL* *OF* *THE* *COURT* *ONLY* *REFER* *TO* *SUCH* *PROPERTY* *AS* *IS* *CAPABLE* *OF* *BEING* *PRODUCED* *IN* *COURT*. *WHERE* *PROPERTY* *ORDERED* *TO* *BE* *ATTACHED* *IS* *DEPOSITED* *IN* *THE* *COURT* *WHICH* *MADE* *THE* *ORDER* *FOR* *ATTACHMENT*, *THAT* *ORDER* *IS* *SUFFICIENT* *NOTICE* *TO* *ITSELF* *THAT* *THE* *PROPERTY* *ORDERED* *TO* *BE* *ATTACHED* *IS* *TO* *BE* *HELD* *SUBJECT* *TO* *THE* *FURTHER* *ORDERS* *OF* *THE* *COURT*, *AND* *IT* *IS* *NOT* *NECESSARY* *THAT* *A* *SEPARATE* *FORMAL* *NOTICE* *SHOULD* *BE* *DRAWN* *UP*. *CHEDI LAL* *v.* *KUARI* *DIGEST* *I. L. R.*, *17* *ALL*, *82*

132. — Attachment of money deposited in Court—*Civil Procedure Code* (1882), ss. 483 and 484.—The term "property," as used in ss. 483 and 484 of the Code of Civil Procedure, is wide enough to include property of every description, moveable and immovable, whether in the actual possession of the defendant or of some other person on his behalf; and the words "the Court may require him . . . to produce and place at the disposal of the Court" only refer to such property as is capable of being produced in Court. Where property ordered to be attached is deposited in the Court which made the order for attachment, that order is sufficient notice to itself that the property ordered to be attached is to be held subject to the further orders of the Court, and it is not necessary that a separate formal notice should be drawn up. *CHEDI LAL* *v.* *KUARI* *DIGEST* *I. L. R.*, *17* *ALL*, *82*

company, in his individual capacity and as manager of the company. His claim was professedly against the company, but he did not make the company, which was then in liquidation, a party to the suit. Subsequently the plaintiff applied for and obtained an order for attachment before judgment of the company's factory at Dhulla. No notice of the application or of the order made on it was given to the liquidator. He at once applied to the Court to raise the attachment, contending that the Court had no power to attach the property of the company, which

## ATTACHMENT—continued.

2. ATTACHMENT BEFORE JUDGMENT  
—continued.

*I R's* property on the 18th of March, subject to three prior attachments, one by *J S*, whose plaint was filed on the 30th of January, and who obtained a prohibitory order on the 13th and a decree on the 16th of February; a second by *N S*, who filed his plaint and obtained a prohibitory order on the 30th of January, and obtained a decree on February 22nd; and a third by *K S*, who also filed his plaint and got a prohibitory order on January 30th, and a decree on February 28th for an order for the sale of the goods on notice to the other three plaintiffs; and the Court ruled that *N S* and *K S* were entitled

the property in the custody of the law. That if property have been attached before judgment, there is no need of a second attachment in the same suit after judgment. That the words "attachment before judgment" in s. 89 of Act VIII of 1859 must be read as equivalent to "attachments in pending suits," or, in other words, the phrase "before judgment" must be read as meaning "until after judgment." *RAJCHUNDER ROY* *v.* *ISSACHUNDER* *ET AL* [Bourke, C. C.]

[*I. L. R.*, 21 Bom., 273]

## ATTACHMENT—continued.

2. ATTACHMENT BEFORE JUDGMENT  
—continued.

135. — Jurisdiction of High Court — *Property situate out of jurisdiction.*—The High Court has no power to attach before judgment a defendant's property situate outside the limits of its ordinary original civil jurisdiction. *NUR MUHAMMAD v. ABUBAKAR IBRAHIM MEMAN* [8 Bom., O. C., 29]

136. — Attachment before judgment, Effect of—*Civil Procedure Code (Act XIV of 1882), ss. 483, 484, 485, 486, 487, 488, 489, 490.*—The effect of an attachment of a property under the Civil Procedure Code, whether made before or after decree, is the same, provided that in the former case a decree is made for the plaintiff at whose instance the attachment takes place. *Raj Chunder Roy v. Isser Chunder Roy, Bourke, O. C., 139*, referred to. *GANU SINGH v. JANGI LAL* [I. L. R., 26 Cal., 531]

137. — *Act XXIII of 1840—Warrant by Mofussil Court.*—It was competent to the High Court, under Act XXIII of 1840, to order a warrant of attachment before judgment issued by a Mofussil Court to be executed within the limits of the High Court's ordinary original civil jurisdiction. *IN RE ABRAHAM* . . . 6 Bom., A. C., 170

138. — *Civil Procedure Code, 1859, s. 81—Execution of decree—Endorsement of decree under Act XXIII of 1840, s. 1.*—The words in s. 81 of Act VIII of 1859, "where the defendant is about to dispose of this property or any part thereof," refer only to property within the jurisdiction of the Court where the suit is pending; therefore, where an order under that section by the First Subordinate Judge of the 24-Pergunnahs in respect of property in Calcutta was sent up to the High Court, in order that it might be endorsed in accordance with the provisions of s. 1 of Act XXIII of 1840, the High Court refused to endorse it. *BALARAM MULLICK v. SOLANO* . . . 8 B. L. R., 335

139. — Grounds of application—*Suit not commenced—Civil Procedure Code, 1859, s. 81.*—In an application made under s. 81, Act VIII of 1859, the Court must be satisfied that a removal of goods is being made, or about to be made, with a view to evade the execution of a decree in a specific suit, though it is not necessary that the suit should be actually commenced at the time of their removal. *RAJNARAIN PODDAR v. LEVY* . . . 2 Hyde, 183

140. — Property within jurisdiction—*Civil Procedure Code, 1877, s. 483.*—The words "any portion of his property" in the latter part of s. 483 of the Code of Civil Procedure, 1877, mean any portion of the property of the defendant which is within the jurisdiction of the Court in which the suit is pending. *KEDAR NATH DUTT v. SEEVA VEYANA RANA LUCHMAN CHETTY* [I. C. L. R., 336]

141. — Property not in jurisdiction—*Civil Procedure Code, 1882, ss. 483, 484.*—Under the provisions of ss. 483 and 484 of the Code of Civil

## ATTACHMENT—continued.

2. ATTACHMENT BEFORE JUDGMENT  
—continued.

*Procedure, 1882, property of the defendant, which is not within the jurisdiction of the Court, cannot be attached before judgment. KRISHNASAMI v. ENGEL* [I. L. R., 8 Mad., 20]

142. — Security for satisfaction of decree—*Civil Procedure Code, 1877, s. 484—Security.*—The defendants were, on the 10th of March 1881, called upon, under s. 484 of the Civil Procedure Code (Act X of 1877), to furnish security for the satisfaction of a decree that the plaintiff might obtain against them, or to show cause on the 28th March 1881 why security should not be furnished. To this direction the order was appended, which is provided by the form at the end of the Code of Civil Procedure for a provisional attachment under s. 484. The defendants, to avoid the attachment, gave security on the 12th March 1881 for satisfaction of the decree, and the attachment was not carried out. On the 28th March 1881, they showed cause why security should not be furnished, but the Subordinate Judge, as security had been furnished, thought the matter was at an end, and that he could not cancel the security bond. *Held* that the Subordinate Judge was wrong; the security so given was really not the security expressly provided under s. 484, and did not preclude the defendants from showing cause why no security should be furnished. *LOTLIKAR v. LOTLIKAR* [I. L. R., 5 Bom., 643]

143. — Grounds for granting application—*Defendant leaving jurisdiction to avoid or delay process—Civil Procedure Code, 1859, ss. 74, 75.*—Applications under ss. 74 and 75, Act VIII of 1859, on the ground first mentioned in s. 74, must show at least that defendant is about to leave the jurisdiction, with a view to avoid process, or to delay the plaintiff in the prosecution of his suit. Evidence sufficient to support this must be adduced in all cases. *TEENARAM v. RAMBUTTON* . . . 2 Hyde, 181

144. — *Defendant leaving jurisdiction or dealing with property so as to make it unavailable—Ground for arrest of debtor.*—A creditor is not entitled, merely because he has a just demand against his debtor, to move the Courts to put in force the extraordinary processes of arrest or attachment on mesne process; he must also have good reason to believe that his debtor is about to depart from the jurisdiction of the Court, or to deal with his property in such a manner that it will be unavailable for satisfaction of the claim against him. *GOUTIERE v. CHARRIOL* [I. N. W., Part 2, 32: Ed. 1873, 91]

145. — *Defendant leaving India—Good cause—Civil Procedure Code, 1859, ss. 74-80.*—When it appears *prima facie* that the defendant is going to leave India with intent to remain absent so long that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant, he will be ordered, unless he show good cause, to find security for the amount of the claim and the costs of the suit. And "good cause" must be either (1)

## ATTACHMENT—continued.

## 2. ATTACHMENT BEFORE JUDGMENT

—continued.

embarrass or coerce him. SPENCE'S HOTEL COMPANY v. ANDERSON. 1 Ind. Jur., N. S., 294 note

146. ————— Defendant

[1 Ind. Jur., N. S., 285

147. ————— Defendant

credit from the owners for that purpose, afterwards drew bills on the credit for other purposes. The defendant being about to leave Calcutta, on the application of the plaintiffs an attachment order was issued against him and the proceeds of the bills in the hands of P's agent. CALCUTTA DOCKING COMPANY v. PASSMORE

[Bourke, O. C., 125; Cor., 151

148.

master a  
—Repairs  
for repairs

granted an order for personal arrest of the defendant, the master and part owner, under s. 80 of Act VIII of 1859. CHAMRIOL v. COURTOIS Cor., 123

vessel for repairs done to his vessel and for hire of a deck in which the vessel had been. The master being about to leave the jurisdiction of the Court with his vessel, the plaintiffs, under s. 477 of the

cause why such security should not be furnished. The

that, as the claim was on a contested account which on the face of it was stated, but unsettled, on the

## ATTACHMENT—continued.

## 2. ATTACHMENT BEFORE JUDGMENT

—concluded.

had no domicile in this country, and that he was shortly leaving in his vessel in the ordinary course of his business. The Court found the plaintiffs were

a person comes on business to this country, in which he has no property or domicile, and enters into a contract with a person to do work in connection with that business, and which must be done before he leaves the country, and it is known he intends to leave as soon as the work is completed, there is an implied understanding if the work was done on his

was pending within a week in terms of s. 479, such security to be for the amount of the claim. PROBYN CRUNDER MULLICK v. DOWRY

[I. L. R., 14 Calc., 695

150.

Disposing of property to delay or obstruct execution—Civil Procedure Code, 1852, s. 453.—Before proceeding under s. 453 of the Civil Procedure Code to attach property, the Court should be thoroughly satisfied that the defendant is really disposing of his property with intent to obstruct or delay the execution of any decree that may be passed against him. SHANKAR SURESHWAR ROY v. HARO GOBIND ROSE

[13 C. L. R., 356

s. 613 of the Code of Civil Procedure, to render him liable to arrest before judgment. EVERETT v. FAIRB

I. L. R., 8 Mad., 205

## 3. ATTACHMENT OF PERSON.

152.

son an  
Procedur  
of 1861,  
and othe  
judgment.  
will proceed in the first instance against the person or the property of his judgment-debtor; and by

**ATTACHMENT—continued.****3. ATTACHMENT OF PERSON—continued.**

s. 15, Act XXIII of 1861, the Small Cause Court is bound to issue execution according to the nature of the application, if made in writing after the passing of the decree under s. 207, Act VIII of 1859. The Court may, at its discretion, refuse execution against the person and property at the same time or against the same person when, under s. 13, Act XXIII of 1861, or under s. 19, Act XI of 1865, application for immediate execution is made verbally at the time of passing the decree. *DAVIS v. MIDDLETON* . . . . . **8 W.R., 282**

**153. ——— Execution of decree—Decree for sale of hypothecated property and against judgment-debtor personally—Execution against judgment-debtor's person—Decree-holder entitled to proceed against property or person as he might think fit.**—Where a decree upon a hypothecation-bond allows satisfaction of the debt from the hypothecated property and also from the judgment-debtor personally, and contains no condition that execution shall first be enforced against the property, and where there is no question of fraud being perpetrated on the judgment-debtor, there is no principle of equity which prevents the decree-holder from enforcing his decree against the judgment-debtor's person or property, whichever he may think best. *Wali Muhammad v. Tarab Ali, I. L. R., 4 All., 497*, explained. *JOHARI MAL v. SANT LALL* **[I. L. R., 9 All., 484]**

**154. ——— Absconding debtor.**—Where a defendant, against whose person an attachment in execution has been issued, absconded, a second attachment against his moveable property was granted, and the writ of attachment against the person was not recalled. *GREGORY v. HADJEE ESSURF COONJEE* . . . . . **1 Ind. Jur., N. S., 244**

**155. ——— Second application for attachment—Discretion of Court.**—*Held* by *PHEAR, J.*, that, under the Code of Civil Procedure, 1859, a Court was not bound to grant, as a matter of course, a second application from a judgment-creditor for attachment, but ought always to require him to show why the steps previously taken did not lead to a full discharge of the debt, and ought not to grant its process a second time unless satisfied that the failure was not attributable to the applicant's own fault. *BYJNATH PUNDIT v. KUNHYA LALL PUNDIT* **[9 W. R., 527]**

**156. ——— Discretion of Court—Act VIII of 1859, s. 221.**—In execution of a decree, a writ was issued against the defendant, who had not any property within the jurisdiction of the High Court. The first writ was made returnable in a month. Another writ, returnable in the same time, was issued, the first not being successful, but the defendants were not found. An application for a writ returnable in one year was refused. *Held*, on appeal, *per PEACOCK, C.J.*, that, although the Judge had a discretion to refuse the writ under s. 221, Act VIII of 1859, yet the fact that the plaintiff had not used the utmost possible diligence was not sufficient ground on which the writ should be refused.

**ATTACHMENT—continued.****3. ATTACHMENT OF PERSON—continued.**

*Per MACPHERSON, J.*—The Court had a discretion under s. 221, and ought not to grant the writ where it is not satisfied that the parties have used every reasonable endeavour to execute former ones that have expired; as the former writs were returnable in so short a time, however, in this case the writ ought to be granted. *NITTAI CHANDRA PAL v. THAKUR DAS BISWAS* . . . . . **8 B. L. R., 258 note**

*KALEE CHUNDER PAUL v. THAKUR DAS BISWAS* **[12 W. R., O. C., 7]**

**157. ——— Attachment and discharge—Further execution against debtor's property.**—After a debtor has been arrested in execution of a decree and discharged at the request of the creditor, his personal property may be taken in execution under the same decree. *JANOKI SINGH ROY v. KALOO MUNDUL* **[B. L. R., Sup. Vol., 889; 9 W. R., 178]**

**158. ——— Non-satisfaction of decree against property of judgment-debtor—Right to attach person.**—Where a judgment-creditor had obtained a writ of attachment against the property of his judgment-debtor, but the debtor had no property to the knowledge of the creditor against which the attachment could be enforced,—*Held* (reversing the decision of the Court below) that he was entitled to an order for execution of the decree by attachment of the person of the debtor. *SETON v. BJOHN* **[8 B. L. R., 255; 17 W. R., 165]**

**159. ——— Option of proceeding against person or property—Civil Procedure Code, 1877, 1882, s. 254 (1859, s. 201)—Execution of decree—Ex-parte decree.**—Under s. 201 of Act VIII of 1859, a judgment-creditor has the option of enforcing his decree against the person or property of the judgment-debtor, and the fact that such decree is an *ex-parte* one makes no difference. *RAJ CHUNDER ROY v. SHAMA SOONDARI DEBI* **[I. L. R., 4 Calc., 583]**

**160. ——— Arrest and discharge of debtor—Re-arrest.**—*D M.*, a prisoner for debt, having been discharged for non-payment of subsistence-money, the execution-creditor applied for a rule *nisi* for his re-arrest, or for a new writ. *Held* that a prisoner, once discharged on non-payment of his subsistence-money, cannot be re-arrested, nor can a new writ be issued against him for the former debt, and that the principle that no man shall be twice vexed on the same charge applies here. *Per MORGAN, J.*—That there may be a distinction between the words "release" and "discharge" in Act VIII of 1859, and that the arrest of the person is not the full satisfaction here that it is under English law. *IN THE MATTER OF DWARKALALL MITTER* . . . . . **Bourke, O. C., 108**

**161. ——— Re-arrest—Distinction between arrest and imprisonment.**—The Code of Civil Procedure expressly preserves a distinction between arrest and imprisonment, and the immunity from further process is only generated by actual confinement. A second arrest, therefore, held to be legal. *CHINGABRAYA CHETTY v. SUBBIAH* . . . . . **6 Mad., 84**

## ATTACHMENT—continued.

## 3. ATTACHMENT OF PERSON—continued.

[Bourke, O. C., 59]

## 183. ——— Imprisonment, Period of—

the 5th September 1883. Imprisonment under s 481

of the Code, is the limit allowed for an imprisonment in execution of a decree. GHANASHAMDAS GOORSANULL & JOHARIMULL KEDARINATH

[I. L. R., 7 Bom., 431]

to his release. KHODA BUKSH & SHUKROOLLAH

[5 N. W., 220]

[Bourke, O. C., 423]

## ATTACHMENT—continued.

## 3. ATTACHMENT OF PERSON—continued.

and was examined on oath as to the particulars of the estate and discharged from custody. His estate

[I. L. R., 6 Mad., 170]

## 187. ——— Decree payable by instal-

separately for default in the payment of each instalment. DAMODAR SHAMGRAM & MALHARI

[I. L. R., 7 Bom., 108]

188. ——— Simultaneous execution by arrest and attachment of property—*Attempt to evade payment.*—A warrant of arrest directed to be issued against the judgment-debtor, notwithstanding the previous proceedings by attachment, the Court being satisfied that the judgment-debtor was determined to evade, if possible, the payment of his debt. CHENA PEMAJI & GHELADDAI NARANDAS

[I. L. R., 7 Bom., 301]

189. ——— Re-arrest of judgment-debtor—*Power of Court to arrest without petition.*—It is not within the competence of a Judge to direct the re-arrest of a judgment-debtor without any petition or motion of the decree-holder to that effect. SHIB RAM MUNDLA & ROHEEMTOOLLAH

[15 W. R., 69]

170. ——— *Civil Procedure Code, 1882, s. 341—Non-payment of subsistence-money—Discharge.*—The discharge of a judgment-debtor before imprisonment on account of the non-payment of the subsistence-money for the debtor is no bar to the debtor being re-arrested. SUBBA & VENKATTA

[I. L. R., 8 Mad., 21]

171. ——— Discharge of debtor—*Civil Procedure Code, 1882, s. 336—Discharge of judgment-debtor arrested under decree of High Court—Right of discharge—Intention to be adjudicated insolvent.*—A judgment-debtor, having been arrested in execution of a decree of the High Court in its Original Civil Jurisdiction and brought before the Court under the provisions of s. 336 of the Code of

s. 336 of the Code of Civil Procedure, was entitled to be discharged. EX-PARTE PISSENT

[I. L. R., 8 Mad., 276]

173. ——— *Civil Procedure*

**ATTACHMENT—continued.****3. ATTACHMENT OF PERSON—continued.**

A judgment-debtor committed to jail can only be discharged under s. 341. *IN RE QUARME*

[I. L. R., 8 Mad., 503]

**173.** ——— **Arrest of debtor in execution of decree—“Arrest,” Meaning of—Insolvent judgment-debtor—Civil Procedure Code (Act X of 1882), s. 349—“Arrest,” “imprisonment,” Meaning of—Procedure where two methods of protection are open to the debtor.**—A judgment-debtor arrested in execution of a decree for money, who has not, on his committal to jail, expressed his intention of applying to be declared an insolvent under Chap. XX of the Code of Civil Procedure, is nevertheless entitled during his imprisonment to make an application for that purpose; and the Court may, under s. 349, pending the hearing of such application, release him on his finding security to appear when called upon. The word “arrest” in s. 349 should be read as meaning “under detention” or “detained in custody.” Where the Legislature has provided two methods by which a debtor can obtain protection from arrest or other serious consequences, and if one of those methods, in any particular case, turns out to be more favourable to the debtor than the other, the Courts will not deprive him of that advantage. *IN THE MATTER OF HASTIE* . . . I. L. R., 11 Calc., 451

**174.** ——— **Civil Procedure Code (1882), ss. 341 and 642—Execution of decree—Arrest of pleader while acting in his professional capacity—Discharge—Re-arrest.**—Under s. 341 of the Code of Civil Procedure, the immunity of a judgment-debtor from a second arrest depends, not only upon his having been arrested, but upon his having been imprisoned under the arrest. *RAJENDRO NARAIN ROY v. CHUNDER MOHUN MISSEER*

[I. L. R., 23 Calc., 123]

**175.** ——— **Civil Procedure Code, s. 349—Court, Power of, to release judgment-debtor after he is imprisoned—“Arrest” and “imprisonment.”**—“Arrest,” as used in s. 349 of the Civil Procedure Code (Act XIV of 1882), does not include “imprisonment.” Therefore the power, conferred on the Court under that section to release a judgment-debtor arrested in execution of a decree on security being given by him ceases after he has been imprisoned or put into jail. *In the matter of Hastie, I. L. R., 11 Calc., 451, dissented from. In re Quarne, I. L. R., 8 Mad., 503, followed. MAHOMED HUSEN v. RADHI* . . . I. L. R., 12 Bom., 46

**176.** ——— **Insolvency—Civil Procedure Code, 1882, ss. 336, 337—Act VI of 1888—Debt not in schedule—Execution of decree obtained against insolvent for such debt—Scheduled debts.**—A person who has taken the benefit of the insolvent sections of the Civil Procedure Code, and who is undischarged, but has not inserted in his schedule a debt for which a decree is subsequently obtained, is not protected from arrest in execution of such decree, merely because his property is in the hands of the Receiver in insolvency. Such a person is liable to arrest under the circumstances and in accordance with the procedure provided for by the

**ATTACHMENT—continued.****3. ATTACHMENT OF PERSON—concluded.**

Civil Procedure Code Amendment Act (VI of 1888). *PANNA LALL v. KANHAIYA LALL*

[I. L. R., 16 Calc., 85]

**177.** ——— **Warrant of arrest—Imprisonment in jail other than that named in warrant—Release—Civil Procedure Code (Act XIV of 1882), ss. 336, 337.**—A Sheriff's officer, of his own motion, delivered over to the officer in charge of the Alipore Jail a judgment-debtor who had been duly committed to the Presidency Jail. *Held* that the imprisonment was unlawful; that the delivery over to the officer in charge of the Alipore Jail amounted to a release; and that the prisoner was entitled, therefore, to be discharged. *SHAMSONESSA BEGUM v. LOVE*

[I. L. R., 11 Calc., 527]

**178.** ——— **Re-arrest of debtor under same decree—Release on recognizance—Surrender under recognizance—Recognizance, Expiry of—Arrest, Fresh application for—Civil Procedure Code (Act XIV of 1882), ss. 239, 241, 341, 349, 357—Writ of attachment—Criminal Procedure Code (Act X of 1882), s. 491.**—A judgment-debtor, once arrested and imprisoned in execution of a decree cannot, under the Civil Procedure Code, be again arrested under a fresh writ of attachment on the same decree. *SECRETARY OF STATE FOR INDIA IN COUNCIL v. JUDAH* . . . I. L. R., 12 Calc., 652

**179.** ——— **Arrest in execution of decree—Civil Procedure Code (Act XIV of 1882), s. 341—Insolvency proceedings—Protection order, Withdrawal of.**—The Civil Procedure Code contemplates as immaterial the circumstances under which a judgment-debtor imprisoned in execution of a decree obtains his release from prison, and there is no power in the Court to order the arrest of such judgment-debtor a second time under the same decree. *The Secretary of State for India in Council v. Judah, I. L. R., 12 Calc., 652, followed. IN THE MATTER OF BOLYE CHAND DUTT* [I. L. R., 20 Calc., 874]

**180.** ——— **Arrest of purdah-nashin lady—Entering zenana—Civil Procedure Code (Act X of 1877), s. 336.**—It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a purdah-nashin lady to enter the zenana of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zenana, in order to effect the arrest. *KADUMBINEE DOSSEE v. KOYLASHKAMINEE DOSSEE*

[I. L. R., 7 Calc., 19: 9 C. L. R., 25]

*See DOORGA CHURN MITTER v. HUREE MOHUN GOOHO* . . . 17 W. R., 86

**181.** ——— **Married woman—Imprisonment for debt.**—Married women, against whom personal decrees for debt have been made, are not exempt from arrest or imprisonment in execution of such decrees under the Code of Civil Procedure. *LAKSHMANA v. KULLANMA* . . . I. L. R., 9 Mad., 99

## ATTACHMENT—continued.

## 4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

## 182. Attachment without sale

—*Sale in execution of decree.*—Under the Code of Civil Procedure, property may be attached without view to immediate sale. SARODA PRASAD MCLICK v. LUTCHMEPOT SINGH DOOGOR

[10 B. L. R. 214: 17 W. R., 239]

14 Moore's L. A., 629

[1 Hyde, 158: 1 Ind. Jur., O. S., 125]

## 184. Attachment of debts—

*Written notice.*—Civil Procedure Code, 1859, s. 236.—When the property to be attached consists of debts, a written notice of attachment is necessary under s. 236, Act VIII of 1859. Until the debtor receives such notice, he is bound to pay the amount of his

THAKOOR DAS SING v. LUTCHMEPOT DOOGOR

[7 W. R., 10]

## 185. Proclamation of sale, Issue

of—Civil Procedure Code, 1859, s. 285—*Property not in jurisdiction.*—Where an attachment is made under s. 285, Act VIII of 1859, the only further

[7 W. R., 287]

decree before the decree had been sent to it for execution vitiates the sale subsequently made of that property, as not being made in strict observance of the procedure prescribed by s. 285 of Act VIII of 1859. SHUKTOOLAH MERDHA v. GOOROO CHURN DASS

8 W. R., 310

## 187. Sale of shares of zamindari

hypothecated by lessee for arrears of rent.—Where the shares of a zamindari hypothecated by the lessee are to be sold to recover arrears of rent due to the Court of Wards, no attachment is necessary, and the Collector has no power to attach the property previous to sale. JOHNSON SAHOR v. GOPAL LALL

13 W. R., 173

## 188. Estates paying revenue to

Government—Civil Procedure Code, 1859, s. 213.—In attaching an estate paying revenue to Government, the attaching creditor must, in addition to the information required by the 1st clause of

## ATTACHMENT—continued.

## 4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—continued.

s. 213, Act VIII of 1859, in respect of ordinary immoveable property, give also the special information indicated in the latter clause of that section, that section being cumulative in respect of estates paying revenue to Government. AJODHYA DOW v. SHRO PERSHON SINGH

11 W. R., 175

## 189. Notice of at-

achment—Civil Procedure Code, 1859, s. 213.—The intention of s. 213, Act VIII of 1859, is that the description in a notice of attachment should be sufficient to identify the property; and in the case of an estate paying revenue to Government, that there should be a specification of the revenue. LACK RAM v. MOHESH DASS

13 W. R., 483

DHIRAJ MAHTAB CHUND v. BURDANATH MUNDUL

18 W. R., 411

## 190. Notice of at-

achment—Civil Procedure Code, 1859, s. 213.—Where a property was described as a lakhiraj tank with four banks, the boundaries of which were given, the identification was held to be fully made out. DHIRAJ MAHTAB CHUND v. BURDANATH MUNDUL

[18 W. R., 411]

## 191. Decree directing sale of

to sell A's property, and proceeds against B's, and cannot realize his decree therefrom, he has not lost his right to attach and sell A's property. STEPHENSON v. USKODA DOSSEH

6 W. R., Mis., 18

[1 L. R., 21 Cal., 85]

## 193. Attachment of property in

pursuant to s. 243, even if the Judge's precept forbids such attachment. So far as the property

**ATTACHMENT—continued.****A. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—continued.**

sought to be attached is moveable, if in the hands of the Judge or the Judge's Court, it must be attached in the mode prescribed by the first part of Act VIII of 1859, s. 239, and a notice so sent to the Judge is an effectual attachment of such moveable property, although it is refused by the Judge, whose refusal to receive the notice cannot make that no attachment which would otherwise be a good attachment. **IN THE MATTER OF THE PETITION OF TEIL & Co. TEIL & Co. v. ABDOL HYE . 19 W. R., 37**

**194. — Attachment and sale of mortgage-bond—Civil Procedure Code, 1882, ss. 268, 274—Lien of purchaser on mortgaged property after attachment under s. 268.**—In execution of a decree obtained by them against *J* and *M*, the plaintiffs attached a decree obtained by *J* and *M* against *D*, and on the allegation that *J* and *M*, in order to avoid the consequence of this attachment, executed a benami conveyance of their interest under the attached decree to *B* and *P*, and afterwards with the same object took in adjustment and satisfaction of that decree two bonds in favour of *R* and *I*, respectively, by which immovable property was pledged as collateral security, the plaintiffs attached these two bonds by prohibitory order, under s. 268 of the Civil Procedure Code, and purchased them at the sale in execution of their decree. In a suit on the bonds against *D*, as the principal defendant with *J*, *M*, *B*, *P*, *R*, and *I* joined as parties,—**Held** that the plaintiffs were entitled to enforce the lien created by the bonds against the immovable property specified in them, notwithstanding that no attachment had been made in accordance with the provisions of s. 274 of the Code; a debt secured by a mortgage lien on immovable property not being "immovable property" within the meaning of that section. **DEBENDRA KUMAR MANDEL v. RUP LALL DASS**

[I. L. R., 12 Calc., 546

**195. — Civil Procedure Code, s. 274, cl. (c)—Rights of purchaser of mortgage-bond at sale in execution of decree.**—Where a person at an execution-sale purchases a mortgage-bond under which certain immovable property is given as collateral security for an advance, the fact that he has not attached under s. 274 of the Code will not affect his right to have the collateral security enforced by the sale of the properties mortgaged. **KASINATH DAS v. SADASIV PATNAIK**

[I. L. R., 20 Calc., 805

**196. — Civil Procedure Code (1882), ss. 268 and 274—Attachment of mortgage-debt—Sale under irregular attachment—Suit by purchaser on mortgage.**—The plaintiff sued to recover principal and interest due on a mortgage. He claimed title as purchaser at a Court sale held in execution of a decree against the mortgagee. It appeared that there had been no attachment under Civil Procedure Code, s. 274, but under s. 268 only. **Held** that the purchase by the plaintiff was not invalid by reason of the last-mentioned circumstance, and that the plaintiff was entitled to recover as against the property, **Debendra Kumar Mandel v. Rup Lall**

**ATTACHMENT—continued.****4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—continued.**

**Dass, I. L. R., 12 Calc., 546, and Kasinath Das v. Sadasiv Patnaik, I. L. R., 20 Calc., 805, referred to. MUNIAPPA NAIK v. SUBRAMANIA AYYAN**

[I. L. R., 18 Mad., 437

**197. — Sale of mortgage-debt in execution of a decree against mortgage—Sale carrying with it security without attaching mortgaged property—Civil Procedure Code (1882), s. 274.**—The sale of a mortgage-debt described as such in execution of a decree carries with it the security without attaching the mortgaged property under s. 274 of the Civil Procedure Code. **Debendra Kumar Mandel v. Rup Lall Dass, I. L. R., 12 Calc., 546, and Appasami v. Scott, I. L. R., 9 Mad., 5 (p. 7, per TURNER, J.), followed. BALDEV DHANRUP MARVADI v. RAMCHANDRA BALYANT KULKARNI**

[I. L. R., 19 Bom., 121

**198. — Civil Procedure Code—Rights and interests of mortgagee out of possession.**—Where the rights and interests under his mortgage of a mortgagee out of possession are attached in execution of a decree, the procedure by which such attachment must be effected is that prescribed by s. 268 of the Code of Civil Procedure. S. 274 of the Code cannot be applied in such a case. **KARIM-UN-NISSA v. PHUL CHAND**

[I. L. R., 15 All., 134

**199. — Sale in execution held in pursuance of an attachment irregularly made—Civil Procedure Code, ss. 268 and 274—Rights of auction-purchaser.**—**Held** that a sale of the mortgagee's rights under a mortgage duly held and confirmed was effectual to pass the mortgagee's rights to the auction-purchaser, even though the attachment subsequent to which such sale was held might have been made under a wrong section of the Code of Civil Procedure. **Bal Krishna v. Masuma Bibi, I. L. R., 5 All., 149; I. L. R., 9 I. A., 182, Mahadeo Dubey v. Bhola Nath Dicit, I. L. R., 5 All., 86; Ram Chand v. Pitam Mal, I. L. R., 10 All., 506, and Karim-un-nissa v. Phul Chand, I. L. R., 15 All., 134, referred to. SHEO CHARAN LAL v. SHEO SEWAK SINGH . I. L. R., 18 All., 469**

**200. — Irregularity in attachment—Beng. Reg. VII of 1825, s. 7—Omission to require security.**—An attachment made under Bengal Regulation VII of 1825, without first requiring security as directed by s. 7 of that Regulation, was held to have been irregularly made, but the irregularity was not one which affected the jurisdiction of the Court or made the attachment void. **KHODAJANINISSA v. STEVENS . 20 W. R., 433**

**201. — Civil Procedure Code, 1859, s. 239—Immaterial injury.**—An attachment of immovable property is not voidable, merely because all the forms prescribed in s. 239, Code of Civil Procedure, have not been followed when the irregularities complained of are immaterial and not productive of any substantial injury to the

**ATTACHMENT—continued.****4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—continued.**

person who objects to the proceedings. *KOORANEE DASSI v. BHUBUN MOHINEE DASSI*

[8 W. R., Mis., 52]

202.

*Attachment of*

*more property than is necessary.*—Where the decree-holder wantonly attached more property than was necessary for the discharge of his claim, the Court may order sequestration of only a portion of the property attached. *PRESOTUM DOSS v. OODEY NARAIN MULL*

[1 Agra, Mis., 3]

203.

*Incorrect de-*

*scription of property sought to be attached—Sale in execution of decree—Subsequent purchase of same property under a decree for pre-emption—Civil Procedure Code, s. 274.*—In execution of a simple

The plaintiffs (who were in possession) sued for a

could not be held to have purchased those mudd interests, and the title of the plaintiffs under their pre-emptive decree of December 1885 must prevail. *HABOU LAL SYNOH v. MUHAMMAD RAZA KHAN*

[1 L. R., 13 All., 110]

204.

*Attachment of*

By an order of attachment issued, at the plaintiff's instance, by the Bhusaval Court to the defendant's disbursing officer at Nagpore, a moiety of pay having been withheld by that officer, the defendant applied to the Bhusaval Court to cancel the order, contending that it was illegal, as neither he nor his disbursing officer resided at Bhusaval. On reference to the High Court, *Held* that the order of attachment was *ultra vires*, as neither the defendant nor his disbursing officer resided within the jurisdiction of the Bhusaval Court. The proper procedure was to send the decree of the Bhusaval Court for execution to Nagpore, where the disbursing officer resided and the defendant's pay was available

**ATTACHMENT—continued.****4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—continued.**

for satisfaction of the decree. *RANGOO JAIRAM v. BALKRISHNA VITHAL*

[1 L. R., 13 Bom., 44]

*GOPAL C. LAVET* [1 L. R., 13 Bom., 45 note]

205.

*Attachment*

*before judgment—Termination of attachment—Sale in execution—Material irregularity in publishing or conducting sale without attachment—Waiver—*

orders for attachment of several houses and premises belonging to defendant, and such attachment was made. The suit was dismissed, but eventually

to the confirmation of the sale, urging that the property sold was never attached in execution of the decree, and the attachment previous to judgment was infructuous, because afterwards the claim was dismissed by the Court of first instance; that there had been several other irregularities in publishing and conducting the sale; and that, owing to the irregularities, property had been sold at a grossly inadequate price, causing substantial injury. The Subordinate Judge, overruling the objections, confirmed the sale. On appeal by the judgment-debtor, *Held*, following *Mahadeo Dubey v. Dhola Nath Ditchit*, [1 L. R., 5 All., 86], that a regularly perfected attachment is an essential preliminary to sales in execution of decrees for money; and where there has been no such attachment, any sale that may have taken place is not simply voidable, but *de facto* void, and may be set aside without any inquiry as to substantial injury being sustained by the judgment-debtor for want of a valid attachment; and that an attachment before judgment, like a temporary injunction, becomes *functus officio* as soon as the suit terminates. Further, that the phrase "a material irregularity in publishing or conducting" in the first paragraph of s. 311 of the Code of Civil Procedure should be liberally construed, and that absence of attachment of property at the time of sale thereof is "a material irregularity," attachment being the first step which a Court in executing a simple money-decree has to take to assert its authority to bring property to compulsory sale. *RAM CHAND v. PITAM MAL*

[1 L. R., 10 All., 506]

206. *Civil Procedure Code, ss. 263, 272—Official Trustee's Act (XVII of 1864)—Public officer—Attachment by notice.*—A decree against a married woman provided that the

## ATTACHMENT—continued.

## 4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—continued.

amount due under it should be payable out of the separate estate of the judgment-debtor. The judgment-debtor was entitled to a life-interest in certain trust funds under a settlement of which the Official Trustee was the trustee. The decree-holder proceeded to execute his decree against the life-interest of the judgment-debtor by notice to the Official Trustee under s. 272 of the Code of Civil Procedure; but there were no funds in the hands of the Official Trustee which would have been attachable under s. 268. The decree-holder now applied that the life-interest might be a *ld.* *Held* that the interest of the judgment-debtor was not validly attached. *Semble*—The Official Trustee is a public officer within the meaning of s. 2 of the Civil Procedure Code. **ABDOOL LATEEF v. DOUTIE**

[I. L. R., 12 Mad., 250]

207.

*Attachment of equity of redemption—Civil Procedure Code (1882), ss. 266 and 274—Transfer of Property Act (IV of 1882), s. 60.*—The equity of redemption of the mortgagor is immovable property, and is, as such, liable to be attached and sold in execution of a decree under s. 266 of the Civil Procedure Code (Act XIV of 1882). Its attachment can be effected under s. 274 of the Code by an order prohibiting the judgment-debtor from dealing with it in any way and all persons from receiving it, such order being proclaimed and notified as therein directed. **PARASHRAM HANLAL v. GOVIND GANESH FORGAUMKAR**

[I. L. R., 21 Bom., 228]

208.

*Attachment of money in hands of Receiver—Attachment made without sanction of Court—Civil Procedure Code (1882), s. 272.*—An attachment of money in the hands of the Receiver made without previous permission or sanction of the Court for such attachment is improper and irregular, and the Court will refuse to recognize it. **Kahn v. Ali Mahomed Haji Umar, I. L. R., 16 Bom., 577, followed. MAHOMMED ZOHURUDDIN v. MAHOMMED NOORUDDIN**

[I. L. R., 21 Cal., 85]

209.

*Attachment for arrears of rent—Notice of attachment before portion of arrears became due.*—Where property was attached for arrears of rent, *Held* that the attachment was not vitiated by the circumstance that notice of the attachment was given before a portion of the arrears claimed had become due. **KAMALA NAYAK v. RANGA RAU**

1 Mad., 24

210.

*Copy of order for attachment not fixed in Collector's office—Civil Procedure Code, s. 274—Copy of order for attachment not fixed up in Collector's office.*—In execution of a money-decree, an order was issued, under s. 274 of the Civil Procedure Code, for the attachment of property which was the joint ancestral estate of the judgment-debtor and his father. A copy of this order was not fixed up in the office of the Collector of the district in which the land was situate, as required by s. 274. *Held* that, though the defect

## ATTACHMENT—continued.

## 4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—concluded.

in the manner in which the attachment was made might render the attachment ineffectual for the purpose of voiding alienations made, the attachment was effectual against the judgment-debtor, and the defect did not afford a ground for declaring the execution proceedings ineffectual. **RAI BALKISHEN v. RAI SITA RAM**

I. L. R., 7 All., 731

## 5. PRIORITY OF ATTACHMENT.

211. *Question of priority of attachment—Attachment under decree of High Court of property already attached under decree of Small Cause Court—Claim to attached property, by what Court to be decided—Civil Procedure Code (1882), s. 272.*—In execution of a decree obtained in the High Court, the plaintiffs, on the 22nd of March 1895, attached certain property of the defendant, which, however, had been already attached on the 22nd of February 1895 by one *R*, who had obtained a decree against defendant in the Court of Small Causes. The plaintiffs' attachment was therefore effected under s. 272 of the Civil Procedure Code (Act XIV of 1882) by a notice addressed by the Prothonotary of the High Court to the Registrar of the Small Cause Court. The claimant was mortgagee in possession, and the defendants were his tenants. On the 26th February he had lodged a claim in the Small Cause Court to the said property as mortgagee in possession, and on the 25th March 1895 a consent order was passed by the Chief Judge of that Court directing that *R*'s attachment should stand subject to the claimant's claim. On the 22nd April 1895, the claimant applied to the Chief Judge of the Small Cause Court to issue a notice to the plaintiffs in this suit, under s. 272 of the Civil Procedure Code, to determine the question of priority of claim to the attached property between him and the plaintiffs. His application was refused, the Chief Judge being of opinion that he could not interfere in a High Court suit. The claimant then filed his claim in the High Court, and took out this summons to remove the plaintiffs' attachment. *Held* that, under s. 272 of the Civil Procedure Code, the Small Cause Court was the only Court to decide the question of priority between the claimant and the plaintiffs. **JAY-NARAYAN MEGHRAJ v. ISMAIL KURIMA**

[I. L. R., 19 Bom., 710]

## 6. ALIENATION DURING ATTACHMENT.

212. *Effect on alienation of setting aside ex-parte decree—Civil Procedure Code, s. 240—Validity of attachment—Ex-parte decree.*—The effect of granting an application under s. 119 of Act VIII of 1859 is to declare that there has not been yet a valid decree in the suit, and thereby any attachment that has issued in execution of the decree which has been set aside becomes invalid. *A* obtained a decree *ex-parte* against *B*. Property belonging to *B* was attached in execution. While under attachment, *B* sold the property to *C*. Afterwards *B* applied for and obtained an order, under

## ATTACHMENT—continued.

6. ALIENATION DURING ATTACHMENT  
—continued.

s. 119 of Act VIII of 1859, to set aside A's decree and for a new trial. Held that C's purchase was not null and void under s. 240 of Act VIII of 1859. **LALA JAGAT NABAYAN v. TULSI RAM**

[1 B. L. R., A. C., 71

**JUGGUT NARAIN v. TOOLSEN RAM**

[10 W. R., 99

213. ——— Incumbrance pending attachment—*Right of purchaser at sale at instance of second attaching creditor.*—The purchaser of the right, title, and interest of a judgment-debtor in certain immovable property at an auction-sale which took place at the instance of a second attaching creditor was held to take the property subject to

**GURU PRASAD SAHU v. BINDA BISI**

[9 B. L. R., 180; 18 W. R., 279

the attaching creditor or persons who may acquire rights under or through the attachment, and not as against the whole world. **ANAND LALL DASS v. RADHAMOHAN SHAW**

[2 B. L. R., F. B., 49; 11 W. R., O. C., 1

Same case affirmed in the Privy Council. **ANUND LALL DASS v. JULLODHUR SHAW**

[10 B. L. R., 134; 17 W. R., 313;

14 Moore's L. A., 543

**RAM CHARAN LAL v. JHATU SAHU**

[12 B. L. R., 413 note; 14 W. R., 25

**BALMOKUND v. RAMHIT DASS** . 13 W. R., 134

ated has been attached. When a private alienation of

[L. L. R., 20 All., 421

218. ——— *Alienation during attachment—Civil Procedure Code (Act XIX of 1882), ss. 453, 454, 455, 456, 457, 458, 459, 460, 276.*—Any private alienation of a property

## ATTACHMENT—continued.

6. ALIENATION DURING ATTACHMENT  
—continued.

attached before judgment, during the continuance of the attachment, is void as against all claims enforceable under the attachment. The effect of an attachment of a property under the Civil Procedure Code, whether made before or after decree, is the same, provided that in the former case a decree is made for the plaintiff at whose instance the attachment takes place. **Raj Chunder Roy v. Isser Chunder Roy, Bourke, O. C., 139**, referred to. **GANU SINGH v. JANG LAL** . 1 L. R., 26 Cal., 531

217. ——— Effect of removal of attachment—*Execution struck off from books of decree-holder.*—Certain property was attached in execution

the prohibition against alienation of property under attachment avoids such alienation only as against the execution-creditor or persons entitled to claim under him. A conveyance executed by the judgment-debtor

title will only date from any subsequent attachment which he may obtain. **PUDDOMOZER DOSSEZ v. HOY MUTHOORANATH CHOWDHRY**

[12 B. L. R., 411; 20 W. R., 133

**GOONJESSUR KOONWAR v. LUCHMEZ NARAIN SINGH** . 20 W. R., 418

**ATONGINT DOSSEZ v. CHOWDHRY JUSMUNJOY MULLICK** . 25 W. R., 513

*Quare*—Would this decision apply where the delay was caused by the decree-holder's willingness to give his debtor every indulgence and every opportunity of repaying the debt? See per GLOVER, J. **INDRANATH KOER v. LUCHMUN SINGH** . 24 W. R., 56

218. ——— *Presumption of abandonment of attachment.*—A deed of alienation of certain property made pending an attachment of the property was held not to become valid by reason of the removal of the attachment. It does not follow, because subsequent applications for attachment are made by a decree-holder, that the original one is abandoned. **DHIRAJ NANATH CHAUD BHANUJI v. STRYOMOTER DOSSEZ**

[12 B. L. R., 414 note; 15 W. R., 222

**ATTACHMENT—continued.****6. ALIENATION DURING ATTACHMENT—continued.**

**219.** ————— *Civil Procedure Code (1882), s. 273—Dismissal for an application for execution—Attachment of a decree—Execution of attached decree.*—The holder of a decree dated 1885 applied to execute it, but his application was dismissed in March 1887 on the ground that "no further steps had been taken." It did not appear that any notice was given to him before the order of dismissal was made. Nevertheless the decree-holder proceeded to execute a decree of the judgment-debtor attached by him and brought to sale certain property which was in question in the present suit, and it was purchased *bona fide* by the present defendant, who obtained a sale certificate from the Court. The present plaintiff claimed as assignee from the holder of the attached decree to execute it against the same land, and now sued for a declaration that it was liable to be brought to sale by him, and that the defendant's purchase was void as against him. *Held* (1) that under the circumstances of the case the attachment in execution of the decree of 1885 was subsisting at the time of the purchase by the defendant; (2) that a judgment-creditor who attaches a decree is competent to execute it. **RANGASAMI CHETTI v. PERIASAMI MUDALI** . . . . . **I. L. R., 17 Mad., 58**

**220.** ————— *Termination of attachment by abandonment.*—The plaintiff had an attachment against certain property. Owing to his not filing a necessary affidavit, the execution petition was struck off. Subsequently he applied for the sale of the property, and the Court directed a fresh attachment to issue. It was held that these facts did not amount to an abandonment of the first attachment by the plaintiff. **SRINIVASA SASTRIAL v. SAMI RAU** **[I. L. R., 17 Mad., 180]**

**221.** ————— *Assignment of decree—Second attachment by assignee—Presumption as to cessation of prior attachment.*—If at the date of the assignment of a decree the judgment-debtor's property is already under attachment, in execution of such decree, it is not necessary for the assignee of the decree to apply for a fresh attachment. When either the decree-holder or his assignee applies to have attachment under the decree of property which has been previously attached under the decree, it lies upon the decree-holder or the assignee of the decree as the case may be, if the question is raised, to show that the second application was unnecessary by reason of the first attachment being still subsisting. Failing such evidence, a Court may presume that the prior attachment had ceased before the application for a second attachment was made. **Pudomonee Dossee v. Muthoora Nath Chowdhry, 12 B. L. R., 411**, referred to. **HAFIZ SULEMAN v. ABDULLAH** **[I. L. R., 16 All., 138]**

**222.** ————— *Circumstances showing expiry of attachment.*—An attachment, which had, at one time, prohibited alienation of the property, and on which the plaintiffs relied as having rendered the mortgage invalid, was held under the circumstances to have been no longer in operation at the time when the mortgage was executed, and the

**ATTACHMENT—continued.****6. ALIENATION DURING ATTACHMENT—continued.**

mortgage was upheld. **MAHOMED MOZUFFER HOSSEIN v. KISHORI MOHUN ROY**

**[I. L. R., 22 Calc., 909  
L. R., 22 I. A., 129]**

**223.** ————— *Order releasing property from attachment—Subsequent decree establishing attaching creditor's right to attached property—Mortgage of attached property between release and subsequent decree—Code of Civil Procedure (1882), ss. 276, 280, and 283.*—A decree-holder attached the property of certain of the defendants, who then obtained an order of release under s. 280 of the Code of Civil Procedure, and subsequently mortgaged the property. The attaching creditor thereupon sued for and obtained, under s. 283 of the Code, a declaration that the mortgaged property was nevertheless liable to be sold under this attachment. A few days after obtaining such decree, he again attached the judgment-debtor's property. The mortgagees then sued on their mortgage, and obtained a decree for sale. The sale in execution of the attaching creditor's decree and that ordered by the decree in favour of the mortgagees were both advertised for the same day. The plaintiff purchased at the sale under the attaching creditor's decree, and then sued for a declaration that the property was not liable to be sold in execution of the mortgage-decree on the ground that the judgment-creditor's attachment was restored by the decree under s. 283 of the Code, and that the mortgage executed by the judgment-debtors was invalid as against the plaintiff, the purchaser at the execution sale. *Held* (affirming the decisions of the Subordinate Judge and the District Judge) that the plaintiff was entitled to the decree sought. **Mahommed Waris v. Pitambur Sein, 21 W. R., 435**, applied. **BOJOMALI RAI v. PROSUNNO NARAIN CHOWDHRY** **[I. L. R., 23 Calc., 829]**

**224.** ————— *Execution case struck off the file.*—Where, certain immoveable property having been attached, the execution case was subsequently struck off the file, and the judgment-debtor applied again for attachment of the same property,—*Held*, looking to the particular circumstances of the case, that a private alienation of the property, after the date of such application, but before attachment, was not void under the provisions of s. 240 of Act VIII of 1859. The principle of the High Court's decision in **Ahmud Hussain Khan v. Muhamamad Azim Khan, 1 N. W., 51**, *Ed. 1873*, 48, followed. **JAIB-UN-NISSA v. JAIRAM GIR**

**[I. L. R., 1 All., 616]**

**225.** ————— *Alienation under irregular attachment—Civil Procedure Code, 1859, ss. 239, 240—Private alienation after attachment.*—Certain land was attached in the execution of a decree in the manner required by s. 235 of Act VIII of 1859, but a copy of the order of attachment was not, as required by s. 239 of that Act, fixed up in a conspicuous part or in any part at all of the Court-house of the Court executing the decree, nor was it sent or fixed up in the office of the Collector of the

## ATTACHMENT—continued.

G. ALIENATION DURING ATTACHMENT  
—continued.

*Indra Chandra v. Agra and Masterman's Bank,*  
1 B. L. R., S. N., 20-10 W. R., 264, followed. *NUR*  
*AHMAD v. ALTAF ALI* . . . I. L. R., 2 All, 58

any future sum which should fall due under the decree and in payment of which *B* should make default. *B* failed to pay a further instalment when due, and *A* obtained an order for sale of the property. *A* himself became the purchaser, and was put in possession by the Court, notwithstanding the claim of *C*, who had been in possession ever since his purchase. In a suit by *C* to recover possession.—*Held* the Court had no power to make the order continuing the attachment, the right of attachment being only for sums actually due, and the whole amount for which execution issued being satisfied out of the proceeds, the alienation of the property to *C* was not void as against *A*. *RAMDHAN MITTER v. KAILAS NATH DUTT*  
[4 B. L. R., A. C., 20: 13 W. R., 457

227. ——— Alienation under attachment not properly executed.—*Suit for money*

the property until the whole of the decree was satisfied. Subsequently *B* mortgaged a portion of this property to *C*. *A* assigned his decree to *D*, upon whose application the property was attached and sold, and *E* became the purchaser. *C* having taken steps to foreclose the mortgage, *E*, to prevent such foreclosure, paid the amount into Court. *Held* that *E* could not maintain a suit against *C* to recover the amount so paid by him. The mortgage by *B* was not an alienation until and void under s. 240, Act VIII of 1853. *B*'s petition did not create a charge upon the

## ATTACHMENT—continued.

G. ALIENATION DURING ATTACHMENT  
—continued.

property in favour of *A*. *RAMESWAR SINGH v. RAMTANU GHOSE* . . . 4 B. L. R., A. C., 24  
*RUTNESSUR SING v. RAM TANOO GHOSE*  
[13 W. R., 491

by the approval of the Court which issued the process of attachment, was valid. *ANNAVUNADAVAS v. IYASAWMY PILLAY* . . . 8 Mad., 65

attachment would not invalidate the sale. *FRANNATH MITTER v. SUMBHOO CHUNDER NATH*  
[7 W. R., 430

*SINGH* . . . 9 W. R., 544

231. ——— Civil Procedure Code (1852), s. 276.—*Lease of property under attachment.*—*Held* that a *sur-i-peshgi* lease and an ordinary agricultural lease made by a judgment-debtor of property under attachment were alienations which were void by reason of the prohibition contained in s. 276 of the Code of Civil Procedure. *DEVI PRASAD v. BALDEO* . . . I. L. R., 18 All, 123

232. ——— Requirements of attachment not complied with.—*Civil Procedure Code, 1859, s. 240.*—Before an attachment can be relied on under s. 240, Code of Civil Procedure, for the purpose of invalidating any subsequent alienation, it must be shown to have been duly made by a written order issued and published, viz., the prohibitory notice prescribed by law. *DWARKANATH BISWAS v. RAM CHUNDER ROY* . . . 13 W. R., 136

**ATTACHMENT—continued.****6. ALIENATION DURING ATTACHMENT**  
—continued.

**233.** ———— *Civil Procedure Code, 1859, ss. 235, 239, and 240.*—Held that the alienation of property cannot be declared void under the provisions of s. 240, Act VIII of 1859, where no attachment order was issued or notified in the manner prescribed by ss. 235 and 239 of the said enactment. Where there was no attachment after the manner prescribed in Act VIII of 1859, but the property was advertised for sale, and the judgment-debtor encumbered the property with lien,—Held that the decree-holder could sell the property, but subject to liens which were not otherwise proved to be collusive. **SAHOO CHUND v. GEETUM SINGH**

[2 Agra, 208]

**234.** ———— *Civil Procedure Code, 1859, s. 240 (1882, s. 276), Object of—Civil Procedure Code, 1859, ss. 240, 270, and 271.*—A private alienation of property while under attachment is null and void only as regards the attaching creditor and those who claim under or through the attachment. **Anund Lall Doss v. Jullodhur Shaw, 10 B. L. R., 134: 17 W. R., 313, followed.** Act VIII of 1859, s. 240, is for the benefit of an attaching creditor (subsequent to, and in defiance of, whose attachment the private alienation thereby declared void has been made), and of those claiming under or through him, and not for the benefit of puisne attaching creditors, whose attachment is laid later than such private alienation. **BALAJI RAMCHANDRA v. GAYANAN BABAJI**

[11 Bom., 159]

**235.** ———— *Effect of good attachment on alienation—Voidable alienation.*—An alienation of property while under attachment is not absolutely void for all purposes and as to all persons, but voidable only, and capable of confirmation. **MAHOMED ALI v. GORUL CHUND**

[1 N. W., 19: Ed. 1873, 18]

*e.g., as in case of the decree being set aside.* **JUGUT NARAIN v. TOOLSEE RAM**

[10 W. R., 99  
[1 B. L. R., A. C., 71]

**236.** ———— *Voidable alienation—Civil Procedure Code, 1859, s. 240.*—An alienation of property attached in execution of a decree, made for the *bonâ fide* purpose of satisfying the decree in respect of which the attachment has been made, and where the consideration for the alienation is applied to, and is found to be sufficient for, the satisfaction of the decree, is not invalid under s. 240 of the Code of Civil Procedure. **PURNESHUR RAI v. HIDAYTOOLLAH, MEHPAL RAI v. HIDAYTOOLLAH**

[1 N. W., 60: Ed. 1873, 114]

**237.** ———— *Alienation after satisfaction, but before removal of attachment—Civil Procedure Code, 1859, s. 240.*—A judgment-debtor satisfied a decree under which attachment of his property had been made. He reported the satisfaction to the Court, and on the following day he executed a mortgage of his property. The day after the execution of the mortgage the attachment was removed by the Court. Held that the mortgage, if

**ATTACHMENT—continued.****6. ALIENATION DURING ATTACHMENT**  
—continued.

*bonâ fide*, was not null and void under s. 240 of the Code of Civil Procedure. **BULDEE SINGH v. KANAKA**

[1 N. W., 71: Ed. 1873, 125]

**238.** ———— *Private alienation, Meaning of—Civil Procedure Code, 1859, s. 240—Insolvent Act, s. 7—Vesting order.*—The expression "private alienation," in s. 240 of the Code of Civil Procedure, does not refer to an alienation effected by a vesting order of the Insolvent Court under s. 7 of the Indian Insolvent Act; such an alienation is rather an alienation by operation of law than one by the judgment-debtor. **SARKIES v. BUNDHOO BARE**

[1 N. W., Part 6, p. 81: Ed. 1873, 172]

**239.** ———— *Illegal alienation—Civil Procedure Code, 1859, s. 240.*—Any alienation of property after attachment is illegal under s. 240, Act VIII of 1859. **JADUBANUND ROY v. BEJOY GOBIND CHOWDRY**

[7 W. R., 511]

**MOORUL SINGH v. MOHUN KOORER**

[9 W. R., 167]

**MONOHUR LALL v. JUGGOMOHUN LALL**

[9 W. R., 307]

**240.** ———— *Prior lease for attached property.*—Where landed property is attached in execution of a decree, the party attaching is bound by a lease obtained for it prior to his attachment. **FEDEDO v. MAHOMED MUDESSUR**

[15 W. R., 75]

**241.** ———— *Alienation after one decree and before another—Civil Procedure Code, 1859, s. 240.*—Although, under the provisions of s. 240 of Act VIII of 1859, a private alienation by sale of property after attachment can be impugned by the holder of the decree in execution of which it was attached, if obstructive of the execution, yet such alienation cannot be impugned by the holder of the decree, under those provisions, because it obstructs the execution of another decree obtained by him subsequently to the date of the alienation. **MAHABAN v. RAHEEMUN**

[6 N. W., 217]

**242.** ———— *Alienation with knowledge and consent of creditor attaching—Civil Procedure Code, 1859, s. 240.*—While certain immovable property was under attachment, the judgment-debtor mortgaged it for value to the Mussorie Savings Bank, with the knowledge of the attaching creditor, the Delhi Bank, which acquiesced in, and benefited by, the mortgage. The property was subsequently released from attachment, but was again attached, and was brought to sale in execution of the decree held by the Delhi Bank, and purchased by the defendants. The Mussorie Savings Bank sued the auction-purchasers, claiming the right to bring the property to sale on the ground of its being under mortgage to the Bank prior to its purchase by the defendants. It was held that under the circumstances the defendants must take the consequences of having purchased the property without having satisfied themselves as to its condition. Had it not been for the conduct of the Delhi Bank, however, the rule that a private *bonâ fide* alienation for value of property attached under Act VIII of 1859 is, by

## ATTACHMENT—continued.

6. ALIENATION DURING ATTACHMENT  
—continued.

DHUREM DASS v. MUSSOORIE SAVINGS BANK

[8 N. W., 296]

243. ——— Civil Procedure Code (1882), s. 276—Kanoon granted during a subsisting attachment—Subsequent discharge of judgment-debt, and other later attachments—Claim for rateable distribution—Effect of discharge in rendering first attachment inoperative as against all creditors.—A kanoon was executed by the karnavan of a tarwad in plaintiff's favour for valuable consideration for the discharge of judgment-debts

## ATTACHMENT—continued.

6. ALIENATION DURING ATTACHMENT  
—continued.

obtained against B. Held that, the sale of 1866 having been a private one and not in process of execution, the respondent only obtained such title as B had in the decree of 1860, viz., a title subject to the effect of the order of September 1865. DINTYBONATH SANIAL v. RAMKUMAR GHOSH. TARA-CHANDRA BHATTACHARJIA v. BAIKANTNATH SANIAL. I L R., 7 Cal., 107; [L R., 8 L A., 85; 10 C. L R., 231]

Procedure. MAHADEVAPPA v. SRINIVASA RAU

[I L R., 4 Mad., 417]

246. ——— Alienation under attachment making material error in description of property—Civil Procedure Code, 1877,

the numbers and areas of the lands comprised in such

[I L R., 23 Mad., 478]

244. ——— Title acquired by private

vender, and cannot acquire a title better than his. Under an execution-sale, the purchaser, notwithstanding that he acquires merely the right, title, and interest of the judgment-debtor, acquires that title, by operation of law, adversely to the judgment-debtor and freed from all alienations and incumbrances effected by him after the attachment of the property sold. In 1858 the respondent obtained a decree against B. In 1863, in satisfaction thereof, he caused to be attached a decree for *meane profits* made in favour of B against the appellants in 1860. In May 1865 the respondent obtained an order for the sale thereof; but instead of proceeding to execution-sale, he purchased, in 1866, the whole of

under s. 276 of Act X of 1877. Held also that the material misdescription of the property in this case in the order of attachment protected the alienance, who are *bona fide* purchasers, from having the alienation set aside as void under s. 276, as the attachment could not under the circumstances be held to have been "duly intimated and made known" as required by that section. GEMANI v. HARDWAR PANDIT. I L R., 3 All., 698

247. ——— Conveyance under award directing it—Civil Procedure Code, 1877, s. 276—Decree in accordance with award—Execution of conveyance—"Private alienation."—By agreement between L and Q, the parties to a suit, the matters in difference between them were referred to arbitration.

## ATTACHMENT—continued.

G. ALIENATION DURING ATTACHMENT  
—continued.

An award was made directing that *L* should transfer certain property to *Q* by way of sale. Between the day the award was made and the day a decree was made, in accordance with the award, such property was attached in execution of a decree against *L*. After the attachment, *L*, in compliance with the decree made in accordance with the award, executed a conveyance of such property to *Q*. *Held* by the Full Bench (affirming the decision of *STRAIGHT, J.*, and reversing that of *SPANKIE, J.*) that such conveyance was not a "private alienation" in the sense of s. 276 of Act X of 1877, and was therefore not void under that section as against a claim enforceable under such attachment. *QURBAN ALI v. ASHRAF ALI* . . . . . I. L. R., 4 All., 219

248. ——— Expiry of attachment, Effect of, on alienation—*Civil Procedure Code, s. 276*.—A private alienation of property under attachment is void, under s. 276 of the Civil Procedure Code, "as against all claims enforceable under the attachment" only. Where, therefore, property attached in execution of a decree was alienated, and was after such alienation again attached, the first attachment having expired, and was brought to sale in pursuance of the second attachment, and the purchaser sued for possession of the property claiming on the ground that the alienation of the property was void under the provisions of s. 276,—*Held* that, as no claim was enforced or was enforceable under the first attachment, under which the property was alienated, but the purchaser was claiming under the second attachment, such alienation could not be assailed under the provision of s. 276. *GOBIND SINGH v. ZALIM SINGH* . . . . . I. L. R., 6 All., 33

249. ——— Alienation after imperfect attachment of immovable property—*Private alienation after such attachment—Civil Procedure Code, ss. 274, 276, 292, sch. IV, No. 141*.—A judgment-debtor, whose property had been attached in execution of a money-decree, sold the property, and out of the price paid into Court the amount of the decree, and prayed that the attachment might be removed. While the attachment was subsisting, and prior to the sale, the holders of other money-decrees against the same judgment-debtor preferred applications, purporting to be made under s. 295 of the Civil Procedure Code, and praying that the proceeds of the sale of the property might be rateably divided between themselves and the attaching creditor. The Court refused to remove the attachment until these creditors had been paid. It was found that the sale by the judgment-debtor was a *bond fide* transaction, entered into for valuable consideration. *Held* that, inasmuch as no order for attachment of the property was passed in favour of the decree-holders in manner provided by s. 274 of the Civil Procedure Code, their claims were not entitled to the protection conferred by s. 276 against private alienations of property under attachment; that these claims were not enforceable under the attachment which was made; that the sale by the judgment-debtor was valid; and that execution of

## ATTACHMENT—continued.

6. ALIENATION DURING ATTACHMENT  
—continued.

the decrees could not take place. *Per MAHMOOD, J.*—That s. 276 of the Civil Procedure Code, being a restriction of private rights of alienation, should be strictly construed; that before property can be subjected to such restriction, there must be a perfected attachment; that the orders passed under s. 295 did not amount to such attachment, and that, even assuming them to amount to such attachment, they, not having been duly intimated and notified, could not make the prohibition of s. 276 applicable to the case. *Mahadeo Dubey v. Bhola Nath Dichit, I. L. R., 5 All., 86, Anand Lall Dass v. Jullodhur Shaw, 14 Moore's I. A., 543: 10 B. L. R., 134, Rameswar Singh v. Ramtannu Ghose, 4 B. L. R., A. C., 24, Indro Chunder Baboo v. Dunlop, 10 W. R., 264, Gobind Singh v. Zalim Singh, I. L. R., 6 All., 33, and Gumani v. Hardwar Pandey, I. L. R., 6 All., 698, referred to. GANGA DIN v. KHUSHALI* [I. L. R., 7 All., 702.

250. ——— Claim to rateable distribution under s. 295—*Civil Procedure Code, ss. 276, 295*.—A claim under s. 295 of the Civil Procedure Code is not enforceable as an attachment against which an assignment is rendered void by the provisions of s. 276. *Ganga Din v. Khushali, I. L. R., 7 All., 702*, followed. In June 1883 *A, B*, and *C* obtained separate money-decrees against, amongst others, *T* as executor under the will of his father. Some time in 1884 *B* attached the whole of the testator's properties in execution of his decree, and *A* and *C* applied for rateable shares in the sale-proceeds. On the 2nd June 1884 the parties came to an arrangement, by which it was agreed that *B*'s claims should be satisfied by means of all the attached properties with the exception of one, which should be left free for the benefit of the other judgment-creditors. By a deed dated the 16th June, but which was found to have been actually executed on the 17th, *T* conveyed this property to *A*, and on the 17th June all the other attached properties were sold in execution of *B*'s decree, and on the same day *B* put in an application for the removal of his attachment from this property. *D*, another decree-holder, on the 16th June, applied to be included in the rateable distribution of the properties attached by *B*, and on the 30th June *D* attached the property sold to *A* in execution of his decree. *A* preferred a claim to the property, which was disallowed, and *A* thereupon brought a suit to establish her right to it on the ground (*inter alia*) that *B*'s attachment had ceased to exist on the date of her purchase, and that the sale was a valid one. *Held* that the sale to *A* was valid against *D*. *DURGA CHURN ROY CROWDERY v. MONMOHINI DAS* . . . . . I. L. R., 15 Calc., 771

251. ——— Sale of tenant's interest by landlord pending attachment by Civil Court—*Madras Act VIII of 1865, s. 38—Civil Procedure Code, ss. 276, 295*.—The interest of a tenant in certain land having been attached by his creditor in execution of a decree for money, the landlord attached the same land for arrears of rent,

**ATTACHMENT—continued.****6. ALIENATION DURING ATTACHMENT—concluded.**

brought it to sale, and purchased it under the provisions of the Rent Recovery Act. The creditor subsequently purchased the interest of the tenant, which was sold in execution of his decree. In a suit by the landlord to have the sale to the creditor declared invalid.—*Held* that the landlord's purchase was subject to the creditor's attachment. *SUBRAMANYA v. RAJARAM*. . . I. L. R., 8 Mad., 573

252. ——— Attachment for arrears of revenue.—Subsequent attachment in execution of decree—*Madras Abkari Act (Madras Act I of 1866), s. 28*.—Certain land was put under attachment for arrears of revenue under the Madras Abkari Act, s. 28; the same land was subsequently attached in execution of a money-decree against the defaulter, and the defendant purchased it at the Court-sale. The Collector of the district intervened in execution, and objected to the sale of the land

ment under Abkari Act had been made. *Held* that the plaintiff was entitled to the declaration asked for. *SARANGAPANI v. SECRETARY OF STATE FOR INDIA*

[I. L. R., 18 Mad., 479]

**7. ATTACHMENT PENDING APPEAL.**

253. ——— Attachment before judg-

pending the appeal of the plaintiff to the Privy Council, nor could it call on the defendant respon-

**8. LIABILITY FOR WRONGFUL ATTACHMENT.**

254. ——— Claim to attach property—

estimated value, it follows that the attachment is the direct act of the creditor for which he is immediately responsible. Should the goods be proved not to belong to the debtor, the litigation and delay, and also any depreciation of the goods by an intermediate fall

**ATTACHMENT—continued.****8. LIABILITY FOR WRONGFUL ATTACHMENT—concluded.**

cation under a 278 maliciously, or without probable cause; and that (b) the goods having been sold under the Court's order, the difference in market-

*SORIMORUN ROY v. HARSHUN DAS*

[I. L. R., 17 Calc., 436]

L. R., 17 I. A., 17

**9. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT.**

*WAS RAMANUJ DAS v. KRETTIER MOHI DASSI*

[I. C. W. N., 617]

256. ——— Revival of attachment on reversal of sale in execution of decree.—An attachment, once legally made, is revived upon the reversal of the sale in execution. *GURGO SINGH v. MUDDUN MOHUN SINGH*. . . W. R., 1864, 28

*MOHESH NARAIN SING v. KISHANRAJ MISSEK*

[3 Ind. Jur., O. S., 1:5 W. R., P. C., 7

Marsh., 592:8 Moore's I. A., 324]

257. ——— Striking off case for neglect to pay talabana fees.—An attachment

**ATTACHMENT—continued.****9. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—continued.**

cannot subsist when the suit has been struck off for neglect to pay in the talabana for the service of the necessary sale processes. **PENBHOO DOSS v. GOMA BHUVAN SINGH** . . . 5 W. R., 181, 4

**358. ——— Extinction of attachment—Act VIII of 1859, s. 270—Execution of decree—Striking off execution case—Money-decree.**—*I* obtained a decree against *C* for possession and mesne profits, but no specific amount of mesne profits was then assessed. In 1864 *A*, in execution of his decree, attached land belonging to *C*, but the execution case was struck off the file in 1865. After several ineffectual proceedings, *A* re-attached the property in March 1869. In execution of a decree against *C*, *B* had in February 1869 attached the same property. The property was sold under *A*'s attachment in May 1869, and on the application of *A*, the Subordinate Judge, on the strength of *A*'s attachment in 1864, gave priority to *A*'s claim over that of *B*. The balance of the sale-proceeds, after satisfaction of *A*'s decree, was only sufficient to cover a small portion of the decree obtained by *B*. In a suit by *B* against *A*, under s. 270, Act VIII of 1859, to recover the amount of her claim which remained unsatisfied,—*Held* that the attachment of *A* in 1864, on the strength of which *A*'s claim was considered by the Subordinate Judge to have priority over that of *B*, was not a sufficient and valid attachment under s. 270. The attachment contemplated by that section means an attachment after a final money-decree. *Held*, also, that the striking off of the execution case of *A* in 1865 caused an extinguishment of the effect of the attachment of 1864. **BINDA BIBEY v. LALLA GOPENDATH**  
[14 B. L. R., 323; 21 W. R., 66]

**359. ——— Striking off execution case.**—The striking off of an execution proceeding affects only the files of the Court and the application for sale, and does not interfere with the continuance of any attachment under the decree which is executed. **NADIR HOSSEIN v. PEAROO THOVIDARINCE** 14 B. L. R., 425 note; 19 W. R., 255

**JUGOONDHOO SEIN v. BHUGWAN CHUNDER DOSS** . . . 17 W. R., 15

**360. ——— Effect upon maintenance of attachment of order dismissing application for execution.**—Where property has once been attached in execution of a decree, an order merely dismissing an application for execution, which order does not contain specific words withdrawing the attachment, and which is not an order declaring the decree incapable of execution, will not have the effect of raising the attachment; and if in appeal such order is set aside, the decree-holder will be in the same position as he was before and entitled to the full benefit of the attachment. **Gunga Rai v. Sakeena Begum**, 5 N. W., 72, **Nadir Hossein v. Pearoo Thovidarince**, 14 B. L. R., 425, and **Golan Yaheya v. Sham Soonduree Kooeres**, 19 W. R., 142, referred to. **BANK OF UPPER INDIA v. SHEO PRASAD**

[L. L. R., 19 All., 482]

**ATTACHMENT—continued.****9. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—continued.**

**361. ——— Continuation of attachment.**—If property is once attached, the attachment will subsist, if not expressly abandoned by the party at which suit it was issued, until an order is issued for its withdrawal, even although no further steps are taken on the attachment within a reasonable period. A mere striking off the execution case off the file by the Court, of its own motion, without notice to or consent of parties, will not invalidate an attachment. **JHATU SAHU v. RAMCHARAN LAL**

[3 B. L. R., Ap., 68; 11 W. R., 517]

**RAMCHARAN LAL v. JHATU SAHU**

[13 B. L. R., 413 note; 14 W. R., 25]

**362. ——— Striking off execution case—Release from attachment.**—The striking off of a case from the file while pending in execution does not release a property from attachment. **GOLAM YAHEYA v. SHAMA SUNDORI KUBER**

[3 B. L. R., Ap., 134; 12 W. R., 142]

*Contra*, **KHADIM HOSSEIN KHAN v. KALBE PERSHAD SINGH** . . . 8 W. R., 49

**363. ——— Attachment before and after decree—Striking off execution sale proceedings.**—*Held* that attachment issued after suit supersedes the attachment order obtained during the pendency of the suit, and that the former was taken off the property when the sale proceedings were struck off the file. **RAM JEWAN v. RAM LALL**

[2 Agra, 190]

**364. ——— Implied withdrawal of attachment.**—The implied withdrawal of an order of attachment, even though such order was not formally withdrawn, but was understood to be withdrawn by the decree-holder, bars objection against the validity of alienation of the attached property by mortgage or otherwise. **JUGUN NATH v. GHASEERAM**

[1 N. W., 32; Ed. 1873, 30]

**365. ——— Case struck off for convenience of Court—Stay of execution for fixed period.**—Execution cases in which a sale or other proceedings are stayed for a fixed period at the request of the debtor, and with the consent of the decree-holder, should not be struck off till that period has expired, and, if struck off for the convenience of the Court by an order which provides for the continuance of the attachment, sale may follow within the said period without a fresh attachment. **CHUMUN LALL CROWDHRY v. DOMUN LALL** . . . 9 W. R., 205

**366. ——— Stay of execution for fixed period.**—Certain property having been attached and advertised for sale in execution of a money-decree, the decree-holder asked the Court to stay further proceedings for six weeks, as the debtor had made part payment, praying that the attachment might be considered to be still in force. The execution case was accordingly removed from the file. *Held* that the order striking the case off the file for the convenience of the Court did not put an end to the attachment. *Held* (JACKSON, J., dissenting) that

**ATTACHMENT—continued.****9. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—continued.**

the attachment continued in force, notwithstanding a year's delay on the part of the judgment-creditor in applying again for execution. *DA COSTA v. KALLER PERSHAD SINGH* . . . 12 W. R., 280

237. ——— **Order striking off attachment pending appeal.**—An order striking off an attachment pending an appeal does not release the pr. party from attachment. *SHEW NARAYN SINGH v. MILLER* . . . 17 W. R., 234

268. ——— **Re-attachment—Abandonment of attachment.**—*Semble*—A re-attachment of pr. party after decree does not imply an abandonment of an attachment obtained before decree. *RAMKRISHNA DASS SUBROWJI v. SURFUNDISSA BEGUM*

[L. L. R., 6 Cal., 129]

289. ——— **Stay of execution, keeping**

affect the rights of the decree-holder. *MUNGOOL PERSHAD DICHIT v. GRIJA KANT LAHIRI*

[L. L. R., 8 Cal., 51; 11 C. L. R., 113  
L. R., 8 I. A., 123]

270. ——— **Order postponing sale and striking case off the file—Effect of, on attachment.**—Where property has been attached in execution of decree, and the parties applied that the sale might be postponed, the Court executing the decree ordered the sale to be postponed, and the "case to be struck off the file." *Held* by the majority of the Court—the CHIEF JUSTICE and ROBERTS, TURNER, and SPANKE, J.J. (ROSS and PRABSON, J.J., dissenting)—that, inasmuch as there was no order passed directing the removal of the attachment, but on the contrary it appeared that it was the intention of the Court and of the parties that the attachment should continue, the direction that the case should be struck off the file of pending cases did not operate to remove the attachment. *AHMUD HOSSEIN KHAN v. MAHOMED AZEEM KHAN* . . . 1 N. W. 5; Ed. 1873, 48

[Agra, F. R., Ed. 1874, 175]

271. ——— **Case struck off file of pending cases—Effect of, on attachment.**—A case of execution of decree, in which an attachment had been taken out, was struck off the file of pending cases by the order of the Court executing the decree. The plaintiff never asked for or consented to the withdrawal of the attachment, nor did the Court by any formal order withdraw the attachment. *Held* that the attachment was not terminated by the order which struck the case off the file of pending cases. *MOOKESWAR RAI v. RAMPHUL SARDHOO* . . . 5 N. W., 70

272. ——— **Effect of, on attachment.**—The attachment of property by a judgment-creditor ceases on his execution case being struck off the file, and he is remitted to his former position of

**ATTACHMENT—continued.****9. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—continued.**

a simple judgment-creditor, and must begin *de novo* and re-attach the pr. party before a sale at his instance can take place. *LUCHMEERPUT v. LEEHAI ROY* (8 W. R., 416)

273. ——— **Attachment without direction that money should be held subject to further order—Dismissal of suit—Effect of, on attachment—Civil Procedure Code, 1859, s. 237.**—

*HUMPHAR* . . . 14 W. R., 101

order of release and to restore the state of things which it had disturbed. *MAHOMED WAKIR v. PITAMBER SEN* . . . 21 W. R., 435

275. ——— **Stay of execution on security pending appeal—Alienation pending attachment—Striking off execution case on inability to give security.**—While an appeal from a decree

the sale order having failed to furnish adequate security, the execution case was struck off. The appeal to the Privy Council having been dismissed, the decree-holder revived execution proceedings, adding costs and interest to her original claim. Upon this a third party intervened, and objected to the attachment on the ground that he had obtained a mukarri pottah of the property from B's representative. The objection having been allowed under Act VIII of 1859, s. 243, M brought a suit to have the mukarri declared to be invalid and fictitious. *Held* that plaintiff was not required to cause M's admitted proprietary right to be sold before she could maintain her suit. *Held* that the act of the Court in striking off the execution proceeding because of the inability of the decree-holder to furnish the required security was only for the convenience of business, and it left intact all the proceedings which had been taken up to that stage; nor did the decree-holder abandon the attachment, which was therefore subsisting when the mukarri pottah was granted. Accordingly the alienation of the property by the pottah was invalid and inoperative. *SOONDER SINGH v. BHOOGIA ALUM HASSEER* [24 W. R., 30]

**ATTACHMENT—concluded.****9. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—concluded.**

**276.** ——— Sale at instance of one attaching decree-holder during the pendency of other attachments—*Priority of attaching creditors—Rival decree-holders—Civil Procedure Code (Act VIII of 1859), ss. 240, 242, and 270, and Act XIV of 1882, ss. 284 and 295.*—When a property is sold in execution of a decree, it cannot be sold again at the instance of another decree-holder who may have attached it before the attachment effected by the decree-holder under whose decree it is actually sold; and when a judicial sale takes place, all previous attachments effected upon the property sold fall to the ground. *KASHY NATH ROY CHOWDHRY v. SUBBANAND SHAHA*

[I. L. R., 12 Calc., 317]

**277.** ——— Stay of execution and striking off case "for the present"—*Duration of attachment—Effect of mortgage made after "striking off" of execution proceedings.*—An application for execution of a simple money-decree having been made on the 6th December 1873, and fresh attachment made thereon in terms of an arrangement between the judgment-debtor and the decree-holder, the proceedings were, on the 31st December 1873, stayed for a month, and the execution case was by an order "struck off for the present," the judgment-debtor undertaking not to alienate certain property in the meantime. Nothing was done by the decree-holder until the 30th November 1874, when a fresh application for attachment and sale was made. On the 2nd February 1874, the judgment-debtor had mortgaged the property in question. *Held* that on that date there was no subsisting attachment, and that from that time the mortgage lien attached to the property. *GUNGA GOTTI PAL v. RAM SUNDER DUTT*

[8 C. L. R., 157]

**ATTAINDER, LAW OF—**

See ENGLISH LAW.

[I. L. R., 16 Mad., 384]

**ATTEMPT TO COMMIT OFFENCE.**

See CRIMINAL INTIMIDATION.

[I. L. R., 11 Bom., 376]

See RAPE . . . I. L. R., 5 Bom., 403

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION . . . 21 W. R., Cr., 35

I. L. R., 3 All., 773

I. L. R., 5 Bom., 140

I. L. R., 14 Calc., 357

I. L. R., 17 All., 120, 123

**1.** ——— Acts necessary to constitute an attempt—*Penal Code, s. 511.*—S. 511 of the Penal Code was not meant to cover only the penultimate act towards completion of an offence and not acts precedent, if those acts are done in the course of the attempt to commit the offence, are done with the intent to commit it, and done towards its commission. Whether any given act or series of act

**ATTEMPT TO COMMIT OFFENCE—continued.**

amounts to an attempt of which the law will take notice, or merely to preparation, is a question of fact in each case. IN THE MATTER OF THE PETITION OF MACCREA . . . I. L. R., 15 All., 173

**2. ——— Mischief by fire**

—*Possession of a fire-ball.*—*Held* by GLOVER, J., that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag, with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511 of the Penal Code, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. *Held* by MITTER, J., that the possession of a fire-ball and moving about with it cannot support a conviction under ss. 436 and 511 of the Penal Code. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s. 511 of the Penal Code, it is not only necessary that the prisoner should have done an overt act towards commission of the offence, but that the act itself should have been done in the attempt to commit it. *QUEEN v. DAYAL BAWRI*

[3 B. L. R., A. C., 55]

**3.** ——— *Attempt when offence could not be committed.*—A person cannot be convicted of an attempt to commit an offence under s. 511 of the Penal Code unless the offence would have been committed if the attempt charged had succeeded. IN THE MATTER OF THE PETITION OF RIASAT ALI. *EMPRESS v. RIASAT ALI*

[I. L. R., 7 Calc., 352; 8 C. L. R., 572]

**4.** ——— *Attempt to murder—Inconsistency between English Law and Penal Code.*—In order to constitute the offence of attempt to murder, under s. 307 of the Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore where the prisoner presented an uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger,—*Held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307 of the Penal Code, but that under the same circumstances he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Apparent inconsistency between the English law with reference to attempts, as laid down in *Reg. v. Collins*, 33 L. J. M. C., 177, and the provisions of the Indian Penal Code, explained. *REG. v. CASSIDY*

[4 Bom., Cr., 17]

**5.** ——— *Penal Code, ss. 307.*—*Murder.*—The accused struck the deceased on the head with a stick with the intention

## ATTEMPT TO COMMIT OFFENCE

—continued.

Code. *See* KAMRONG, *Q.*—murder under s. 303 of the Penal Code. *QUEEN-EMPRESS v. KHANDU* . . . I. L. R., 16 Bom., 194

8. ——— *Facts necessary to constitute such attempt.*—S. 511 of the Penal Code does not apply to attempts to commit murder, which are fully and exclusively provided for by s. 307 of the said Code. A person is criminally responsible for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence, and when the completion of the offence is only prevented by some cause independent of his volition. *QUEEN-EMPRESS v. NIDRA* . . . I. L. R., 14 All., 38

7. ——— *Intention—Know-*

*ADMINISTRATION OF JUSTICE ACT, 1887*  
*v. TULSIA.* . . . I. L. R., 20 All., 143

8. ——— A young Brahman widow was confined of a child. The chief constable of police, acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a new-born child wrangled in a cloth with  
Sensuous  
murder.  
convictor  
insufficient.

[3 Bom., Cr., 194]

[7 W. R., Cr., 48]

10. ——— *Attempt to fabricate false evidence—Concealment of salt.*—Facts showing that an accused person had dug a hole intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a

## ATTEMPT TO COMMIT OFFENCE

—continued.

conviction for an attempt to fabricate false evidence. *QUEEN v. NUNDA* . . . 4 N. W., 133

within the meaning of the word "attempt" as used in the section. *QUEEN v. RAMSARON CROWSEY*  
[4 N. W., 46]

[I. L. R., 16 All., 409]

the owner would have to take back the certificate so indorsed to the central office and present it to be cashed. *Held* that, even assuming the accused to have falsely represented the contents of the kuppas as alleged, he had not completed an attempt to cheat, but had only made preparation for cheating, and that the conviction must therefore be set aside. *QUEEN-EMPRESS v. DUDHAI* . . . I. L. R., 8 All., 304

**ATTACHMENT—concluded.****9. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—concluded.**

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**ATTEMPT TO COMMIT OFFENCE**

—*continued.*

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[I. L. R., 7 Calc., 352; 8 C. L. R., 572]

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*Inconsistency between English Law and Penal Code.*—In order to constitute the offence of attempt to murder, under s. 307 of the Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore where the prisoner presented an uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger,—*Held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307 of the Penal Code, but that under the same circumstances he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Apparent inconsistency between the English law with reference to attempts, as laid down in *Reg. v. Collins*, 33 L. J. M. C., 177, and the provisions of the Indian Penal Code, explained. *Reg. v. Cassidy*

[4 Bom., Cr., 17]

**5.** ———— *Penal Code, ss. 307,*

—*Murder.*—The 'accused' struck the deceased on the head with a stick, with the intention

**ATTEMPT TO COMMIT OFFENCE***—continued.*

f killing him. The deceased fell down senseless on the ground. The accused, believing that he was dead, set fire to the hut in which he was lying with a view to remove all evidence of the crime. The medical evidence showed that the blows struck by the accused were not likely to cause death, and did not cause death, and the death was really caused by injuries from burn.

*Held* (P.A.) guilty of murder under s. 302 of the Penal Code. **QUEEN v. KRANDU** . I. L. R., 15 Bom., 194

8. *Facts necessary to constitute such attempt.*—S. 511 of the Penal Code does not apply to attempts to commit murder, as the same is expressly provided for by

by some cause independent of his volition. **QUEEN v. EMPRESS v. NIDHA** . I. L. R., 14 All., 38

7. *Intention—Knowledge of probable consequences of act—Presump-*

administered it, with intent to murder. **QUEEN v. TULSHA** . I. L. R., 20 All., 143

8. A young Brahman widow was confined of a child. The chief constable of police, acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Sessions Judge convicted the accused of attempt to murder. The High Court on appeal reversed the conviction on the ground that the evidence was insufficient to support it. **REG. v. CHINNA**

(8 Bom., Cr., 164)

[7 W. R., Cr., 48]

10. *Attempt to fabricate false evidence—Concealment of salt.*—Facts showing that an accused person had dug a hole intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a

**ATTEMPT TO COMMIT OFFENCE***—continued.*

conviction for an attempt to fabricate false evidence. **QUEEN v. NUNDA** . 4 N. W., 133

1. *less done towards the commission of the offence, they are not done in the attempt to commit the offence within the meaning of the word "attempt" as used in the section.* **QUEEN v. BANSARUN CHOWHET** [4 N. W., 46]

12. *Penal Code, ss. 467 and 511—Forgery—Facts necessary to constitute an attempt—Abetment.*—One C, calling himself K, the son of B, went to a stamp vendor, accompanied by a man named K S, and purchased from him, in the name of K a stamp paper of the value of 4 annas. The two men then went to a petition-writer, and again giving his name as K, they asked the petition-writer to write for them a bond for Rs50 payable by K to K S. The

**QUEEN v. NUNDA** . I. L. R., 16 All., 409

induced to the central office and present it to be cashed. *Held* that, even assuming the accused to have falsely represented the contents of the kappas as alleged, he had not completed an attempt to cheat, but had only made preparation for cheating, and that the conviction must therefore be set aside. **QUEEN v. EMPRESS v. DUTTA** . I. L. R., 8 All., 304

## ATTEMPT TO COMMIT OFFENCE

—concluded.

14. ———— *Currency Office—*  
*Application for payment of lost halves of currency notes.*—A man may be guilty of an attempt to cheat, although the person he attempts to cheat is rewarned, and is therefore not cheated. *R. v. Hensler, 11 Cox, C. C., 570*, referred to. *M* wrote a letter to the Currency Office at Calcutta, enclosing the halves of two Government currency notes, stating that the other halves were lost, and enquiring what steps should be taken for the recovery of the value of the notes. The Currency Office, having, upon enquiry, discovered that the amount of the notes had been paid to the holder of the other halves, and that the notes had been withdrawn from circulation and cancelled, sent *M* the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying *M* in respect of the notes. The form was filled up and signed by *M*, and returned by him to the Currency Office. Held that, although there was no intention on the part of the Currency Office to pay the amount of the notes, *M* was guilty of an attempt to cheat. **GOVERNMENT OF BENGAL v. UMESH CHUNDER MITTER** . . . . . *I. L. R., 18 Calc., 310*

## ATTESTATION.

See CASES UNDER DEED—ATTESTATION.

See DEED—EXECUTION.

*I. L. R., 20 All., 532*  
*I. L. R., 26 Calc., 78, 246*  
*3 C. W. N., 84*  
*I. L. R., 27 Calc., 180*  
*1 C. W. N., 81*  
*2 C. W. N., 603*

See STAMP ACT, s. 3, CL. 4.

*I. L. R., 15 Mad., 193*  
*I. L. R., 22 Calc., 757*  
*I. L. R., 17 All., 211*

See CASES UNDER WILL—ATTESTATION.

——— Want of—

See EVIDENCE ACT, s. 68.

*I. L. R., 18 Mad., 29*  
*I. L. R., 26 Calc., 222*  
*3 C. W. N., 228*

## ATTORNEY.

See CASES UNDER ATTORNEY AND CLIENT.

See CASES UNDER COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

See COUNSEL.

*I. L. R., 6 Calc., 59 : 6 C. L. R., 374*

See GUARDIAN—LIABILITY OF GUARDIANS.  
*[2 Ind. Jur., N. S., 269]*

See LETTERS PATENT, HIGH COURT, CL. 10.  
*[3 B. L. R., 418]*

See PRIVILEGED COMMUNICATION.

*[12 B. L. R., 249]*

See TAXATION OF BILL OF COSTS.

*[7 B. L. R., Ap., 50]*

## ATTORNEY—continued.

See WITNESS—CIVIL CASES—PERSON COMPETENT OR NOT TO BE WITNESS.

*[5 B. L. R., Ap., 28]*

——— Change of, pending suit.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT *I. L. R., 19 Calc., 368*  
*[I. L. R., 26 Calc., 769]*

——— Improper conduct of—

See RECEIVER *I. L. R., 22 Calc., 648*

——— Lien of, for costs.

See CASES UNDER COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

See SET-OFF—GENERAL CASES.

*[I. L. R., 4 Calc., 742 : 4 C. L. R., 122]*

1. ——— Striking off the roll—*Misconduct.*—Where an attorney knowingly prepares a conveyance containing untrue recitals of the transaction between the parties thereto, and attests the deed and a receipt for consideration-money, which, to his knowledge, was never paid, or intended to be paid, the production of such a document to the Court is sufficient ground for calling upon the attorney for an explanation of his conduct. But if such explanation be given, supported by evidence to the effect that there was no fraudulent intent, and if no fraudulent use of the deed has in fact been made or attempted, nor any injury caused thereby, it is not sufficient ground for striking the attorney off the rolls of the Court. *Semble*—The High Court in Calcutta is not authorized in striking an attorney off the rolls when such a step would not be sanctioned by the practice of the Courts in England. **IN THE MATTER OF STEWART**

*[1 B. L. R., P. C., 55 : 10 W. R., P. C., 43]*

2. ——— Negligence—*Allowing clerk to file false affidavit.*—Where an attorney had been guilty of negligence in allowing his clerk to act in his absence and file a false affidavit, and adopted it without enquiring into its character, he was suspended from practising in the High Court in its original jurisdiction for one year, but he was at liberty to practise as vakeel on the appellate side. It had not been proved that the clerk was acting as an attorney without a license, or had a share in the profits. Had this been so, the attorney would have been struck off the rolls. **IN THE MATTER OF POORNOO CHANDRA MOOKERJEE**

*[Bourke, O. C., 377]*

3. ——— Practice as to non-publication of name when charges are brought against an attorney.—The practice which prevails in England as regards the non-publication of the name of an attorney against whom a rule has been obtained, approved of and followed. **IN THE MATTER OF AN ATTORNEY** *I. L. R., 23 Calc., 578*

4. ——— Vakalatnamah—*Criminal Procedure Code, 1872, s. 156.*—An attorney of the High Court, when appearing to defend a person in the Criminal Court, under s. 186 of the Criminal

**ATTORNEY—concluded.**

Procedure Code, should not be required to file a vakalatnamah. **ANONYMOUS** . 7 Mad., Ap., 41

which have been released, cannot be assigned. **RE ARTICLES OF CLERKSHIP OF CALANGOR SOOBRAMANETAN** . 2 Ind. Jur., O. S., 15

**ATTORNEY AND CLIENT.**

See **CASES UNDER COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.**

See **COSTS—TAXATION OF COSTS.**

[I. L. R., 18 Bom., 189

I. L. R., 20 Bom., 301

I. L. R., 24 Calc., 891

See **EXECUTION OF DECREE—MODE OF EXECUTION—COSTS.**

[I. L. R., 18 Bom., 152

I. L. R., 17 Bom., 514

See **PRIVILEGED COMMUNICATION.**

[I. L. R., 3 Bom., 91

I. L. R., 11 Calc., 655

I. L. R., 4 Bom., 631

I. L. R., 12 Calc., 265

I. L. R., 18 Bom., 263

See **RULES OF HIGH COURT, BOMBAY—RULE NO. 183.**

[I. L. R., 16 Bom., 152

I. L. R., 17 Bom., 514

See **VENDOR AND PURCHASER—INVALID SALES.**

[I. B. L. R., A. C., 95; 10 W. R., 128

**1. — Negligence, Liability for.—**

If a client places himself in the hands of an attorney, he places himself in his hands in regard to all matters having connection with the suit, and the attorney must be held liable for any negligence, even though his client do not take prompt action in the matter. **ALLY NUCKEE KHAN v. ANLEY**

[1 Hyde, 134

many interference of the Court, and to warrant it in

**ATTORNEY AND CLIENT—continued.**

making an order for the attorney to proceed with the suit, and to deprive him of costs already incurred. **IN THE MATTER OF AN ATTORNEY AND PROCTOR**

[1 Ind. Jur., N. S., 305

**3. — Power to compromise—Want of client's consent.**—A decree (embodying the terms of a compromise) made in open Court, upon the

authority is not known to the other side. *Semle*.—That such decree is binding as between the attorney and his client, provided it embodies a reasonable and proper compromise, and is not made against the express directions of the client. **JAGANNATH DAS GURUBAKSHDAS v. RAMDAS GURUBAKSHDAS**

[7 Bom., O. C., 79

to the former of a large remuneration for his services, including a portion of the property in suit. *Held* that such a contract stands on a different footing

the substance of the transaction, and not merely to the language of the agreement. **NUHOO LALL v. BUDDEE PERSHAD**

1 N. W., 1

**5. — Intercession of third party—Mukhtar.**—The interposition of a third party does not necessarily affect the fiduciary relation between the legal adviser and his client. **TAYLER v. ASMEEDH KOONWAR**

4 W. R., 80

**6. — Taxation of bill**

ditor had issued execution against his property, and he

Interest was to be payable at 12 per cent. per annum, and compound interest at the same rate was also to be charged on all interest in arrear. In September 1870 a further advance on the same terms was made and

**ATTORNEY AND CLIENT—continued.**

a further mortgage executed, which included the original sum, with the interest then due, and the further advance. Further advances were made in the same way in October 1871 and March 1876. In all these transactions the defendant had no independent professional advice, and the mortgages were prepared in the plaintiff's office, but not charged for. In a suit to recover the sum due on the mortgages by sale of the mortgaged property, the plaintiff abandoned any accumulation of interest since the date of the third mortgage. *Held* that the defendant, notwithstanding he had declined the offer of the plaintiff in 1869 to tax the bills, and notwithstanding the delay that had taken place, was entitled (having regard to the relation between the parties and to the fact that a portion of the costs was incurred in suits then pending) to have the bills taxed and to re-open the account. Under the circumstances, the Court would not infer acquiescence from the delay on the part of the defendant, nor did the plaintiff's offer to tax, and the defendant's refusal of that offer, debar the defendant of his right to have the bills taxed in the usual way. *Held*, also, that there is no rule which prevents an attorney from taking security or otherwise arranging with his client for the payment of costs which have actually become due, and that the plaintiff was entitled to sale of the property, to accumulations of interest prior to the date of the third mortgage calculated by allowing annual rests, to interest at 10 per cent. as being a fair rate for the client to have undertaken to pay when the mortgages were executed, and to interest on his costs. *MONOHUR DOSS v. ROMANATH LAW* [L. L. R., 3 Calc., 473]

**7. ———— Trustee—Purchase by attorney from client.**—*T* had acted as trustee and agent for *M*, and *F* had acted in the place of *T* during *T*'s temporary absence. *T* and *F*, as attorneys in partnership, did solicitors' work for *M*. *T*, as trustee and agent for *M*, invested money on a mortgage. The equity of redemption was put up for sale at public auction in execution of a decree obtained by a third party against the mortgagors, and a portion was purchased by *T* and *F*, as attorneys in partnership. *Held* that there was no equity compelling *T* and *F* to hold the equity of redemption for the benefit of *M*. *Semle*.—The agency could not be separated from the attorneyship. *Held*, also, that under the circumstances there was no equity calling for a sale in substitution of the foreclosure claimed by *M*. *MACKINTOSH v. NOBIMONEY DOSSEE* . . . 2 Ind. Jur., N. S., 160

**8. ———— Trustees of insolvent retaining attorney to continue suit—Costs.**—The contract to be implied from the employment by the trustees of an insolvent, of an attorney to carry on a suit already commenced by the insolvent as plaintiff, and in which such attorney was retained for him, is a contract to pay all subsequent costs, but not the costs incurred prior to such employment. *SHAMRAY PANDURANG v. TRUSTEES OF BHUVANDAS PUESHOTOMDAS* . . . 5 Bom., O. C., 163

**9. ———— Lien—Costs—Lien on sum recovered by client—Attachment of fund by creditor.**

**ATTORNEY AND CLIENT—continued.**

—The plaintiff obtained a decree against the defendant, but before satisfaction of the decree, the amount of the decree was attached in the hands of the defendant by a third person, who had obtained a decree in a suit against the plaintiff. On an application by the attorney for the plaintiff that the defendant might be ordered to pay to him his costs of suit out of the sum which had been attached in the defendant's hands, and on which the attorney claimed to have a lien, the Court held that the attorney had a lien for his costs on the sum so attached, but that the only order it could make was an order to the defendant not to pay the sum attached to any one without notice to the attorney. *NAWAB NAZIM OF BENGAL v. HEBBALALL SEAL* . . . 10 B. L. R., 444

**10. ———— Lien for costs—Title-deeds delivered for specific purpose—Right to re-delivery.**—*D*, an attorney, who had a lien against *C* for costs on the title-deeds of certain property belonging to *C*, for whom he had been acting in negotiations for the sale of the property, delivered the deeds at the request of *C* to *M*, who was acting as attorney for *J*, an intending purchaser. *M*, on obtaining the deeds, signed a receipt for them, by which he undertook to "return them on demand without claiming any lien for costs or otherwise." *D* subsequently ceased to act for *C* in the matter of the sale of the property of which *J* became the purchaser. The title-deeds remained with *M*. *Held* that *D* was entitled to have re-delivery of the deeds to him from *M*, even independently of the express contract to return them. He did not give up possession of them to *C* by delivering them to *M*, though that was done at *C*'s request. *IN THE MATTER OF MACKERTICH* . . . 15 B. L. R., Ap., 15

**11. ———— Lien for costs—Lien on documents—Discharge by dissolution of partnership—Contract Act (IX of 1872), ss. 1, 171.**—Where a firm of attorneys dissolved partnership after the death of a client, there being at that time papers and documents belonging to the client in their hands, and a debt due in respect of costs from the client to them,—*Held* that the dissolution of partnership operated as a discharge by the firm, and that the attorneys were not entitled to retain the papers and documents until their costs were paid, but were bound to hand them over to the administrator of the client. S. 171 of the Contract Act does not give an attorney an absolute lien. S. 1 provides that nothing in the Act contained shall affect any usage or custom of trade, and, as no part of the English law is inconsistent with s. 171, cases arising in this country must be governed by the English authorities. According to those authorities, while the relation of attorney and client exists, the client may either continue to employ the attorney or change him. When he claims to do the latter, the attorney being willing to act, he cannot ask the attorney to give up papers in his possession without first satisfying the lien. The attorney has his option,—he may, if he chooses, either go on acting for his client, or cease to act; if he adopt the latter course, he must give up the papers. On the death of the client, his representative stands in exactly the

**ATTORNEY AND CLIENT—continued.**

same position with respect to the attorney as the client did. **IN THE MATTER OF MCCORKINDALE**

[I. L. R., 8 Calc., 1: 6 C. L. R., 408

12. *Lien for costs—*

*Lien on translation of documents.*—Messrs. P and W were solicitors for the plaintiff in this suit from its commencement. When the case was about to appear in the list for hearing, Messrs. P and W wrote to the plaintiff, requesting her to send them an advance of Rs. 1,000 to enable them to deliver briefs to counsel. They received no reply from the plaintiff, who afterwards obtained leave to sue as a

remained in their possession, and upon which they

tions as he has upon other documents, and the fact that

[I. L. R., 4 Bom., 353

suit. The plaintiff not having satisfied in full his attorney's taxed bill of costs, the attorney applied for payment out of the fund in Court. Previously to this application, the fund had been attached by a third

14. *Constructive notice—Fraud in transaction with client.*—The Court will not presume notice to have been given to his client by an attorney where such notice would involve a confession by the attorney of a fraud practised by himself. **HORMASJI TEMULJI v. MANKU FARBAT**

[12 Bom., 262

equally applicable to the relationship of wakil and client; and in transactions of such a nature Courts should be careful not to allow them to be enforced in the name of a third person put forward as the real plaintiff. **FRIEDEL JIBER v. OMDAN JIBER**

[11 B. L. R., 60 note; 10 W. R., 460

**ATTORNEY AND CLIENT—continued.**

duty to proceed with the diligent prosecution of the business or matter for which he has been retained.

**MAH MITTER v. KUSUM KUMAR MITTER**

[4 C. W. N., 767

**LALL AGARWALLAH v. MOONIA BIBEK**

[I. L. R., 8 Calc., 70

[I. L. R., 20 Calc., 760

19. *Rules of Madras High Court, rule No. 320—Leave of Court for*

that leave must be obtained before such a change of attorney can be made) until the costs of the attorney are first paid or provided for. **RAMASAMI CHETTI v. SUBBU CHETTI** [I. L. R., 23 Mad., 134

20. *Warrant of attorney—Filing appeal through another attorney without discharging the former attorney—Sanction*

in form, empowers an attorney to act for the defendant and to establish his grounds of defence in his

**ATTORNEY AND CLIENT—concluded.**

Court, whether in its original or appellate jurisdiction. An application for sanction to prosecute under s. 125, Criminal Procedure Code, is not a proceeding in connection with the suit within the words of the original warrant to defend, and the defendant is entitled to appear through a new attorney without obtaining a discharge of his original warrant or retainer in favour of the original attorney. *CASSIDY* *MAMOOJEE v. GOPAL LALL SEAL*

[3 C. W. N., 570]

21. ———— **Delivery of bill of costs—Right to maintain suit—Executor.**—There is no law in force in India to prevent an executor of an attorney from maintaining a suit for business done by the attorney, without having previously delivered a bill of costs to the defendant, and left it with him for a reasonable time before bringing the action; and the fact that the defendant had notice that the bill was to be referred to taxation is immaterial. *WILKINSON v. ADHAS SINGH*

[3 B. L. R., O. C., 98]

**ATTORNMENT.**

*See* LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

*See* LANDLORD AND TENANT—TRANSFER BY LANDLORD.

——— **Notice of—**

*See* REGISTRATION ACT, s. 49.

[I. L. R., 19 Bom., 38]

**AUCTIONEER.**

*See* SALE BY AUCTION.

[I. L. R., 18 Calc., 702]

**“AUCTION-PURCHASER.”**

*See* CASES UNDER CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUIT.

*See* CASES UNDER CIVIL PROCEDURE CODE, s. 244—QUESTIONS IN EXECUTION OF DECREE.

*See* LIMITATION ACT, 1877, s. 10.

[I. L. R., 15 Calc., 703]

*See* SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

*See* SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

*See* SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHTS OF.

*See* SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

*See* SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

**AUCTION-SALE.**

*See* SALE BY AUCTION.

**AUDITOR.**

*See* COMPANY—WINDING UP—LIABILITY OF OFFICERS . I. L. R., 18 All., 12

**AUTREFOIS ACQUIT, PLEA OF—**

*See* ACT XIII OF 1859.

[I. L. R., 21 Calc., 262]

*See* CASES UNDER CRIMINAL PROCEDURE CODE, 1852, s. 403.

*See* DISCHARGE OF ACCUSED.

[I. L. R., 12 Mad., 35]

1. ———— **Former trial illegal and without jurisdiction.**—A former trial set aside on the ground of want of jurisdiction and illegality is not a bar to a second trial. *QUEEN v. METHOORAPERSHAD PANDAY* . . . . . 2 W. R., Cr., 10

2. ———— **Complaint practically identical.**—Where a second complaint, though altered and revised, was practically the same as one on which defendant had been acquitted,—*Held* the second conviction was illegal. *GOVERNMENT v. DOULAT*

[2 Agra, Cr., 3]

3. ———— **Criminal trespass, Trial for, after dismissal of charge of rioting.**—The dismissal by one Court of the charge of rioting instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrences. *QUEEN v. MORLEY SHRIKH* . . . . . 6 W. R., Cr., 51

4. ———— **Forgery—Similarity of signature in different documents—Criminal Procedure Code, 1861, s. 55.**—*D* was tried on a charge of forging, etc., document *A*, and acquitted. In order to prove the charge, evidence was given in respect of another document *B*, which was also alleged to have been forged, and the prosecutor mainly based his case on the alleged exact resemblance between the signatures to *A* and *B*, both of which, it was said, exactly resembled a third signature admitted to be genuine. *Held* by PEACOCK, C.J., and KEMP, J. (MARKBY, J. dissenting), that the acquittal in respect of the document *A* did not operate as an acquittal in respect of the document *B* so as to enable the accused to plead *autrefois acquit*. *REG. v. DWAREA NAUTH DUTT*

[3 Ind. Jur., N. S., 67: 7-W. R., Cr., 15]

5. ———— **Discharge by Sessions Court for irregularity of procedure—Criminal Procedure Code, 1861, s. 55.**—Where a prisoner is released by the Court of Session on the ground that the proceedings had in his case were illegal and irregular, there is no bar under s. 55 of the Code of Criminal Procedure to his being subsequently tried and convicted of the same offence. *QUEEN v. WAHED ALI* . . . . . 13 W. R., Cr., 42

6. ———— **Order for release of accused as guiltless—Acquittal.**—The order for the release of the accused as *nirdoshi* (guiltless) was held to be an acquittal and not a discharge, and therefore to have exempted them from a second trial for the same offence. *RAMJOY SURMAH v. MIRZA ALI*

[18 W. R., Cr., 10]

# AUTREFOIS ACQUIT, PLEA OF—

—continued.

and M were then acquitted, while N and O were convicted. N and O appealed to the Court of Session, and that Court, considering that the evidence showed that they had been guilty of an attempt at murder, forwarded the record to the High Court, when the conviction was quashed and a new trial ordered. The order referred expressly only to N and O, but proceedings were commenced *de novo* against all the five persons, and they were committed to the Court of Session for trial on a charge of attempt at murder, and convicted, as stated above, by that Court.

QUEEN v. NYAZALI . . . 25 W. R., Cr., 47

Magistrate of the second class (s. 3, cl. 5, and s. 56), a person tried for any such offence by any such Magistrate and acquitted is not liable to be tried again for the same offence (s. 403), unless the acquittal has been set aside by the High Court on appeal by the Government. QUEEN-EMPRESS v. GUSTADJI BARBORJI . . . I. L. R., 10 Bom., 181

10. ——— Single act constituting several offences—Previous acquittal, when no bar to further trial—Power of Appeal Court in disposing of appeal—Retrial, Effect of order directing, in case where one act constitutes several offences, and there has been an acquittal on some charges and a conviction on others and an appeal from such conviction—"Verdict"—Criminal Procedure Code (1882), ss. 236, 403, and 423.—The word "verdict" as used in cl. (d) of s. 423 of the Code of Criminal Procedure, in cases where an accused person is tried for various offences arising out of a single act, or series of acts, as contemplated by s. 236, means the entire verdict on all the charges, and is not limited to the verdict on a particular charge upon which an

# AUTREFOIS ACQUIT, PLEA OF—

—concluded.

the verdict of a jury of some of such offences and convicted of others and appeals against such conviction, and where the Appellate Court reverses the verdict of the jury, and orders a retrial without any express limitation as to the charges upon which such retrial is to be held, such retrial must be taken to be upon all the charges as originally framed, and the acquittal by the jury on the previous trial upon some of such charges is no bar to the accused being tried on them again, as, having regard to the provisions of s. 423 of the Code of Criminal Procedure, the provisions of s. 403 in that respect cannot apply to such cases. KRISHA DHAN MANDAL v. QUEEN-EMPRESS

[I. L. R., 23 Calc., 377

# AUTREFOIS CONVICT.

See ACT XIII of 1859.

[I. L. R., 21 Calc., 262

# AVA, KINGDOM OF—

See CIVIL PROCEDURE CODE, 1882, ss. 387, 391 (1859, s. 177) 2 B. L. R., A. C., 73

# AWARD.

See CASES UNDER ACT XIII of 1849.

See CASES UNDER APPEAL—ARBITRATION.

See CASES UNDER ARBITRATION.

See MADRAS BOUNDARY ACT, ss. 21, 25, 29.

[I. L. R., 13 Mad., 1

See CASES UNDER RIGHT OF SUIT—AWARDS, SUITS CONCERNING.

See SMALL CAUSE COURT, MOFESSAIL—JURISDICTION—ARBITRATION

[3 N. W., 17

7 N. W., 329

I. L. R., 13 Mad., 344

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—AWARD.

[4 B. L. R., Ap., 82

13 W. R., 233

7 N. W., 167

See CASES UNDER SURVEY AWARD.

Application to file—

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R., 16 Bom., 240

See COSTS—SPECIAL CASES—AWARD.

[2 B. L. R., A. C., 240

11 W. R., 104

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R., 19 Calc., 334

See JURISDICTION—SUITS FOR LAND—GENERAL CASES.

[I. L. R., 2 Calc., 44

**AWARD—concluded.**

See LIMITATION ACT, 1877, ART. 176.

[I. L. R., 7 Calc., 333  
9 C. L. R., 209]

**Claim under—**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.

[7 B. L. R., 186: 14 Moore's I. A., 40]

**Effect of—**

See HINDU LAW, JOINT FAMILY—NATURE OF JOINT FAMILY AND POSITION OF MANAGER . I. L. R., 16 All., 231

See JURISDICTION—TESTAMENTARY AND INTESTATE JURISDICTION.

[I. L. R., 20 Bom., 238  
I. L. R., 21 Bom., 335]

See NAWAB NAZIM'S DEBTS ACT.

[L. R., 19 I. A., 95  
I. L. R., 19 Calc., 584, 742]

See PANCHAYET . I. L. R., 15 Mad., 1

See RES JUDICATA—ADJUDICATIONS.

[I. L. R., 18 Calc., 414  
L. R., 18 I. A., 73  
I. L. R., 19 Mad., 290  
I. L. R., 20 Mad., 490]

**Loss of—**

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS . I. L. R., 12 Mad., 331

[I. L. R., 15 Mad., 99]

**B****BAD FAITH.**

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

**BAIL.**

See ARREST—CRIMINAL ARREST.

[I. L. R., 14 All., 45]

**on arrest of ship.**

See COSTS—SPECIAL CASES—ADMIRALTY AND VICE-ADMIRALTY.

[I. L. R., 17 Calc., 84]

See SALVAGE . I. L. R., 17 Calc., 84

**Order for—**

See MAGISTRATE, JURISDICTION OF—POWER OF MAGISTRATES.

[I. L. R., 22 Bom., 549]

**Petition for—**

See PRACTICE—CRIMINAL CASES—PETITION FOR BAIL I. L. R., 15 Bom., 488

1. ——— Accused person—Criminal Procedure Code, 1872, s. 390—Convicted person—Sessions Judge.—The Court of Session has no power, under s. 390, Act X of 1872, to admit a convicted person to bail, a convicted person not being an accused person within the meaning of that section. QUEEN v. THAKUR PERSHAD . I. L. R., 1 All., 151

**BAIL—continued.**

2. ——— Discharge for want of evidence—Criminal Procedure Code (Act XXV of 1861), s. 212—Act X of 1872, s. 389.—The accused in a case of dacoity and assault were discharged by the Magistrate for want of evidence. At the same time, he ordered them to give security to the amount of Rs 250 to appear before him any time within six months if called upon. The Judge referred the question of the legality of the order to the High Court, by whom the order for security was quashed. RAMLAL TEWARI v. SUPHARAM

[I. B. L. R., S. N., 26: 10 W. R., Cr., 34]

3. ——— Insolvent convicted and sentenced to imprisonment under s. 50 of the Insolvent Act (Stat. 11 & 12 Vict., c. 21)—Appeal by insolvent under s. 73—Power of High Court to admit insolvent to bail pending appeal.—An insolvent was convicted by the Insolvent Court of an offence under s. 50 of the Indian Insolvent Act (Stat. 11 & 12 Vic., c. 21), and sentenced to imprisonment. Under s. 73 of the Act, he appealed against the decision and sentence of the Insolvent Court, and applied to be admitted to bail pending the hearing of his appeal. Held, refusing the application, that the High Court had no power to admit him to bail. IN THE MATTER OF HORMASJI AND DESIR HORMASJI . I. L. R., 17 Bom., 334

4. ——— Power of Sessions Court to admit to bail—Criminal Procedure Code (Act XXV of 1861), ss. 436, 411.—A person sentenced to one month's imprisonment by a Magistrate, from which sentence no appeal is allowed under s. 411 of Act XXV of 1861, is not an accused person within the meaning of s. 436 of the same Act, so as to be admitted to bail by the Court of Session, when his case is referred to the High Court under s. 434 of the same Act. QUEEN v. MAHENDRANARAYAN BANGABHUSAN

[I. B. L. R., A. Cr., 7]

BAGDEE MANJEE v. MOHINDRO NARAIN

[10 W. R., Cr., 16]

5. ——— Further remand—Evidence of guilt—Necessity of taking evidence before refusing bail.—When an accused person is first brought before a Magistrate and a remand is required by the prosecutor, it is ordinarily sufficient to show by the evidence of a police officer that the police are in possession of information, believed to be reliable, that the accused has committed an offence; but when the accused is again brought up after remand and a further remand is needed, some direct evidence of the guilt of the accused should be required to justify the Magistrate in refusing bail, and with each remand the necessity for production of evidence of guilt becomes stronger. PONNUSAMI CHETTI v. QUEEN . I. L. R., 6 Mad., 69

6. ——— Criminal Procedure Code, 1872, ss. 190, 194—Remand of case for evidence—Judicial proceeding—Reasonable ground for remand not supported by sworn testimony.—The proceeding in which it has to be determined whether an accused person should be admitted to bail by a Magistrate is a judicial proceeding, and, as such, cognizable by the High Court under s. 297 of the

**BAIL—continued.**

Code of Criminal Procedure, 1872. S. 194 of the Criminal Procedure Code, 1872, must be read as

in order that further evidence might be produced (so that the enquiry, when commenced, might be continuous).—*Held* that such a reason recorded by the Magistrate, although not sworn to, justified a remand for five days and a further remand for four days. An accused person has a right to have the evidence against him recorded at as early a period

and remands the prisoner under s. 194 of the Code of Criminal Procedure, 1872, he is bound to express clearly on the record the reasonable cause from which such action became necessary or advisable. **MANIKAM MUDALI v. QUEEN**. I L R, 6 Mad, 63

7. — Power of single Judge of High Court, pending appeal—*Release on bail*.—A single Judge of the High Court may order the release of a prisoner on bail, pending the hearing of an appeal. **QUEEN v. JALCO SIRDAR** [W. R., 1864, Cr., 18]

8. — Discretion of Magistrate to accept or refuse bail.—The refusing or accepting bail is a judicial and not merely a ministerial duty, and a mistake in the performance of that duty without malice will not be sufficient to sustain an action. **PARANKUSAM NARASAYA PANTULU v. STUART** [3 Mad, 398]

9. — Contempt of Court—*Criminal Procedure Code, 1861, s. 163*.—In a case of contempt, the Court before which the offence is committed is bound, under s. 163 of the Code of Criminal Procedure, to accept bail, if sufficient bail is tendered. **QUEEN v. CHUNDER SEKKUR ROY** [12 W. R., Cr., 18]

10. — Power of Sessions Judge to give bail pending reference to High Court.—A Sessions Judge has no power to release on bail persons convicted by the Magistrate, pending a reference to the High Court under Act X of 1872, s. 290. **ARADHUN MUNDUL v. MYAN KHAN TAKADGHER**. 24 W. R., Cr., 7

11. — Admission to bail after sentence.—*Criminal Procedure Code, 1872, s. 390*.—Act X of 1872, s. 390, refers only to the period during which a case is under enquiry, and when the party concerned is still in the position of an accused. The Sessions Judge has no power to admit him to bail after he is sentenced and convicted. **QUEEN v. RAM HUTTON MOOKERJEE**. 24 W. R., Cr., 8

**QUEEN v. KANHAI SHAHU**. 23 W. R., Cr., 40  
**MOHESH MUNDUL v. BHOLANATH BISWAS**  
[3 C. L. R., 404]

**BAIL—concluded.**

**MOHESH MUNDUL v. BHOLANATH BISWAS**  
[3 C. L. R., 405 note]

to law. The duty of deciding as to its sufficiency or otherwise is with the Court itself and not with the police. **QUEEN-EMRESS v. GATIRI PROSENKO GHOSAL**. I L R, 12 Calc., 455

**BAILEES.**

See CASES UNDER CARRIERS.

See HOTEL-KEEPER AND GUEST.

[I L R., 23 All, 164]

See CASES UNDER RAILWAY COMPANY.

**BAILEMENT.**

See CONTRACT ACT, s. 108.

[13 B. L. R., 42]

20 W. R., 467

I L R., 9 All, 398

See CONTRACT ACT, s. 178

[I L R., 3 Calc., 264]

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

[I L R., 3 All, 756]

See HOTEL-KEEPER AND GUEST.

[I L R., 23 All, 164]

See ONUS OF PROOF—BAILEMENTS.

[I L R., 9 All, 398]

1. — Law applicable to the mofussil—*English law*.—The general principles of the law of bailment are applicable in the mofussil, and they are substantially the same as those which prevail under English law. **DOOMEN PRADHAN v. SHROOF CHAND PAUL**. 17 W. R., 60

2. — Non-delivery of goods.—*Bailee—Onus probandi*.—A sent cotton to B's screw-

had satisfactorily done. A's suit must be dismissed. Decree affirmed on appeal; but per PEACOCK, C.J.—*Quare*—Was B a bailee at all? Per MARKBY, J.—

**BAILMENT—concluded.**

*B* was a bailee for custody, but not a gratuitous bailee. **MOOLCHAND v. ROBINSON**

[1 B. L. R., O. C., 68]

3. ———— **Seizure of goods—Interpleader suit—Costs—Execution of decrees of Small Cause Court—Act IX of 1850, s. 88.**—*A* obtained a decree in the Small Cause Court against *B*. In execution of the decree, goods belonging to *B*, but in the possession of a pledgee, were seized by a bailiff of the Small Cause Court. The pledgee brought an interpleader suit, under s. 88 of Act IX of 1850, to recover the goods. *Held* the pledgee was entitled to have the goods released to him and to have the costs of his suit paid by the execution-creditor. **BHINJI GOVINDJI v. MONOHAR DAS**

[5 B. L. R., Ap., 31: 14 W. R., 303]

4. ———— **Bailee's lien for work done—Work done—Contract—Quantum meruit—Act IX of 1873 (Contract Act), s. 170.**—*S* delivered *J* an organ to repair, *J* promising to repair it for Rs. 100. *J* subsequently refused to repair it for that sum, and claimed to be entitled to retain the organ until he received certain remuneration for the work done. *Held* that, as, where there is an express contract, it must be performed in its entirety or nothing can be claimed under it, and there is only room for a quantum meruit claim where no express contract has been made, *J* was not entitled to retain the organ until he was paid. **SKINNER v. JAGER**

[I. L. R., 6 All., 139]

**BALANCE OF ACCOUNT.**

*See* CASES UNDER LIMITATION ACT, 1877, ART. 64.

*See* CASES UNDER LIMITATION ACT, 1877, ART. 85 (1859, s. 9).

**BALANCE SHEET.**

*See* STAMP ACT, 1879, SCH. I, CL. 1.

[I. L. R., 15 Calc., 162]

**BALLOT FOR JURY.**

*See* JURY . I. L. R., 1 Bom., 462

**BANDEUS.**

*See* HINDU LAW—INHERITANCE—GENERAL HEIRS—BANDHUS.

*See* HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES.

*See* HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES.

**BANIAN OF FIRM.**

*See* LIEN . I. L. R., 18 Calc., 573  
[I. L. R., 18 I. A., 78]

**Liability of—**

*See* PRINCIPAL AND AGENT—LIABILITY OF AGENT . 2 B. L. R., O. C., 7

[2 Hyde, 129: Cor., 47  
Bourke, A. O. C., 117: 2 Hyde, 301]

**BANIAN OF FIRM—concluded.**

——— **Lien of, on goods under agreement with firm.**

*See* PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS.

[3 B. L. R., O. C., 80]

**BANK MEMORANDUM.**

*See* STAMP ACT, 1869, SCH. II, CL. 7.

[I. L. R., 4 Calc., 829]

**BANK OF BENGAL.**

*See* PRESIDENCY BANKS ACT.

[I. L. R., 8 Calc., 300]

1. ———— **Act IV of 1862, s. 10—Loans and advances on security of land—Security for past loan.**—The prohibition contained in s. 30 of Act IV of 1862, which regulates the Bank of Bengal against making loans and advances on the security of land, is no prohibition against the Bank taking land as security for a past loan and an existing debt. **IBRAHIM AZIM v. CRUICKSHANK**

[7 B. L. R., 653: 16 W. R., 203]

2. ———— **Act XI of 1876, ss. 17, 21—Registration of transfer—Right of Bank to refuse to register.**—The Bank of Bengal is entitled to refuse to register a transfer of shares when the application is made during the time the transfer books of the Bank are closed under the powers given by s. 21, Act XI of 1876, and after a public notification in accordance therewith. Though the Bank may not have given this reason for not registering at the time of the application being made, they are entitled to avail themselves of it subsequently, when a suit is brought to compel them to register the transfer. S. 17 of Act XI of 1876, which entitles the Bank of Bengal to refuse to register the transfer of shares until payment of any debts due by the person in whose name the shares stand, refers only to debts which are presently payable; therefore, where *R* was indebted to the Bank, and gave bills as security therefor,—*Held* the Bank would not be entitled to refuse under s. 17 to register the transfer during the currency of the bills. **MOTHOORMOHUN ROY v. BANK OF BENGAL**

[I. L. R., 3 Calc., 392: 1 C. L. R., 507]

**BANK OF BOMBAY.**

*See* PRESIDENCY BANKS ACT.

[I. L. R., 24 Bom., 350]

**BANKER AND CUSTOMER.**

*See* LIMITATION ACT, 1877, ART. 59.

[I. L. R., 13 Bom., 338]

*See* LIMITATION ACT, 1877, ART. 60 (1859, s. 1, CL. 9) . 10 Bom., 300

[I. L. R., 16 Calc., 25]

I. L. R., 18 Mad., 390

——— **Payment of cheque—Evidence.**—Case in which it was held on the evidence that the respondent Bank had, on the presentation by the appellants' servant of a cheque drawn upon it in favour of the appellants, failed to pay the same in such manner as to be discharged of its obligation. **LALL CHAND v. AGRA BANK** . I. L. R., 18 I. A., 111

**BANKERS.**

1. — Deposit of money—Obligation to keep funds separate—Breach of trust—Commission agents.—The insolvents earned on business as bankers and commission agents, receiving the money of their constituents on deposit, for investment or for remittance, charging a commission on each

[I. L. R., 6 Calc., 70 : 7 C. L. R., 18

placed it was laid the custom that money it afterwards payment for it. If neglect as of the funds

3. — Lien of banker—Contract Act (IX of 1872), s. 171—Deposit of securities with bank to secure debts due to bank.—

he proved that the defendant had agreed to give up his general lien. KUNHAN MAYAN v. BANK OF MADRAS [I. L. R., 19 Mad., 234

4. — Banking company registered under Companies Act (VI of 1882)—Criminal breach of trust by banker—Payment of dividends dishonestly out of deposits—Directors—

**BANKERS—continued.**

to pay dividends to shareholders at a time when the bank is insolvent and cannot legally pay dividends. In the case of a bank registered under the Indian Companies Act as a company limited by shares, and governed by the regulations contained in table A in the first schedule to the Act, it was held that the

ful loss. Whether the illegal payment of dividends

the bank they were guilty of cheating in the

the commencement of the winding up of the

and correctly represents what is in the books. A balance-sheet which showed all the debts owing to the company, amounting to Rs 23 lakhs, under the head of assets, without specifying in accordance with the form of balance-sheet annexed to table A, which of such debts were good and secured, which good and unsecured, and which considered bad and doubtful

## DIGEST OF CASES.

**BANKERS—concluded.**

and also showed a divisible balance of profits amounting to Rs19,000, the facts being that out of the Rs28 lakhs some Rs13 lakhs were bad and irrecoverable, and that the capital, reserve fund, and other provision for bad debts had been lost, and that the company, instead of making profits, was, and long had been, insolvent, was found to be false and misleading. Having regard to the nature of the charges above referred to, the Court, under s. 239 of the Code of Criminal Procedure, rejected an application by the defence that the accused should be tried separately.

**QUEEN-EMPRESS v. MOSS** . I. L. R., 16 All., 88

**BANKERS' BOOKS EVIDENCE ACT (XVIII OF 1891).**

s. 2—*Admissibility in evidence of certified copies of entries in books of banks to which that Act does not apply.*—Copies of entries in the books of a bank which does not come within the definition of a "Company" as given in sub-s. (1) of s. 2 of the Bankers' Books Evidence Act, though certified in accordance with the form prescribed by that Act, are not admissible in evidence under the provisions of that Act. **QUEEN-EMPRESS v. MCGUIRE** . 4 C. W. N., 433

**BANK NOTE.**

See GOVERNMENT CURRENCY NOTE.  
[7 Bom., O. C., 1]

**BANKRUPTCY IN MAURITIUS.**

See DEBTOR AND CREDITOR.  
[I. L. R., 16 Mad., 85]

**BANKRUPTCY ACT, 1889.**

See INSOLVENT ACT, s. 40.  
[13 B. L. R., Ap., 2, 9  
I. L. R., 2 Mad., 15]

**BANNS OF MARRIAGE, PUBLICATION OF—**

See BIGAMY

I. L. R., 1 All., 316

**BARRISTER.**

See CASES UNDER ADVOCATE.  
See CASES UNDER COUNSEL.

Receipt of fees by—

See STAMP ACT, 1879, SOH. II, ART. 15.  
[I. L. R., 9 Mad., 140  
I. L. R., 16 All., 132]

1. — *Suspension from practising—*  
*Malus animus*—Ground for suspension.—An order of a High Court suspending a barrister from practice for five years set aside on the ground that, although there had been grave irregularity, there was no *malus animus* to show an intention to commit a fraudulent act. **IN RE NEWTON**  
[10 B. L. R., 88; 17 W. R., 65  
14 Moore's I. A., 237]

**BARRISTER—continued.**

2. — *Agreement with client as to fee—Disability to contract—Pleader—Suit by client for fees—Act I of 1846, s. 8.*—A engaged G, a barrister practising in the mofussil, to conduct a suit for him, and promised to pay him a sum of money as a present in addition to the fee allowed by Regulation XIV of 1816, provided that the decree awarded to A a sum above Rs1,000. The condition being fulfilled, G collected moneys for A under the decree, and retained the sum promised. It was not proved that A assented to the appropriation by G of the sum retained in payment of the promised present. A sued G to recover the sum retained. *Held* (1) that, if G was to be regarded as a barrister, he was under a disability to contract with A as to his fees; (2) that if G was to be regarded as a pleader, he was prohibited by a Circular Order of the Sudder Adalat from enforcing this contract. *Semble*—The decision in **Kennedy v. Brown**, 13 C. B., N. S., 677, governs all agreements made by members of the English Bar in that character. **ACHAMPARAMBATH CHEBIA KUNHAMMU v. GANTZ** . I. L. R., 3 Mad., 138

3. — *Right of client to sue for return of fee when barrister was absent—Advocate and client.*—Taking it that the rule of English law, that the relation of counsel or advocate and client creates mutual incapacity to make a binding contract of hiring and service, either express or implied, governs the relation of advocate and client generally in this country, there must be the relation of advocate and client to give rise to the incapacity, and the incapacity is strictly confined to contracts relating to service as an advocate in litigation and matters ancillary to such service. The degree of barrister is but one of the qualifications for admission and enrolment as an advocate of the High Court. Where the defendant, a barrister who was not admitted an advocate of the High Court, accepted a valued an advocate of the High Court, and the defendant failed to appear on the day to which the trial of the plaintiff was adjourned, and the plaintiff sued the defendant to recover the amount of the fee paid,—*Held* that the suit was maintainable. **KISHNA ROW v. MUTTUKRISHNA** . 4 Mad., 244

4. — *Right to sue for fees for professional services—Barrister enrolled as advocate.*—A barrister enrolled as an advocate of the High Court is incapacitated from making a contract of hiring as an advocate, and cannot maintain a suit for the recovery of his fees. **SMITH v. GUNESSEE LAL**  
[3 N. W., 83]

5. — *Right to act as advocate and attorney.*—Where a barrister renders services which go beyond his profession as a barrister, his incapacity to recover fees as a barrister does not extend to such extra-professional services; and where, as in Burma, the law enables an advocate to recover fees, and a barrister acts both as an advocate and in other capacities, the remuneration claimed by him ought to be divided into two parts; and while, in that part of his services in which he acts as attorney, he should be allowed to recover fees

**BARRISTER—concluded.**

ices being the only proper and a full remuneration for them. **LAND MORTGAGE BANK OF INDIA v. ELMES** . . . 25 W. R., 339

6. ——— Barrister or pleader appearing as litigant in person—*Practice*—In cases

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**BASTARDY PROCEEDINGS.**

See **CASES UNDER MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.**

See **WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES.**

[I. L. R., 18 Calc., 781

**BASTI LAND.**

See **CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1868, s. 2.**

[I. L. R., 31 Calc., 528

**BAZARS.**

See **BENGAL REGULATION XXVII OF 1793, s. 5** . . . 15 W. R., 48

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**BENAMIDAR.**

See **CASES UNDER BENAMI TRANSACTION.**

See **BENGAL TENANCY ACT, s. 173.**

[I. L. R., 21 Calc., 554

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I. L. R., 16 Calc., 355

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5 B. L. R., 321: 13 W. R., 157

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**BENAMI TRANSACTION.**

Col.

1. **GENERAL CASES** . . . 663

2. **SOURCE OF PURCHASE-MONEY** . . . 671

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(a) **ACTS XII OF 1841, I OF 1845, AND XI OF 1853** . . . 678

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[I. L. R., 11 Bom., 708

See **LIMITATION ACT, 1877, s. 10 (1859, s. 2).**

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2 Ind. Jur., N. S., 327: 8 W. R., 483

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[I. L. R., 14 Calc., 109

I. R., 13 I. A., 180

I. L. R., 15 Calc., 350

**1. GENERAL CASES.**

1. ——— Custom—Recognition of benami transactions.—Benami transactions are a custom of the country, and must be recognized till otherwise ordered by law. Meanwhile the extent of their compatibility with an honest purchase depends upon the peculiar circumstances of each case. **KALLY MOHUN PAUL v. BHOLANATH CHAKRADAR** . . . 7 W. R., 128

2. ——— Presumption as to ownership.—The habit of holding land benami, though inveterate in India, does not justify the

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Courts in making every presumption against apparent ownership. *JUDONATH BOSE v. SHUMSOONISSA BEGUM. BUZLOOR RUHEEM v. SHUMSOONISSA BEGUM*

[8 W. R., P. C., 3: 11 Moore's I. A., 551]

**3. ——— Presumption—Evidence justifying benami purchase.**—Evidence raising presumption of purchase at a sale in execution being made benami for the judgment-debtor discussed. *RAM CHUNDER BYSACK v. DINO NATH SURMA SIKKAR*

[5 C. L. R., 470]

**4. ——— Purchase of property by manager of joint family property.**—When the manager of a joint Hindu family re-purchases benami property sold for arrears of revenue, the presumption is that the property so purchased is held by him for the benefit of the joint family. *KALEH DOSS MOOKERJEE v. MOTHORANATH BANERJEA*

[5 W. R., 154]

**5. ——— Use of farzi name.**—In the case of a benami purchase, the mere use of the farzi name is sufficiently disposed of if the party whose name is used sets up no claim, and if there appears to have been long-continued possession on the part of the person claiming to be the beneficial owner. *HOYMOBUTTY DASSEE v. SREEKISSAN NUNDY*

14 W. R., 58

**6. ——— Purchase by father in name of son.**—Where the father of a joint Hindu family purchases property in the name of his minor son, the presumption is that it is a benami purchase by the father on whose death it becomes the property of the family. *BHAGBUT CHUNDER DEY v. HURO GOBIND PAL*

20 W. R., 269

**7. ——— Lease taken in name of wife and son.**—Where a father obtained, once and again, a lease in the name of his wife and son, paying the consideration-money out of his own funds, and on the decease of his wife obtained the lease in the joint names of the son and of his daughter by the deceased, and it was found that latterly the possession was not with the father,—*Held* that there was no error in law in the Judge's coming to the conclusion that the property was not intended by the father for his own benefit, but was given to his wife and children for their maintenance. *ZEEMUT ALI v. ALIMOONISSA*

10 W. R., 277

**8. ——— Purchase in the name of Hindu wife.**—The question for decision was whether a purchase in 1842, in the name of a Hindu wife, of an interest in part of her husband's ancestral estate, was for herself, or for her husband, her name being used benami for him. The High Court, at the hearing in appeal, considered certain previous decisions in cases arising out of benami transactions. But in arriving at its conclusion, which was that the property was the wife's, it proceeded entirely on the evidence in the particular case. The judgment of the Judicial Committee, which also went upon the evidence, was, on the contrary, that the husband was, in fact, the purchaser, the purchase

**BENAMI TRANSACTION—continued.****1. GENERAL CASES—continued.**

being benami in his wife's name. *DHARANI KANT LAHIREI CHOWDEY v. KRISTO KUMARI CHOWDH-RANI*

[I. L. R., 13 Calc., 181: I. R., 13 I. A., 70]

Reversing decision of High Court in *CHOWDH-RANI v. TARINY KANT LAHIREI CHOWDEY*

[I. L. R., 8 Calc., 545: 11 C. L. R., 41]

**9. ——— Purchase by husband in name of wife—Claim by husband when property is attached.**—A husband who puts his wife into the position of being the true owner of an estate and allows her to deal with the world as the true owner, deprives himself of the right to set up, or rely on, his benami title. *NIDHEE SINGH v. BISSONATH DOSS*

24 W. R., 79

**10. ——— Property of husband bought from wife.**—Where property is bought from a wife as the ostensible owner, the husband consenting to the sale, and the transaction is *bond-fide* on the part of the purchaser for a consideration, the purchase is a good one, even if the property is not the wife's, but the husband's. *GOLAM RUSSOOL v. ABDOL RUHEEM*

15 W. R., 19

**11. ——— Property of husband standing in name of wife.**—Certain property standing in the name of a wife was mortgaged by her. The mortgage debt was paid off. The mortgagee, having a decree against the husband, attached and sold the property. *Held* that, though payment of the mortgage debt by the wife might have given her a lien on the property to the extent of any money paid by her out of her own fund, the mortgagee's acting on the wife's assertion of title did not prevent him, when he subsequently discovered that the property was really the deceased husband's, from making it available for the satisfaction of his decree against the husband. *AMEERONISSA BEEBEE v. BENODE RAM SEIN*

2 W. R., 29

**12. ——— Property acquired by Mahomedan married woman.**—Where property is acquired by a Mahomedan lady living in a state of wedlock, and also by her legitimate daughter, a very small amount of evidence would suffice to dispose of the presumption arising from the fact of title deeds being with the lady, against the supposition of a benami purchase. *KUDEERTUN v. LALLUN*

[14 W. R., 366]

**13. ——— Purchase in name of daughters—Right of bond fide purchaser from daughter.**—A, having two daughters, B and C, granted a *patni talukh* of certain lands in his *zamin-dari* to them in their infancy, and transacted the business connected therewith as manager down to the time of his death. After his death, B sold her interest to her sister C, and C sold the *patni talukh* to D. The heirs of A brought a suit against D for the lands. *Held* that the lower Court might, upon these facts, infer that the grant of the *patni talukh* by A to his daughters was by way of provision for them, and that it was not a case in which the daughters held benami for the father. Secondly, that even if it were so, D, acquiring by a *bond fide* purchase

## BENAMI TRANSACTION—continued.

## 1. GENERAL CASES—continued.

Bosa . . . . . Marsh, 584; 2 Hay, 630

confidence so created. *NUNDELL v. TAYLER*

[1 Ind. Jur., N. B., 55; 5 W. R., 37

15. ———— *Benami purchase—Alienation by benamidar.*—Property bought by P in the name of S was mortgaged by P through his benamidar S by conditional sale to L, who, dying after foreclosure, left it in possession of his widows, defendants Nos. 3 and 4, from whom plaintiff purchased it at a sale in execution of a decree against them. Defendants Nos. 1 and 2 resisted on the ground that S's conditional sale did not pass the rights and interest of P, which they bought at an auction sale in execution of a decree

took with notice of the fact. *HAUGWAN DOSS v. UROOCH SINGH* . . . . . 10 W. R., 185

they show a distinct intention to hold on their own behalf. *JUGGERNATH PERSHAD DUTT v. HOGG*

[12 W. R., 117

17. ———— *Purchaser at*

interpell against him. *Dinendranath Sawmal v. Ram Kumar Ghose*, 1. L. R., 7 Calc., 107; 1. L. R., 8 I. A., 65, and *Lala Parbhu Lal v. Mylne*, 1. L. R., 14 Calc., 401, followed. Held, further, that it was not necessary to decide whether the plaintiff's mortgage was valid as against A, the plaintiff not having raised the

## BENAMI TRANSACTION—continued.

## 1. GENERAL CASES—continued.

[1. L. R., 20 Calc., 236

the plaintiff was entitled in equity to a declaration that the sums advanced with interest were a charge thereon. *SARJU PARSHAD v. BIR BHADDAR SEWAK PANDAY* . . . . . 20 I. A., 108

aidar—  
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there may be circumstances under which a person whose name does not appear upon a contract may be liable to perform its conditions. *BISSESSURE DEBIA v. GOVIND PARSHAD TEWARI* . . . . . 21 W. R., 308

20. ———— *Covenant for quiet*

gether with A, sold the land under a conveyance, which contained a joint covenant to remove any hindrance in the vendee's enjoyment of the land. Persons claiming under the lawful successor of the deceased benamidar obtained an ejectment decree against the repre-

suit. Held that the plaintiffs were entitled to the decree sought by them against A notwithstanding that he was a benamidar merely. *SOMASUNDARAM AYYAR v. FISCHER* . . . . . 1. L. R., 19 Mad., 60

the judgment-debtors, it is necessary to be very careful, and to ascertain beyond a doubt that the fact is so. *MAHOMED ISSA KHAN v. ONRIET* . . . . . 8 W. R., 23

22. ———— *Execution of decree.*—When a decree is assigned to A for his benefit in the name of B, B, the calculable decree-holder, may take out execution. *PURNA CHANDRA ROY v. ABHAYA CHANDRA ROY*

[4 R. L. R., Ap., 40

**BENAMI TRANSACTION—continued.****1. GENERAL CASES—continued.**

**23. — Evidence of ownership—Title to property seized in execution—Evidence—Suspicion.**—In determining the right to property seized in execution, the Court must not declare a person claiming as purchaser to be a benamidar for the debtor upon suspicion merely, but its decision must rest upon legal grounds established by legal testimony. *FAEZ BUX CHOWDHRY v. FAKIRUDDIN MAHOMED AHASAN CHOWDHRY*

[9 B. L. R., 456 : 14 Moore's I. A., 234

Reversing decision of lower Court in *FUKEROOD-DEEN MAHOMED AHSON CHOWDHRY v. KURREEM BUKS CHOWDHRY* . . . . . 5 W. R., 43

**24. — Breach of covenant—Cause of action—Plaint—Consent of benamidar.**—The plaintiff alleged that the three first defendants with a brother, since deceased, purchased a patni mehal therein described ; that the same was thereafter sold for arrears of rent, and purchased by the said three defendants with their own funds ; but that the Collector, in compliance with their petition, entered the name of their mother, the fourth defendant, as the purchaser. The plaintiff then alleged a subsequent sale by the three first defendants to the plaintiff ; that they, the said defendants, caused a kobala to be executed by the fourth defendant, and that they, being the real owners, became witnesses to the deed, and received the whole of the consideration-money, and prayed by reason of ouster and disturbance alleged for damages against all the defendants for breach of the following covenant contained in the kobala : " If any one making any objection to the sale by me of the said mehal give you trouble in any way, then I will put matters straight. If I fail to do so, I will return the consideration-money. If I do not return it, you will realize it by means of a suit." The Civil Judge in whose Court the plaintiff was filed held that no cause of action was shown, and the High Court on appeal remanded the case to try whether there had been the ouster and disturbance alleged, and whether, under the circumstances, they constituted a breach of the contract. The High Court, however, dismissed the suit against the three first defendants, holding that the mother only was bound by the contract. *Held* by the Privy Council that the plaintiff disclosed a cause of action against all the defendants, and that the case must be remanded accordingly. One issue raised by the plaintiff was whether the kobala was really entered into by the mother as the agent and on behalf of the three first defendants, and by their authority. *BISHESWARI DEBYA v. GOVIND PRASAD TEWARI*

[L. R., 3 I. A., 194 : 26 W. R., 32

Varying the decree of the High Court in

[21 W. R., 398

**25. — Suit on bond executed benami—Money lent by wife for husband.**—Where a woman sues to recover money advanced on a bond executed in her name, it is open to the obligor to plead that the money was not lent by the woman, but that the bond was merely an acknowledgment of indebtedness from him to her husband. *BHOOBUNESSUR ROY CHOWDHRY v. JUGGESSUREE CHOWDHRIANI*

[22 W. R., 413

**BENAMI TRANSACTION—continued.****1. GENERAL CASES—continued.**

**26. — Money lent by person other than holder of bond.**—In a suit upon a bond where defendant pleads that the bond, though executed in the name of the plaintiff, was really executed in favour of a third party, if it is found that plaintiff is not the real holder of the bond, the suit must be dismissed. *JUDONAUTH DEY v. GIRIJA BHOOSUN MITTER* . . . . . 23 W. R., 446

**27. — Benami purchase by judgment-debtor of property subject to mortgage decree—Effect of.**—*P L* brought a suit against *H*, and, while it was pending, executed a bond in favour of *R C* hypothecating the property in dispute. The suit was dismissed with costs, and another suit was brought by one *P M* upon the bond, and, while it was pending, the property in dispute was sold in execution of *H*'s decree for costs and purchased by *S*. The day after this, i.e., on 10th November 1868, *P M* obtained a mortgage decree, which he transferred to *R B*, who executed it and attached the property in dispute, when *S* intervened, objecting that the mortgage, the mortgage decree, and the transfer of the decree were all fictitious and collusive, and brought about by *P L*. This objection having been rejected, a suit was brought on the same ground against *R B*, *P M*, and the widow of *P L* to establish *S*'s rights and to stop the pending sale. The property was, however, sold and purchased by *D*, who was then made a defendant in the suit. Both the lower Courts found that *R B* was a benamidar for *P L*, and upheld the title of *S* in preference to that of *D*. *Held* on the principle of *In re Suroop Chunder Hazra*, B. L. R., Sup. Vol., 938 : 9 W. R., 230, viz., that the purchase by a judgment-debtor extinguishes the decree,—that the same result followed in a benami transaction when the decree was a mortgage decree, and therefore, although *S* by virtue of his auction-purchase was not entitled to the property in dispute, yet he was entitled to a declaration that, so far as the amount of his purchase-money went to satisfy the decree of November 1868, it should be considered a charge on the property. *DHONDHAI SINGH v. SULEH-MOODDEEN HOSSEIN* . . . . . 24 W. R., 359

**28. — Benami transfer—Mutation of names in settlement record.**—A transfer from a husband of a share in a village was not formally carried out otherwise than by its being evidenced by mutation of names in the settlement record ; and a son, claiming as his father's heir, alleged that his mother's name was only used benami by the father. *Held* that a finding that such mutation was not for the purpose of putting the property into the name of the wife benami for the husband, but for her own benefit, was substantially correct. *THAKRO v. GANGA PARSAD*

[I. L. R., 10 All., 197 : L. R., 15 I. A., 29

**29. — Person allowing property to be purchased benami—Sale by ostensible owner.**—If a person allows property to be purchased for him in the name of another, and takes no steps to show to the world that he is the owner, he must make out a clear right to relief against any one who

**BENAMI TRANSACTION—continued.****1. GENERAL CASES—continued.**

purchases that property *bond fide* from the ostensible owner. *NIDRA DOSSEN v. ARDOOL WAHED*

[25 W. R., 532]

**30. ——— Suit on bond, the consider-**

answer to a suit on the bond, brought against A by a person who has purchased the bond from C *bond fide*, without notice, that the money advanced belonged to A. A person who lends money in the name of another must accept the consequences, if an innocent

**31. ——— Benamidar, Right of, to sue in his own name—Purchase by a non-agriculturist in name of an agriculturist—Suit by benamidar for redemption—Court-fees payable as if real purchaser was plaintiff—Dekkhan Agriculturists' Relief Act (Act XVII of 1879).—**

were the actual plaintiff. One D, an agriculturist,

in his own name, but must pay the usual stamp fees, and that the suit should proceed as an ordinary suit, as though K was the nominal as well as the real plaintiff. *DAGDU v. BALVANT RAMCHANDRA NATU*

[I. L. R., 23 Bom., 820]

**33. ——— Right of benamidar to sue on negotiable instrument—Suit on promiss-**

[I. L. R., 21 Mad., 30]

**33. ——— Benami purchase by a Government officer prohibited from acquiring land—Suit for declaration against benamidar.—**The plaintiff sued for declaration of his title to certain land which had been purchased by him in the name of the defendant. The object of the transaction was to conceal from the Collector the fact that the plaintiff, who was a taluqdar, had acquired property in his talukh contrary to the rules

**BENAMI TRANSACTION—continued.****1. GENERAL CASES—continued.**

of his department. *Held* that the plaintiff was entitled to the declaration sought. *LOBO v. BAIRIO*

[I. L. R., 21 Mad., 231]

**34. ——— Suit by benamidar to eject tenants—Madras Revenue Recovery Act (Madras Act II of 1864), s. 39—Madras Revenue Recovery Amendment Act (Madras Act III of 1884), s. 1 (5)—Sale for arrears of revenue—Benami purchaser—Right of suit.—**Land forming part of the endowment of a chattram was brought to sale for arrears of revenue, and was purchased by the plaintiffs, who now sued to eject the tenants, who were in occupation of the land. *Held* (1) that

*NAIKAR* [I. L. R., 13 Mad., 480]

**35. ——— Benami deed executed with intention to defraud creditor—Relief against fraudulent benami deeds executed by**

remained in possession of the properties till his death in 1860. After his death P remained in possession of the properties 1, 2, and 3, and S, the younger widow, remained in possession of other properties. In November P executed, in respect of the 8 annas of the properties covered by the hibas, a khabala in favour of G's son, then a minor. S died in 1863, and P died in 1871. A daughter of K by S succeeded them, and that daughter died in August 1882. In a suit brought by a son of that daughter on 4th January 1893 for the recovery (*inter alia*) of possession of his share of properties 1, 2, and 3 from G's son, with mesne profits and for a declaration that the deeds executed by K were colourable transactions,

the proposition that it is always open to a party to show that a document simply executed, but not carried into effect, is a benami and colourable document, and to recover possession of property against the party claiming under such document. *Symes v. Hughes*, L. R., 9 Eq., 475, *Phool Bibee v. Goor Suran Dass*, 13 W. R., 455, *Sreenath Roy v. Bindoo Baskines Debia*, 20 W. R., 112, *Debia Chowdhran v. Bindoo Soodrree Debia*, 21 W. R., 422, *Bylant Nath Sen v. Goboolah Siddar*, 24 W. R., 391, *Mahmud Mulluck v. Bamjan Sardar*, 2 C. L. R., 64, referred to. *Kalyanath Kar v. Doyal Krato Deb*, 13 W. R., 87, not followed.

**BENAMI TRANSACTION—continued.****1. GENERAL CASES—concluded.**

*Rangammal v. Venkatachari*, I. L. R., 18 Mad., 378, and *Chencirappa bin Virbhadrappa v. Puttappa bin Shiebasappa*, I. L. R., 11 Bom., 708, distinguished. *Taylor v. Bowers*, L. R., 1 Q. B. D., 291, followed. *Kearley v. Thomson*, L. R., 21 Q. B. D., 742, referred to. *SHAM LALL MITRA v. AMARENDRO NATH BOSE* . . . I. L. R., 23 Cal., 460

**36.** ——— **Colourable conveyance in fraud of creditors—Fraud carried into effect—Suit by real owner against benamidar and his transferee—Right of suit.**—Plaintiff, with the object of defeating the claims of his creditors, executed a colourable conveyance of his property in favour of another person, and the transferee successfully resisted the creditors of the plaintiff from seizing the property in execution of their decrees. The transferee then conveyed the property to a third party, who took possession. *Held*, following the case of *Kali Charan Pal v. Rasik Lal Pal*, I. L. R., 23 Cal., 962 note, that the plaintiff was precluded from maintaining an action for the recovery of the property. *Held*, also, that there is a distinction between those cases in which the fraud was only attempted, and those in which it was actually carried into effect; and that in the latter class of cases the Court would, by granting relief to the wrongdoer, be making itself a party to the fraud. *GOBERDHAN SINGH v. RITU ROY* I. L. R., 23 Cal., 962

**37.** ——— **Fraud carried into effect—Suit by the real owners against benamidar—Right of suit.**—Where property has been conveyed benami with the object of placing it beyond the reach of creditors, and the fraudulent purpose has been carried into effect, the real owner ought not to be permitted to succeed in a suit instituted by him for recovery of the property. A distinction exists between such a case and a case where the fraud has not been carried into execution. *Debia Chowdhraim v. Bimola Soonduree Debia*, 31 W. R., 422, explained. *KALICHARAN PAL v. RASIK LAL PAL* [I. L. R., 23 Cal., 962 note

**38.** ——— **Suit by real owner against benamidar—Fraudulent purpose given effect to by claim successfully preferred by the benamidar.**—A suit does not lie for a declaration that a conveyance executed by the plaintiff is a benami and fictitious transaction, when the alleged transaction has been used to accomplish the fraudulent purpose for which it was intended. The fraudulent purpose is accomplished when, the property conveyed being attached by a decree-holder, the benamidar is allowed to prefer a claim to it, and the claim is allowed by the Court. *BANKA BEHARY DASS v. RAJ KUMAR DASS* I. L. R., 27 Cal., 231 [4 C. W. N., 289

**2. SOURCE OF PURCHASE-MONEY.**

**39.** ——— **Source of purchase-money—Evidence of beneficial ownership.**—It is not a principle of law that the issue be framed in a case

**BENAMI TRANSACTION—continued.****2. SOURCE OF PURCHASE-MONEY—continued.**

of benami purchase is from what source the purchase-money came, though that is an excellent criterion and test for determining the character of the purchase. *BRISO BENABEE SINGH v. WAJED HOSSAIN* [14 W. R., 372

**40.** ——— **Evidence of beneficial ownership.**—In cases of benami purchase in India, the criterion of beneficial ownership is the source from which the purchase-money is derived. *GOPEEKRISHN GOSSAIN v. GUNGAPERSAUD GOSSAIN* [6 Moore's I. A., 53

*AKBUR ALI v. MAHOMED FAIZ BUKSH* [15 W. R., 12

**41.** ——— **Possession.**—In coming to a conclusion in a case of a benami purchase, the circumstances and probabilities are to be carefully considered and weighed,—e.g., the object of the purchase, whether the purchase-money really belonged to the purchasers, and whether possession was taken after purchase; and, if not, why possession was not taken. *BHOODUN MOHUN BUREAL v. NAGOREN DOSSIA* . . . 15 W. R., 15

**42.** ——— **Proof of consideration.**—Where a deed of sale is executed benami under circumstances which suggest an intention to defraud creditors, it is not sufficient that the sale was formally made and the deed duly registered; the Court must be satisfied as to consideration having actually passed from the purchaser to the former owner, and as to the source from which the purchase-money was derived. *MUTUROOLLAH v. TORABOODEN* . . . 15 W. R., 305  
*See LUCHMEE KOER alias BHUGOBUITY KOER v. FUTTEH SINGH* . . . 24 W. R., 400

**43.** ——— **Mahomedan, Purchase by.**—Where a Mahomedan husband was found to have paid the purchase-money for a patni talukh standing in the name of his wife, it was held that his having been in possession of the money was *prima facie* evidence that the patni talukh belonged to himself and not to his wife, and that presumption was not rebutted by the fact that he purchased the patni in the name of his wife. *SURNOMOYEE v. LUCHMEEPUT DOOGUR* . . . 9 W. R., 338

**44.** ——— **Property acquired by separate funds.**—In a suit for certain property as belonging to plaintiff's judgment-debtor, in which the defendant, the adoptive mother of the judgment-debtor, claimed the property as purchased by her *bond fide* in the name of her son, but with her own funds,—*Held* that this case could not be judged by the criterion laid down by the Privy Council in the case of *Gossain v. Gossain*, 6 Moore's I. A., 53, viz., whence came the purchase-money; for the question in that case related to property acquired by a member of a joint Hindu family, where the presumption would ordinarily be that all the property is joint. *NADIRJAN BIBEE v. KUREMOONISSA CHOWDHRAIN* . . . 12 W. R., 122

**45.** ——— **Hindu and Mahomedan Law—Presumption.**—In cases where the

**BENAMI TRANSACTION—continued.****2. SOURCE OF PURCHASE-MONEY—concluded.**

vancement in favour of the son. Upon the facts, the decision of the Court below reversed. **AZHAR ALI v. ALTAF FATIMA**

[4 B. L. R., P. C., 1: 13 W. R., P. C., 1

**AZHAR ALI v. ULTAZ FATIMA**

[13 Moore's L. A., 233

**40. —** *Benami purchase—Whether property was held benami for the claimant or was a gift to the holder—Evidence of ownership—Source of purchase-money.*—The claimant, having supplied the purchase-money on the sale of the village in suit, took the transfer by sale-deed in the name of the first defendant, who remained in possession of it, receiving rents. The claim was for proprietary possession by the purchaser on the ground that the property was held benami for him. The first Court decreed the claim. The Appellate Court reversed this decision. The first Court had attributed too much to the fact that the plaintiff had

[I. L. R., 28 Calc., 227

L. R., 28 I. A., 38

3 C. W. N., 113

**3. ONUS OF PROOF.**

**47. —** *Onus probandi—Purchase by member of joint Hindu family in name of son—Presumption—Conveyance in English form.*—Where a purchase of real estate is made by

lease and release, held to be a benami purchase, and the son in whose name it was purchased declared to be a trustee, for the father, and the taluk part of the father's estate. **GOPEKRISTO GOSAIN v. GENGAPERSAUD GOSAIN**

6 Moore's L. A., 53

**BENAMI TRANSACTION—continued.****3. ONUS OF PROOF—continued.**

**48. —** *Registration of name.*—The benami system being one of the recognized institutions of the country, a purchaser does not discharge himself of the onus which lies upon him, by looking only to the apparent title. Nor is the onus discharged by the mere fact of the name of the defendant's vendor being alone registered in the zamindar's books as the exclusive owner of the patta, or of the vendor only being sued by the zamindar for the rent of the patta. **JEEBUNISSA v. UMUL CHUNDRA CHACKLANUTIS**

18 W. R., 151

**49. —** *Evidence of ownership.*—In cases of alleged benami sales effect should be given to the evidence of possession and enjoyment since the purchase, as showing who is the substantial owner. The burden of proof lies on the person who maintains that the apparent state of things is not the real state of things, and the apparent purchaser must be regarded as the real purchaser until the contrary be proved. **DEO NATH v. PIR KHAN**

3 Agra, 18

[3 Mad., 26

Following in this **GOPEKRISTO GOSAIN v. GENGAPERSAUD GOSAIN**

6 Moore's L. A., 53

[7 W. R., P. C., 10

**KADERNATH DEUT v. OXBOT COOMAR BHUTTA-CHARJEE**

9 W. R., 203

**52. —** *Benami lease—Proof of beneficial interest.*—Where there is an allegation that a lease is held benami, it is not sufficient for the party in whose name the lease is drawn out to produce the documents, but it is necessary for him to prove that he has the beneficial interest in the property. **SARODAMOHUN ROY CHOWDHURY v. SHAMA SOODERY DOSSIA**

[7 W. R., 209

**53. —** *Property purchased at sale in execution of decree.*—A decree-holder, in execution of his decree, put up for sale certain property of his judgment-debtor which was

**BENAMI TRANSACTION—continued.****3. ONUS OF PROOF—continued.**

purchased by plaintiff ostensibly on his own account. Having reason, however, to believe that the purchase was benami for the judgment-debtor, the decree-holder again took out execution against the same property, and advertised it for sale. Plaintiff intervened, but his objections were disallowed by the Court, which found the judgment-debtor in *bona fide* possession on his own account. The property was then sold, and one of the defendants bought it. Plaintiff then sued to have the execution proceedings set aside, and to have it declared that the property had been bought on his own account and with his own money. *Held* that the onus of proof lay on the plaintiff. **MUDDUN MOHUN SIAHA v. BHARUT CHUNDER ROY** . . . **11 W. R., 249**

**54. Presumption—Creditors claiming against benamidar—Evidence.**—Although a purchase by a Mahomedan with his own money of an estate in the name of his son raises a presumption of the son's name being used benami for his father, proof that the father's object was to affect the ordinary rule of succession as from him to that property is sufficient to give, as respects strangers, a title to the son independent of, and adverse to, the father. Where *bona fide* creditors of the ostensible owner of property are claimants on that property, the Court will require strict proof on the part of any one seeking to have it declared that he held it only benami. **RUKNADAWLA NOWAB AHMED ALI KHAN v. HURDWARI MULL** . . . **5 B. L. R., 578**

**AJMUT ALI KHAN v. HURDWAREE MULL**  
[**14 W. R., P. C., 14: 13 Moore's I. A., 395**

**55. Proof of beneficial ownership—Presumption from possession on receipt of rents.**—Where there are benami transactions, and the question is who is the real owner, the actual possession on receipt of the rents of the property is most important. In a suit against a purchaser at a sale under Act XI of 1859, s. 13, the plaintiff claimed to have an incumbrance by virtue of two mokurari pottahs, executed by the heirs of the last of a series of benamidars, and it appearing that the last benamidar had actual ownership of one-fourth of the property comprised therein, *Held* that the incumbrance was good to the extent of such fourth. **IMAMBANDI BEGUM v. KUMLESWARI PERSEAD**

[**L. R., 13 I. A., 160: I. L. R., 14 Cal., 109**

**56. Purchase by Hindu widow for a relation.**—A step-son made over property to his step-mother for her support. Out of the produce she bought properties for her nephew in the name of other parties. *Held*, under the circumstances, that the purchased property, on her death, went to the nephew, and not to the step-son as heir of her husband. Although the defendant, by his written statement, denied the fact of the purchases being with the widow's money, and it was proved that they were made with her money, *Held* that this did not remove from the plaintiff the burden of proving that the purchases were made benami for her. **CHANDRANATH ROY v. RUMJAI MUZUMDAR**  
[**6 B. L. R., 303: 15 W. R., P. C., 7**

**BENAMI TRANSACTION—continued.****3. ONUS OF PROOF—continued.**

**57. Creditors of benamidar, Right of—Credit given to benamidar in good faith.**—Certain property having been attached in execution of a decree against *B*, the plaintiff instituted a suit claiming the property and alleging that *B* was his benamidar. The allegation was established. It was contended that the public and the creditor at whose instance the attachment was made in execution of a decree for money advanced to *B* had been misled by the benami transaction. *Held* that the creditor was bound to prove that he had actually advanced the money believing in good faith that the property belonged to *B*. **GOLUK CHUNDER DASS v. BHAGMUT DASS**

[**11 C. L. R., 106**

**58. Benami purchase by Hindu or Mahomedan—Property bought by a father in his son's name—Advancement—Presumption—Evidence—Nature of evidence to rebut.**—When purchase is made by a Hindu or a Mahomedan in the name of his son, the presumption is in favour of its being a benami purchase; and it lies on the party in whose name it was purchased to prove that he is solely entitled to the legal and beneficial interest in the estate. When the rights of creditors are in issue in such a transaction, very strict proof of the nature of the transaction should be required from the objector to such rights, and the burden of proof lies with more than ordinary weight on the person alleging that the purchase was intended for the benefit of the son. **NAGINBHAI v. ABDULLA**

[**I. L. R., 6 Bom., 717**

**59. Allegation of benami conveyance.**—*A* and *B* were co-sharers. *B* leased his share to *D* taking rent separately from him, and *A* sold his share to *C*, so that *B* and *C* became co-sharers. Afterwards *B* conveyed his share to *E* and delivered *D*'s kabuliati to him, the conveyance which was registered reciting payment of the consideration. Subsequently *E* sold the share to *C* for valuable consideration. In a suit brought by *C* for possession, *B* alleged that his conveyance to *E* was a benami transaction of which *C* was cognizant. *Held* that the onus of showing that was on *B*, and that, *prima facie*, *C* was justified in supposing that *E* had a good title to convey. **SATYA MONI DAS v. BHUGGOBUTTY CHURN CHATTOPADHYA** . . . **1 C. L. R., 466**

**60. Husband and wife—Proof of bona fide purchase.**—In a case of purchase after a decree, where the vendor is only a benamidar, and the vendor's husband (supposed to be the real owner) wrote the deed and received the purchase-money (thereby making himself a consenting party), the onus lies on the plaintiff to prove that he is a *bona fide* purchaser for value, exercising due care and diligence. **MAN TUBUNGNEE DABEE v. BOISTUB CHURN BHUDDER** . . . **1 W. R., 110**  
See **ALLI KHAN v. MEER NASSEH ALI**

[**1 W. R., 115**

**61. Benami advance of money for mortgage.**—Where a plaintiff sued

**BENAMI TRANSACTION—continued.****3. ONUS OF PROOF—continued.**

alleging that a certain deed of mortgage was executed by *M B* benami for the benefit of *H B*, through whom the plaintiff claimed, and also alleging that *H B* had advanced the money for the mortgage out of her own moneys, it was held that,

In the absence of proof sufficient to establish the title of *H B*, and to show that the money was advanced by *H B*, the plaintiff's suit was dismissed. *BHAVEN DOSS v. MAHOMED HOSSEIN*

[13 W. R., P. C., 38; 13 Moore's I. A., 348]

See *ROOP CHAND ASWAL v. KARPOOL*

[25 W. R., 54]

63. ————— Suit for declara-

right by a plaintiff in possession of the land that, under the circumstances of the case, the onus was on the plaintiff to show that the deed was what it appeared to be, and not a mere paper transaction. *MOOKTO KESHER DEBES v. ANUNDO CHUNDER CHATTOPADHYA*

2 C. L. R., 48

[13 C. L. R., 188]

64. ————— Purchaser's bond

*HAJIRANG SINGH* 13 C. L. R., 280

65. ————— Purchase, *in*  
*farzi*, in the name of a person other than the real

mortgagee the amount of the mortgage debt and interest with also a small sum of money. In after years the husband, now plaintiff, and the wife, defend-

**BENAMI TRANSACTION—continued.****3. ONUS OF PROOF—concluded.**

showing that she had continuous possession in accordance with the sale deed. She did not prove that any money was paid by her, either to the vendors or to the mortgagee; nor was there such an amount of possession proved as affected the question either way. The conclusion was that the wife's name was used *in farzi* for the husband's as alleged. *SULEIMAN KADH BANADUR v. MEHENDI BEGUM*

[I. L. R., 25 Calca., 473]

L. R., 35 I. A., 15

2 C. W. N., 186

**4. CERTIFIED PURCHASERS.**

(a) Acts XII of 1841, I of 1845, AND XI of 1859.

66. ————— Act XII of 1841—*Suit to*  
*certified purchaser at sale for arrears of revenue.*—*S. 22*, Act XII of 1841, did not apply to a suit for a declaration of the plaintiff's title in right of inheritance as against other members of the family. *MAHOMED WAYEZ v. SUGERROONISSA* 6 W. R., 38

67. ————— Act I of 1845—*Purchaser at*  
*sale for arrears of revenue.*—The ruling of the Full Bench in *Bihari Kunwar v. Bihari Lal*, 3 D. L. R., P. D., 15 11 W. R., P. D., 16, that a benami purchaser is debarred from setting up his title in opposition to a certified purchaser was held not to apply in a suit in which the plaintiff was a certified purchaser who had bought at a sale for arrears of revenue under Act I of 1845. *BIHARI BHANU SINGH v. WAJED HOSSEIN* 14 W. R., 372

68. ————— s. 21—*Purchases made*  
*benami.*—S. 21, Act I of 1845, does not protect purchases made in the name of third parties from the operation of decrees against the persons beneficially entitled to the purchased property. *AMEEROSISSA BEBES v. BENODE RAM SEIN* 3 W. R., 23

69. ————— *Property pur-*

*LALL* 10 W. R., 223

70. ————— *Onus probandi.*

years allowed defendants to remain in possession and enjoy the usufruct as proprietors.—Held that the burden of proof was rightly thrown on the plaintiff. *Jadub Ram Deb v. Ram Lockun Muduck*, 5 W. R., 56, and *Bihari Kunwar v. Bihari Lal*, 3 D. L. R., P. D., 15; 11 W. R., P. D., 16,—the former on s. 26, Act XI of 1859, and the latter on s. 260, Act VIII of 1859,—considered and applied to a case

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

under s. 21, Act I of 1845. **JOHUR ALI v. BRINDABUN CHUNDER** . . . . . 14 W. R., 10

**71. ———— Certified purchaser.**—S. 21, Act I of 1845, does not apply to a suit brought to oust the certified purchaser on the ground that the purchase was made on behalf of another person, but to make void a pottah granted by his mother. **BISSONATH SUREMA BHUTTACHARJEE v. MORAN** . . . . . W. R., 1864, 353

**72. ———— Fraudulent purchase.**—Act I of 1845 was not intended to afford statutable protection to a purchaser at a sale brought about by fraudulent default on a preconcerted arrangement, for the purposes of title. **MUNSOOR ALI KHAN v. OJODHYA RAM KHAN** . . . . . 8 W. R., 399

**73. ———— Sale of arrears of revenue—Purchase by manager of joint Hindu family—Suit by one member to recover his share.**—A purchase by a managing member of a joint Hindu family, in his own name, at a revenue sale held under Act I of 1845, is not affected by s. 21 of the Act. A suit by one of the members for recovery of possession of his share of the property, purchased by the managing member in his own name, but for the use of the family, is not a suit to oust a certified purchaser and, therefore, not affected by s. 21, Act I of 1845. **TUNDAN SINGH v. PUKH NARAYAN SINGH** [5 B. L. R., 546 ; 13 W. R., 347

Confirmed by P. C. on 9th June 1874,

[22 W. R., 199 ; L. R., 1 I. A., 342

**74. ———— Act XI of 1859, s. 36—Act XII of 1841.**—Held (by MITTER, J.) that s. 21 of Act I of 1845, and s. 36, Act XI of 1859, do not apply to a purchase under Act XII of 1841. **BOOA RUSSOOLEE v. NAWAB NAZIM OF BENGAL** [11 W. R., 382

**75. ———— Act XI of 1859, s. 36, Construction of—Title of benami purchaser, how limited—Benami property, its liability to claims against true owner.**—The object of s. 36 of Act XI of 1859 is to prevent the true owner from disputing the title of his benamidar (certified purchaser), and not to preclude a third party from enforcing a claim against the true owner in respect of the benami property. **CHUNDRA KAMINY DEBBA v. RAMBUTTUN PATTFUCK** . . . . . I. L. R., 12 Calc., 302

**76. ———— Suit to oust certified purchaser.**—A purchased a mehal in the name of B's brother, and obtained possession. He then sued B, who was acting as his tahsildar, for an account and for delivery of certain papers connected with that mehal. Held that the terms of s. 36 of Act XI of 1859 did not apply to bar the suit. **BRINDABUN CHUNDER NUNDI v. RAM SUNDER MOZUMDAR** [I. L. R., 21 Calc., 375

**77. ———— Construction of—Suit certified purchaser—Plaintiff instructed defendant No. 2 purchase**

*Penal section  
ignee from  
of suit—  
chase a  
half ;  
but*

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

with the money of the plaintiff, and afterwards agreed to execute a deed of release in favour of plaintiff, but without doing that he fraudulently executed a deed of sale in favour of defendant No. 1, who had notice of plaintiff's title. In a suit by plaintiff for recovery of possession and declaration of title of the property it was contended that s. 36 of Act XI of 1859 was a bar. Held per MACLEAN, C.J., and GHOSE, J., that s. 36 of Act XI of 1859 is a penal section and ought to be construed strictly and literally, and in construing the section the Court ought not to go beyond the strict letter of the language used or to put a construction upon that language which would have the effect of materially extending the operation of the section. Held further by MACLEAN, C.J., that s. 36 is no bar to the suit, inasmuch as this is not a suit "to oust the certified purchaser," but to oust somebody else, although he claims through the former ; and the true ground upon which the suit is based is the fraud of defendant No. 2, of which defendant No. 1 had notice. Held per GHOSE, J., that the suit might well be regarded as based upon the ground of fraud, and in this view of the matter the case falls outside the provisions of s. 36 of the Revenue Sale Law. **Buhuns Kowur v. Lalla Beharee Lall**, 14 M. I. A., 496, **Lokhee Narain Roy Chowdhry v. Kalypuddo Bandopadhyay**, L. R., 2 I. A., 154, **Toondun Singh v. Pokhnarain Singh**, L. R., 1 I. A., 342, referred to. Per TREVELYAN, J. (dissenting)—S. 36 of Act XI of 1859 applies just as much to a suit to oust the assignee of a certified purchaser as it does to a suit to oust that purchaser. The Legislature, in enacting s. 36, intended to give to a certified purchaser in possession a statutory title against the person, if any, on whose behalf he had purchased, and therefore this protection should devolve upon his heir or assignee who would take a title in continuation of that of the certified purchaser. **RAJ CHUNDER CHUCKERBUTTY v. DINA NATH SAHA** [2 C. W. N., 439

(b) **CIVIL PROCEDURE CODE, 1882, s. 317 (1859, s. 260).**

**78. ———— Civil Procedure Code, 1882, s. 317—Sale for arrears of revenue—Act XI of 1859, s. 36—Certified purchaser, suit against.**—A, the certified purchaser of a talukhat at a sale held under the provisions of Act XI of 1859 for arrears of revenue, and who had obtained symbolical possession, had at the time of the sale agreed with B, the former owner of the talukh, to re-convey to him (B) after the sale had been completed. In a suit by B to compel specific performance of the contract, alleging that he had never quitted actual possession of the talukh, objection was taken that the suit was not maintainable under s. 36 of Act XI of 1859 and s. 317 of Act XIV of 1882. Held that the suit, not being one to oust the certified purchaser from possession, was not barred by s. 36 ; and that neither was it barred by s. 317 of the Civil Procedure Code, that section applying only to suits for specific performance of decrees of Civil Courts held under the Civil Procedure Code. **RAHAMAN v. RAHAMAN** 4 Calc., 583

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

DART DASSER . . . Marsh, 423 : 2 Hay, 512

81. ———— *Purchase in another's name at Court sale—Liability of property to creditors of benamidar.*—The immovable property

82. ———— *Agreement to re-*

[10 Bom., 344

83. ———— *Suit for possession against certified purchaser.*—Suit for possession by purchaser from certified purchaser at an execution sale. Defendant in possession not only denied plaintiff's title, but that of his vendor, whose

[8 W. R., 130

84. ———— *Previous possession of party claiming to be the real purchaser.*—The correct interpretation of s. 200, Act VIII of 1859, is to the effect that a suit by a party claiming to be the real purchaser of immovable property sold in execution of a decree cannot be brought against the certified auction-purchaser, even though the claimant has had previous possession. *BRUKER CHUNDER MOOSTAFEE v. RAEMA MOTEE DEBIA*

[8 W. R., 380

85. ———— *Certified purchaser—Purchaser under second sale in execution of decree.*—The certified purchaser of property which had been a second time attached and sold in the execution of a decree as the property of the judgment-

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

debtors sued to be confirmed in possession of the pro-

[6 N. W., 197

86. ———— *Suit by decree-holder against certified purchaser.*—S. 200 of Act

was in possession as such at the time of attachment. *SORTIN LALL v. LALA GYA PERSHAD*

[6 N. W., 285

87. ———— *Onus probandi.*—Where plaintiff, as heir of the ostensible auction-purchaser, sued to oust defendant, who had been

TUKER . . . 9 W. R., 438

was made benami for him in the name of the plaintiff, the "certified purchaser." *JOHN LALL v. HUSS KOOKA*

10 W. R., 167

89. ———— *Certified pur-*

benami conveyance to female members, the father continuing the absolute and uncontrolled owner during his life, and the son entering into possession after his death, cannot exclude the claim of the son's creditors. Where a purchaser at a sale in execution was named in the sale certificate as "mother and

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

guardian of her infant son," the title to the property was held to be vested by the certificate in the minor absolutely. *HEMANGINEE DOSSEE v. JOGENDRO NARAIN ROY* . . . **12 W. R., 236**

**90.** ————— *Certified purchaser—Fraud.*—S. 260, Act VIII of 1859, does not apply when the name of the certified purchaser has been inserted by fraud and contrary to the wishes of the purchaser. *KOOSUMBA v. TUFUZZUL HOSSEIN* **[13 W. R., 85]**

**91.** ————— *Suit by purchaser.*—In a suit for possession of a tank, on the allegation that plaintiff purchased it in execution of a decree against one *S D*, and that, after being put in possession, she was subsequently ousted, defendant's plea being possession after prior purchase at an execution sale under a decree against the same *S D*; the lower Court found that the defendant's purchase was a fictitious transaction, being in reality for the benefit of *S D*, who was in actual possession and enjoyment of the property at the time of the plaintiff's purchase. *Held* that the case did not come under the purview of s. 260, Act VIII of 1859. *TARA SOONDUREE DABEE v. OOLUL MONEE DASSEE* **[14 W. R., 111]**

**92.** ————— *Right of suit—Fraud.*—*J* and *B* borrowed a sum of money on a mortgage of property. Shortly after this they granted a mokurari of the property to plaintiff and afterwards sold their rights as proprietors to one *R R*. Subsequently to this the mortgagee brought a suit against the mortgagors, and obtained a decree declaring the property liable to be sold in satisfaction of his debt. The property was accordingly sold in execution and purchased by one *R D*, and the sale-proceeds were made over to the judgment-creditor. Plaintiff as mokuridar now sues to obtain possession on the ground that, the debt being paid off, the mortgage is no longer in existence. The Judge having found that the purchase by *R D* was not *bond fide*, but for and on the part of *R R*, who was in actual possession,—*Held* that s. 260 of the Code of Civil Procedure was no bar to the suit, the ground of fraud alone giving plaintiff sufficient right to question the legality of the sale. *SHAMA KESHEE v. RAJ KISHORE* . . . **14 W. R., 179**

**93.** ————— *Suit against certified purchaser.*—If a person is the person to whom under s. 259, Act VIII of 1859, a Court is directed to grant a sale certificate, he is entitled to be regarded as the "certified purchaser" at any time after the acceptance of his bid at the execution sale, even though the certificate may not actually have been granted to him before any suit against him, in connection with the property purchased by him, has been instituted; and s. 260 applies so as to bar a suit by the alleged real purchaser against him. *BUNDA ALI KHAN v. AMEERUN* . . . **25 W. R., 493**

**94.** ————— *Suit by certified purchaser.*—S. 260 of Act VIII of 1859 must be construed strictly and literally, and is applicable only to a suit brought against a certified purchaser to

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

assert a benami title against him. Where the certified purchaser is a plaintiff, the real owner, if in possession, and if that possession has been honestly obtained, may show in defence that the holder of the certificate is a mere trustee. *LOKHEE NARAIN ROY CHOWDERY v. KALYADDO BANDOPADHYA* **[L. R., 2 I. A., 154; 23 W. R., 358]**

**95.** ————— *Sale in execution of decree—Certified purchaser—Benami purchase.*—A talukh in possession of a mortgagee was put up for sale under an execution against the mortgagor, and was bought by *A* in his own name, but benami for the mortgagee. *A* obtained a certificate as purchaser, and was put formally in possession, the mortgagee remaining in actual possession. In a suit by *A* in ejectment to recover possession of the property purchased,—*Held (dissentiente L. S. JACKSON, J.)* that the defendant was debarred, not only by s. 260, but by the general provisions of the Act, from pleading that the plaintiff, the certified purchaser, purchased not on his own behalf, but benami for him, the defendant. Such defendant must show a transfer of title to him from the purchaser, in whom alone, under the certificate, the title of the judgment-debtor has vested. The object of s. 260 is to prevent any enquiry between the purchaser *de facto* and any person on whose behalf he is alleged to have purchased. *Held* on appeal (reversing the decision of the High Court) that s. 260 of Act VIII of 1859 is to be construed strictly, and that no suit would lie by *A* against the mortgagee to redeem. *BIHANS KUNWAB v. BEHARI LAL*

**[3 B. L. R., F. B., 15; 11 W. R., F. B., 16]**  
On appeal . . . **10 B. L. R., 159**  
**[18 W. R., 157; 14 Moore's I. A., 498]**

*MUTHOORA NATH DASS v. RAJEROMUL DOSSEE* **[24 W. R., 278]**

**96.** ————— *Civil Procedure Code, s. 317—Suit by purchaser at sale in execution of decree.*—At a sale in execution of a decree, in February 1875, the plaintiff purchased certain property in the name of *M*, who was recorded as the purchaser. In 1886, eleven years after the execution-sale, *M* sold the property to *H*, whose name was subsequently registered as owner, notwithstanding the plaintiff's objections. The plaintiff thereupon, in 1888, brought a suit against *H* for a declaration of his title to the property on the grounds that it had originally been purchased on his behalf at the execution-sale, and that he had been in possession for more than twelve years:—*Held* that the suit did not fall within s. 317 of the Civil Procedure Code. *Buhuns Kooncur v. Lalla Buhoree Lall*, **10 B. L. R., 159; 14 Moore's I. A., 496**, relied on. *KARAM-UDDIN HOSAIN v. NIAMUT FATEHMA* **[I. L. R., 19 Calc., 199]**

**97.** ————— *Civil Procedure Code (1882), s. 317—Suit against heir of certified purchaser.*—*Held* that s. 317 of the Code of Civil Procedure would not preclude a suit against a person who claimed title through the certified purchaser based on the allegation that the certified purchaser

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

was not the real purchaser, but only purchased benami for the person through whom the plaintiff claimed. *Buhans Kowar v. Lalla Buhorees Lall*, 10 B. L. R., 159; 14 Moore's I. A., 496, referred to. *SITA KUNWAR v. BHAGOLI*

[I. L. R., 21 All., 199]

98. ——— Suit for declaration that the name of certified purchaser was inserted fraudulently.—S. 200, Act VIII of 1859.

99. ——— Purchase by member of joint family in his own name with joint funds.—The provisions of s. 200, Act VIII of 1859.

[4 B. L. R., Ap., 32]

100. ——— Purchase by member of joint family in his own name with joint funds.—The provisions of s. 200, Act VIII of 1859.

[12 B. L. R., P. C., 371; 19 W. R., 356]

*Sokun Lall v. Lala Gya Pershad*, 6 N. W., 265, that s. 200, Act VIII of 1859, was in no way a bar to the suit. *PURAN MAL v. ALI KHAN*

[I. L. R., 1 All., 235]

101. ——— Suit by certified

*HAMMAD v. ILAHI BAKSH*. I. L. R., 1 All., 290

102. ——— Civil Procedure Code, 1877, s. 317—Suit by member of Hindu family against his father and a purchaser who has bought benami for him for partition.—The provisions of s. 317 of the Code of Civil Procedure are no bar to a suit for partition brought by a Hindu son against his father and a certified purchaser of family property, who has bought benami for the father with the family funds at a sale in execution of a decree against the father. *NATESA ATYAR v. VENKATARAMAYAN*

I. L. R., 8 Mad., 135

103. ——— Certified purchaser—Suit against certified purchaser—Grant of sale certificate after institution of suit.—A suit K, the purchaser of certain immovable property sold in execution of a decree under Act VIII of 1859, for

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

a declaration that K had purchased such property on her behalf. The suit was instituted after Act VIII

[I. L. R., 5 All., 478]

104. ——— Benami purchaser—Stranger to the transaction not affected.—In a suit by A against B and C to recover land, A alleged that B bought the land at a Court-sale on his behalf. B did not contest the suit. C, who

*RAMAKRISHNAPPA v. ADINARAYANA*

[I. L. R., 8 Mad., 511]

105. ——— Suit for property purchased at execution sale.—In a suit to obtain possession of certain property purchased at an execution sale, the plaintiff, who alleged that the purchase had been made for his benefit and that the certified purchaser was his benamidar, made the certified purchaser, who admitted his allegation, a defendant along with the person in possession. Held that the case came within the rule laid down in *Buhans Kowar v. Lalla Buhorees Lall*, 14 Moore's I. A., 496; 10 B. L. R., 159, and that the suit was not barred by s. 317 of the Civil Procedure Code. *HAZI ABJUN MULLICK v. PARUTILLA*

[9 C. L. R., 295]

106. ——— Civil Procedure Code (1852), s. 317—Benami transaction—Fraud—Suit against purchaser buying benami—Sale certificate granted in name of benamidar.—Certain property belonging to a judgment-debtor was brought to sale and purchased by a person in the benami name of her daughter, then an infant, and the sale certificate was made out in the name of the latter. Subsequently the mother mortgaged the property, and the mortgagee brought a suit, obtained a decree, and had the property sold and purchased it himself. Upon his being restrained by the daughter in attempts to get his name registered as proprietor, he instituted a suit against both mother and daughter to establish his rights to the property. The daughter thereupon objected that such suit would not lie by reason of the provisions of s. 317 of the Civil Procedure Code. Held that the provisions of that section, which were intended to prevent fraud, were inapplicable to the

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

facts of the case, and that the suit was maintainable.  
**KANIZAK SAKINA v. MONOHAR DAS**

[I. L. R., 12 Calc., 204

107.

*Civil Procedure Code (1882), s. 317—Benami purchase at execution-sale for judgment-debtor—Remedy of subsequent purchaser for value—Mortgage of parties.*—In a suit to redeem a kamra bought by the plaintiff who had purchased the land in execution of a decree against the joint, it appeared that the land had previously been purchased in the name of one who was joined as a supplementary defendant, with the funds of the joint's estate, and with the object of defrauding the creditors of that estate. A decree for redemption was passed, which was reversed on appeals filed by the supplementary defendant and the kamrar respectively. The plaintiff preferred a second appeal against the decree in the first-mentioned appeal, joining the kamrar as respondent. *Held* that the plaintiff could not succeed, as the kamrar was not a party to the appeal against which the second appeal was preferred. *Seable*, apart from the above objection, the plaintiff was not entitled to a declaration that the purchase by the supplementary defendant was benami for the benefit of the original joint and consequently invalid as against the plaintiff. **Kanizak Sakina v. Monohar Das**, I. L. R., 12 Calc., 204, dissented from. **RAMA KRISHNA v. SRIDEVI**, I. L. R., 16 Mad., 290

108.

*Civil Procedure Code (1882), s. 317—Suit by execution-creditor for declaration that property is liable to be sold in execution of decree as belonging to his debtor.*—The plaintiff lent money to F on a bond, and after his death sued his representative to recover the money out of the deceased's assets, and obtained a decree, in execution of which he attached certain property. S preferred a claim to the property on the ground that she was the purchaser of it at an execution-sale, and it was released. The plaintiff then brought a suit against S and F's representative for a declaration that the property was the property of his debtor F, and was therefore liable to be sold in execution of his decree. *Held* that the suit was not barred by s. 317 of the Civil Procedure Code. **Kanizak Sakina v. Monohar Das**, I. L. R., 12 Calc., 204, **Seetanath Ghose v. Muddab Narain Roy Chowdhry**, 1 W. R., 329, **Khyat Ali v. Sufallah Khan**, 8 W. R., 130, **Sohan Lall v. Lala Gya Pershad**, 6 N. W., 265, and **Paran Mal v. Ali Khan**, I. L. R., 1 All., 235, followed. **Rama Kurup v. Sri Devi**, I. L. R., 16 Mad., 290, dissented from. **SUBHA BIBI v. HARA LAL DAS**, I. L. R., 21 Calc., 519

109.

*Civil Procedure Code (1882), ss. 317 and 244—Purchase by a benamidar with funds belonging to a joint Hindu family—Right of member of family not being a party to benami transaction to sue for his share.*—A Hindu sued for partition of his share of the family property, and obtained a decree, which he partially executed. He then died without issue, leaving a widow. The rest of the family remained

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

undivided, and the plaintiff was born into it after the decree was passed. Some of the members of the family arranged for the purchase of the late decree-holder's property with their money benami for them, and for a similar purchase of other portions of the family property at Court-sales held a further execution of the decree. The plaintiff now sued for partition of, *inter alia*, those portions of the family property which had been the subject of the benami transaction. *Held* that the plaintiff was entitled to share therein, and was not precluded from asserting his right by Civil Procedure Code, s. 244 or s. 317. **MINAKSHI AMMAL v. KALIANRAM RAYER**

[I. L. R., 20 Mad., 349

110.

*Civil Procedure Code (1882), s. 317—Sale in execution of decree—Right to prove purchase benami.*—Certain property was mortgaged in 1881 and again in 1882. In 1883 the interest of one of the mortgagors in the property was brought to sale subject to the mortgages in execution of a decree against him, and was purchased by the assignor of defendant No. 6. In 1884 a decree for sale was obtained on the mortgage of 1882, neither defendant No. 6 nor his assignor having been brought on to the record. In execution of that decree, the property now in question was purchased by the predecessor in title of the plaintiff, who now brought this suit for redemption, averring that the purchase of 1883 was benami for the mortgagors. *Held* that the plaintiff was not debarred by the Civil Procedure Code, s. 317, from proving this averment. **KOLANTAVIDA MANIKOTH ONAKKAN v. TIRUVALLI KALANDAVA ALIYAMMA**, I. L. R., 20 Mad., 362

111.

*Civil Procedure Code (1882), s. 317—Assignment from a certified purchaser.*—A person taking an assignment from a certified purchaser at a Court-sale is not entitled, under Civil Procedure Code, s. 317, to object to the maintainability of a suit to recover the land purchased on the ground that the purchase was made benami. **THEYFAYELAN v. KOCHAN**

[I. L. R., 21 Mad., 7

112.

*Civil Procedure Code (1882), s. 317—Effect of benami purchase, and purchase as execution-debtor's agent—Right of suit for possession.*—Where the purchaser at an execution-sale is the agent of the execution-debtor and buys the property as such, though he advances the purchase-money on the understanding that he is to be repaid, a suit for possession of the property is maintainable by the latter against the former. Such a transaction is not a mere benami purchase, and is not a bar to such a suit under s. 317 of the Civil Procedure Code. **SANKUNNI NAYAB v. NARAYAN NUMBURI**, I. L. R., 17 Mad., 282

113.

*Civil Procedure Code (1882), s. 317—Sale under mortgage-decree—Benami purchaser—Purchase on account of a subsequent usufructuary mortgagee—Right of suit for possession.*—Certain land was hypothecated to A and subsequently put in the possession of B under a usufructuary mortgage. A obtained a decree upon

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

his hypothecation for the sale of the property against *B* and the mortgagor. In execution the land was purchased by the agent of *B* with his money, and he agreed to execute a conveyance to *B*. This agreement was not carried out, and the nominal purchaser ejected *B*'s tenant. Held the suit was not barred by s. 317 of the Civil Procedure Code, that *B* was entitled to a decree for delivery of possession and execution of a conveyance. *KUMRALINGA PILLAI v. ARIAPUTRA PADIACHI*. I. L. R., 18 Mad., 436

[I. L. R., 23 All., 434]

115. Interference by

Procedure Code, but was maintainable. *SASTI CHURN NUNDI v. ANNOPTUNA*

[I. L. R., 23 Cal., 689]

purchaser is not the beneficial owner. *Soham Lall v. Lala Gya Pershad*, 6 N. W., 265, *Puran Mal v.*

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

property with his own money, but in the name of his mohurrir, and for a very inadequate sum. The plaintiffs thereupon brought this suit against the defendants (the pleader and his mohurrir) for a

the suit, possession of the land sold had not been

118 Civil Procedure Code (1852), s. 317—Sale in execution of decrees—Benami purchase—Suit by creditor on the ground

ment of *KNOX, J.*, in *Delhi and London Bank v. Chaudhri Partab Bhaskar*, I. L. R., 21 All., 29, approved. *Ram Kurup v. Sri Devi*, I. L. R., 16 Mad., 290, followed. *Uncovenanted Service Bank v. Abdul Bari*, I. L. R., 19 All., 461, distinguished. *Bahadur Kowar v. Lalla Bahadur Lall*, 14 Moore's I. A., 496, and *Williamson v. Norris*, 68 L. J. Q. B., 54, referred to. *KISHAN LAL v. GARGUDONWASA PRASAD SINGH*. I. L. R., 21 All., 338

119. Suit by benami-  
dar—Effect of decision in suit on beneficial owner—

tuted with the full authority of the beneficial owner, and any decision made in such suit will be as much binding upon the real owner as if the suit had been brought by the real owner himself. *Mekeroomisa Bibee v. Har Churn Bose*, 10 W. R., 220, *Kalce Prasanno Bose v. Dino Nath Mullick*, 11 B. L. R., 55, 19 W. R., 434, and *Sita Nath Shah v. Achin Chander Roy*, 5 C. L. R., 102, discussed. Where

**BENAMI TRANSACTION—continued.****4. CERTIFIED PURCHASERS—continued.**

an application made by *C* and *D* to have their names registered in respect of certain malikana, as to right to which there was a dispute between *A* and *B*, was opposed by *E*, who alleged that *A* had been acting throughout as his benamidar, and was eventually rejected in 1876, on reference by the Collector to the Civil Court.—*Held* in a suit brought by *C* and *D* against *E* for a declaration of their right to the malikana, and for a reversal of the order refusing to allow their names to be registered in respect thereof, that, inasmuch as the allegation made by *E* in the proceedings held in 1876 on the application by *C* and *D* before the Collector, and afterwards upon the reference before the Civil Court, that *A* had been acting in the matter merely as his benamidar, was uncontradicted by *C* and *D* in their plaint in the present suit, there was sufficient evidence upon which to hold that that fact was true. **GOPINATH CHOWRY v. BIRGAWAT PERSHAD** . . . **I. L. R., 10 Calc., 697**

**120.** ————— *Suit against benami purchaser at Court-sale, by owner to recover the land after ejection.*—If, after obtaining a certificate of sale in execution of a decree, the purchaser acknowledges that his purchase is benami and gives up possession, or does some act which clearly indicates an intention to waive his right, or restores the property to the real owner, such act may, by reason of the antecedent relation of the parties, operate as a valid transfer of property. Defendant acted benami in buying certain land at a Court-sale for plaintiff, paid part of the purchase-money for plaintiff, and allowed plaintiff to remain in possession on the understanding that defendant was to transfer the property on repayment of the balance of the purchase-money. Defendant having ejected plaintiff, plaintiff sued to recover the land. *Held* that s. 317 of the Code of Civil Procedure was no bar to plaintiff's suit. **MONAPPA v. SURAPPA** **I. L. R., 11 Mad., 234**

**121.** ————— *Civil Procedure Code (Act XIV of 1882), s. 317—Sale in execution of a decree—Suit against heirs or mortgagee of the certified purchaser.*—S. 317 of the Civil Procedure Code is no bar to a suit against any person claiming through or under the certified purchaser, such as his heir or mortgagee. **Buhuns Kowur v. Lalla Buhoree Lall, 14 Moore's I. A., 496; 10 B. L. R., 159; 18 W. R., 157, and Lokhee Narain Roy Choudhry v. Kallypuddo Bandopadhyaya, L. R., 2 I. A., 154; 23 W. R., 358,** referred to. **Raj Chunder Chuckerbutty v. Dina Nath Saha, 2 C. W. N., 433, and Theyyavelan v. Kochan, I. L. R., 21 Mad., 7,** followed. **DUKHADA SUNDARI DASI v. SRIMONTA JOARDAR** **[I. L. R., 26 Calc., 950; 3 C. W. N., 657]**

(c) **N.-W. P. LAND REVENUE ACT (XIX OF 1873), s. 184.**

**122.** ————— *Sale for arrears of Government revenue—Alleged benami purchase—Suit on a mortgage against the debtor and the certified purchasers alleged to be benamidars of the debtor—Civil Procedure Code, s. 317.—Per KNOX,*

**BENAMI TRANSACTION—concluded.****4. CERTIFIED PURCHASERS—concluded.**

*J.*—The operation of s. 184 of Act No. XIX of 1873 is not confined to disputes between certified auction-purchasers and persons who allege that such auction-purchasers purchased on their behalf as their benamidars, but, extends to cases where the dispute is between the certified purchasers and third persons who allege that the certified purchasers are not the real purchaser. In such a case the claimants cannot succeed without proof of fraud. **Buhuns Kowur v. Lalla Buhoree Lall, 14 Moore's I. A., 496, Sohun Lall v. Lala Gya Pershad, 6 N. W., 265, Kanizak Sukina v. Monohur Das, I. L. R., 12 Calc., 204, Chundra Kaminy Debea v. Ram Ruttun Pattuck, I. L. R., 12 Calc., 302, and Tara Soanduree Debee v. Oajul Monee Dossee, 14 W. R., 111,** referred to. *Per BANERJI, J.*—S. 184 of Act XIX of 1873 contemplates a suit between the person claiming to be the real purchaser and the certified purchaser, and not a suit by a creditor of such person in which the creditor seeks to establish that the purchase was in reality made by his debtor, and that the certified purchaser is only the benamidar of the debtor. S. 184 does not preclude a creditor of the beneficial owner from suing the certified purchaser on the allegation that his purchase was benami for the debtor, and that the latter is the real purchaser. **Buhuns Kowur v. Lalla Buhoree Lall, 14 Moore's I. A., 496, Bodh Sing Doodhoooria v. Gunes Chunder Sen, 12 B. L. R., 317, Lokhee Narain Roy Chowdhry v. Kallypuddo Bandopadhyaya, L. R., 2 I. A., 154, Uncovenanted Service Bank v. Abdul Bari, I. L. R., 18 All., 461, Sohun Lall v. Lala Gya Pershad, 6 N. W., 265, Puran Mal v. Ali Khan, I. L. R., 1 All., 235, Kanizak Sukina v. Monohur Das, I. L. R., 12 Calc., 204, Subha Bibi v. Hara Lal Das, I. L. R., 21 Calc., 519, Ameers-oon-nissa Beebee v. Binode Ram Sein, 2 W. R., 29, and Chundra Kaminy Debea v. Ram Ruttun Pattuck, I. L. R., 12 Calc., 302,** referred to. **DELHI AND LONDON BANK v. CHAUDHRI PARTAB BHASKAR** . . . **I. L. R., 21 All., 29**

**BENCH OF MAGISTRATES.**

**1.** ————— *Trial of cases under Criminal Procedure Code, s. 530.*—A Bench of Magistrates has no power to deal with cases coming under s. 530 of the Criminal Procedure Code. A Bench may be empowered under s. 50 of the Code "to try such cases or such class of cases only and within such limits as the Government may direct." The definition of the term "trial" shows that it refers to trials for offences, and these do not come within the miscellaneous matters mentioned in s. 530. **SUFFERUDDIN v. IBRAHIM** **[I. L. R., 3 Calc., 754]**

**2.** ————— *Salaried officer of municipality, Disqualification of—Criminal Procedure Code (Act X of 1882), s. 555—Municipal offence.*—Notwithstanding anything contained in s. 555 of the Criminal Procedure Code, a conviction for an offence against any municipal law or regulation, had before a Bench of Magistrates, which includes a salaried officer of the municipality, is bad. **IN THE MATTER OF THE PETITION OF NOBIN KRISHNA**

## CH OF MAGISTRATES—continued.

ERJEE. NOBIN KRISHNA MOOKERJEE v.  
MAY, SUBURBAN MUNICIPALITY

[I. L. R., 10 Calc., 194

Criminal Procedure Code, 1872. QUEEN v.  
BENI PATHAN 21 W. R., Cr., 12

Jurisdiction of Bench—Of

Criminal Procedure  
1882, s. 261—Madras Police Act (XXIV  
1859), s. 48—Offences against "Conspiracy

It has no authority to disturb it. ABDUL HUSSAIN  
v. IDRAK 21 W. R., Cr., 57

re QUEEN v. DWARNATH MOLICK  
[21 W. R., Cr., 45

before a Bench of Magistrates, neither of whom  
actually exercised these powers, but sitting to-

[2 C. L. R., 348

Absence of member

IN KONTI GUA 13 C. L. R., 212

9. Order irregularly

hearing another Bench of Magistrates, none of

## BENCH OF MAGISTRATES—continued.

made. RAM SUNDAR DE v. RAJAH ALI  
[I. L. R., 12 Calc., 558

10. Absence of member  
of Bench—Hearing of part of case by one Bench of  
Magistrates and decision by another—Criminal  
Procedure Code, 1882, s. 16, 350—Rules framed by  
Local Government for the guidance of Benches of  
Magistrates under s. 16, Criminal Procedure Code—  
Ultra vires.—Rule 8 of the rules framed by the  
Local Government for the guidance of Benches of  
Magistrates is ultra vires. An Honorary Magistrate

11. Criminal Procedure  
Code (Act X of 1882), ss. 15, 16—Consti-  
tution of the Bench under the rules of the Govern-  
ment of Madras.—The accused was tried on a charge  
under the Penal Code, s. 352, by a Bench of Magistrates  
consisting of a pensioned District Munsif who had  
been appointed Chairman of the Bench and one  
Special Magistrate. The Magistrates differed in  
opinion, but the Chairman gave his casting vote for  
conviction, and the accused was convicted and  
sentenced. Held that the Court was not legally  
constituted under the rules of the Government of  
Madras, and the conviction should be set aside.  
QUEEN-EMPRESS v. MUTHIA

[I. L. R., 10 Mad., 410

12. Criminal Proce-  
dure Code (1882), ss. 16 and 350—Change in consti-  
tution of the Court during a trial—Offence under  
Madras Town Nuisances Act (Madras Act III of  
1889).—A trial under the Town Nuisances Act of  
1889 was begun before a Bench of Magistrates, and  
adjourned. On the adjourned date the Bench was  
constituted differently, only one Magistrate being  
present of those who attended on the first occasion;  
but the trial was proceeded with, and resulted in a  
conviction. Held that the conviction was illegal, and  
should be set aside. Hardwar Singh v. Kaeja  
Ojha, I. L. R., 20 Calc., 570, followed. QUEEN-  
EMPRESS v. BASAPPA . I. L. R., 18 Mad., 394

13. Absence of  
member of Bench—Hearing of part of the case by  
two Magistrates and decision by three—Criminal  
Procedure Code (1882), s. 350.—Only three Magis-  
trates who have heard the whole of the evidence can  
decide a case. There is no provision of law which  
provides for a change in the constitution of Benches  
of Magistrates during the hearing of a case. S. 350  
of the Criminal Procedure Code does not apply to  
cases tried by Benches of Magistrates. Shambhu  
Nath Sarkar v. Ram Kaml Gula, 13 C. L. R.,  
212, and Hardwar Sing v. Kaeja Ojha, I. L.  
R., 20 Calc., 570, followed. DAMEE THAKUR v.  
BHOWANI SARKOO . I. L. R., 23 Calc., 194

**BENCH OF MAGISTRATES—concluded.**

14. ————— *Criminal Procedure Code (Act X of 1882), ss. 16, 350—Madras District Municipalities Act (Act IV of 1881), ss. 263, 264.*—A trial on the charge of making an encroachment upon public land under the Madras District Municipalities Act, 1881, ss. 167, 263, and 264, was begun before a Bench of seven Magistrates, and ended in a conviction by five of the Magistrates in the absence of the other two. *Held* that on the facts of the case the conviction under s. 263 was right, and that it was not invalidated by the absence at the end of the trial of two of the Magistrates before whom it had begun. *KARUPPANA NADAN v. CHAIRMAN, MADRAS MUNICIPALITY*  
[I. L. R., 31 Mad., 246]

**BENEFIT SOCIETY.**

*See MADRAS MUNICIPAL ACT, 1884, s. 103.*  
[I. L. R., 11 Mad., 253]

**BENGAL ACT—1863—VI.**

*See CASES UNDER APPEAL—MEASUREMENT OF LANDS.*

*See CASES UNDER BENGAL RENT ACT, 1869, ss. 25, 31, 37, 38, 41, 43—49, 53.*

*See CASES UNDER MEASUREMENT OF LANDS.*

————— s. 16.

*See CLAIM TO ATTACHED PROPERTY.*

[10 W. R., 21]

————— s. 20—*Suit for account and for money misappropriated by agent—Cause of action—Bengal Act I of 1879, s. 116—Agency, Creation of.*—Where an agency for the collection of rents of toke *G* and *H* was created in district *M*, in which district toke *G* was situated, toke *H* being situated in district *L*.—*Held* in a suit brought against the agent for an account and for money fraudulently misappropriated and instituted in district *M* that, so far as the suit related to toke *H*, the Court of *M* had no jurisdiction to try it. Bengal Act VI of 1863 requires a suit to be brought in some Court within the district in which the land lies in respect of which the agency was created, and the question where the cause of action arose is material only in determining in which sub-division of the district the suit is to be brought. *NILMONI SINGH DEO v. NILU NAIK* . I. L. R., 20 Calc., 425

**VIII.**

*See ZAMINDARI DAKS* . . . 4 W. R., 6  
[6 W. R., 100  
8 W. R., 45]

————— **IX—Mohurrir appointed under—**

*See PUBLIC SERVANT* 20 W. R., Cr., 49

**1863—III.**

*See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS.*

[2 Ind. Jur., N. S., 180]

**BENGAL ACT—1863—III—concluded.**

*See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BENG. ACT III OF 1863,*  
[10 W. R., Cr., 30]

**V.**

*See NAZIR.*

[11 B. L. R., 256 : 19 W. R., 335]

*See PEONS, APPOINTMENT OF.*

[9 W. R., 333]

11 W. R., 158, 159

**VI.**

*See CALCUTTA MUNICIPAL ACT, 1863.*

**1864—III.**

*See BENGAL MUNICIPAL ACT, 1864.*

**V, s. 16.**

*See OBSTRUCTION TO NAVIGATION.*

[2 B. L. R., A. C., 23 : 11 W. R., Cr., 18]

**VII.**

*See SALT, ACTS AND REGULATIONS RELATING TO—BENGAL.*

**1865—VI.**

*See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS.*

[2 Ind. Jur., N. S., 180]

————— ss. 31 and 32—*Protector of labourers, Powers of—Wages of labourers—Mode of taking account—Criminal Procedure Code (XXV of 1861), s. 444.*—*Held* that until an enquiry is made under s. 31, Bengal Act VI of 1865, the Protector of labourers is not competent to act under s. 32; that the procedure under s. 31 must be conducted in accordance with s. 444 of the Criminal Procedure Code, 1861; that to support a conviction under s. 32, Bengal Act VI of 1865, it must be shown that the wages or part of the wages due have remained unpaid for more than six months. But in an account current, the payments are not to be appropriated for the wages of the month in which the payment was made. *IN THE MATTER OF THE NORTHERN ASSAM TEA COMPANY*

[3 B. L. R., A. Cr., 39 : 12 W. R., Cr., 29]

**VII.**

*See SLAUGHTER-HOUSE.* 6 W. R., Cr., 77

[16 W. R., Cr., 4]

6 B. L. R., Ap., 28 : 14 W. R., Cr., 67

**VIII.**

*See SALE FOR ARREARS OF RENT—INCUMBRANCES.*

*See SALE FOR ARREARS OF RENT—UNDER-TENURES, SALE OF.*

**1866—I.**

*See FERRY* . . . 15 W. R., 132

**II.**

*See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.*

[21 W. R., 289]

**BENGAL ACT—continued.**

1866—IV.

See CALCUTTA POLICE ACT, 1866.

See POLICE MAGISTRATE.

[1 B. L. R., O. C., 39]

—VI.

See CONVICTION . 1 B. L. R., O. Cr., 41

1887—II.

See CASES UNDER GAMBLING.

Offence under—

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE . I. L. R., 27 Calc., 144

1868—VI, sch. K.

See JUDICIAL OFFICERS, LIABILITY OF.

[14 B. L. R., 254; 21 W. R., 391]

—VII.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[3 C. L. R., 508]

See CASES UNDER PUBLIC DEMANDS RECOVERY ACT.

See CASES UNDER SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE.

s. 1—Estate—Lands not permanently settled—Sunderbund estate—District of which portion only is permanently settled—Bengal Regulations LX of 1916 and III of 1823—Estate—Bengal Act VII of 1869.—The plaintiff was the auction-purchaser at a sale under Act XI of 1859 by the Collector of the 24-Pergunnahs for arrears of revenue of an estate in the Sunderbunds on which the defendant was the holder of a mokurari mouzaal jungleburi tenure, under which he was to clear away the jungle and then to cultivate the

UNACHURN BANDYOPADHYA v. BHOLANATH BANDYOPADHYA . I. L. R., 14 Calc., 440

s. 2.

See REVIEW—POWER TO REVIEW.

[1 L. R., 23 Calc., 419]

**BENGAL ACT—1868—VII—concluded.**

s. 18.

See  
RE  
211

I. L. R., 27 Calc., 698  
4 C. W. N., 588

1869—II.

See CHOTA NAGPORE TENURES ACT, 1869.

—VIII.

See BENGAL RENT ACT, 1869.

1870—III, s. 3.

1. Object of section—*Transfer of decree for execution.*—The object of s. 3, Bengal Act III of 1870, was that a person against whom a decree was passed should not be harassed by two sets of proceedings in execution simultaneously carried on in two different Courts. MUDDEN MOHUN BISWAS v. PUDDO MONKE DASSEE . 17 W. R., 139

FOOL KISHOREN DASSEE . 18 W. R., 308

Collector In October 1871, he applied to the Munsif

therefore, would be that laid down by s. 108 of the Act, i.e., under Act X of 1869, and the appeal would lie to the Collector, not to the Judge under ss. 153 and 155 of that Act. The decree alone was transferred to the Civil Court, and the application for review was rightly made to the Court of the Deputy Collector. IN THE MATTER OF RAMSOONDER BANDO-PADHYA . 10 B. L. R., Ap., 21

RAMSOONDER BANERJEE v. DOORGA CHURN BARTY [19 W. R., 123]

IN RE JEGGODENBA DASSEE [10 B. L. R., Ap., 23 note  
15 W. R., 75]

**BENGAL ACT—1870—III—concluded.**

4. *Application to set aside decree—Jurisdiction.*—When an *ex-parte* decree of a Revenue Court has been transferred to the Civil Court under the provisions of s. 3 of Bengal Act III of 1870, an application to set aside the decree must be made to the Civil Court, and not to the Revenue Court. *KRISHNA KISHORE PODDAR v. WOOMESH CHUNDER ROY* . 13 B. L. R., F. B., 214: 21 W. R., 448  
IN RE WOOMA CHURN ROY MOZOOMDAR

[13 B. L. R., 215 note

WOOMA CHURN MOZOOMDAR *v.* CHUNDER KANT ROY CHOWDHRY . . . 16 W. R., 255

ODDWUNT MAHTOON *v.* BIDDHI CHAND CHOWDHRY [13 B. L. R., 216 note  
18 W. R., 207

MOHESH CHUNDER SINGH SURMA *v.* BHOOBUN MOYEE DEBIA

[13 B. L. R., 217 note: 18 W. R., 252

5. *Where a decree of the Collector was by the operation of Bengal Act III of 1870, s. 3, transferred to a Civil Court for execution, the effect was to make it as it were a case of execution, or a decree of that Court; and in dealing with an order in such a case made by the Civil Court in execution, the High Court was bound to assume that the lower Court had acted properly and with jurisdiction, and its appellate jurisdiction followed as a matter of course.* *DINDYAL PARAMANICK v. DINOBUNDHOO CHOWDHY* . . . 21 W. R., 412

**IV (Court of Wards Act,**

1870).

*See* COLLECTOR . . . 18 W. R., 466

*See* CASES UNDER COURT OF WARDS.

*See* LUNATIO . . . 8 B. L. R., Ap., 50  
[17 W. R., 180

**VI.**

*See* VILLAGE CHOWKIDARS ACT.

**1871—IX, s. 27.**

*Notice of suit—Tolls paid in excess of powers given—Suit for refund of money.*—In certain suits brought against a toll collector for the refund of money alleged to have been exacted by him improperly as toll under Bengal Act IX of 1871, the defendant pleaded that no notice of suit in accordance with s. 27 of that Act had been given. *Held* that, such notice not having been given, the suits should be dismissed. *Waterhouse v. Keen*, 4 B. & C., 200, followed. *RAM PITAM SHAH v. SHOOBUL CHUNDER MULLICK* . . . I. L. R., 15 Calc., 259

**X.**

*See* BENGAL CESS ACTS (X OF 1871).

**1872—II, s. 34.**

*See* STORING JUTE . . . 19 W. R., Cr., 4

**1873—III.**

*See* BENGAL EXCISE ACT (III OF 1873).

**VI.**

*See* EMBARKMENTS.

[I. L. R., 7 Calc., 505: 8 C. L. R., 553

**BENGAL ACT—concluded.****1875—V.**

*See* BENGAL SURVEY ACT.

**1876—I.**

*See* CHEATING . I. L. R., 17 Calc., 606

*See* EVIDENCE—CIVIL CASES—MARRIAGE, REGISTRATION OF.

[I. L. R., 10 Calc., 607

**II.**

*See* OPIUM . . . 13 C. L. R., 336

**IV.**

*See* CALCUTTA MUNICIPAL ACT, 1876.

**V.**

*See* BENGAL MUNICIPAL ACT, 1876.

**VII.**

*See* LAND REGISTRATION ACT (BENGAL), 1876.

**VIII.**

*See* ESTATES PARTITION ACT, 1876.

**1878—VII.**

*See* BENGAL EXCISE ACT.

**1879—I.**

*See* CHOTA NAGPORE LANDLORD AND TENANT ACT.

**IX.**

*See* COURTS OF WARDS ACT (BENGAL).

**1880—VII.**

*See* PUBLIC DEMANDS RECOVERY ACT, 1880.

**IX.**

*See* BENGAL CESS ACTS (IX OF 1880).

**1881—III.**

*See* COURT OF WARDS ACT (BENGAL).

**IV.**

*See* BENGAL EXCISE ACT AMENDMENT ACT.

**1882—II, ss. 61, 76, and 80.**

*See* EMBANKMENTS.

[I. L. R., 11 Calc., 570

**1884—III.**

*See* BENGAL MUNICIPAL ACT, 1884.

**1888—II.**

*See* CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888.

**1889—II.**

*See* BENGAL PRIVATE FISHERIES PROTECTION ACT.

**1892—I—(Village Chowkidars).**

*See* CONFESSION—CONFESSIONS TO POLICE OFFICERS . . . 2 C. W. N., 637

**1895—VII.**

*See* BHOTAN DUARS ACT (XVI OF 1869).

# BENGAL CESS ACTS (X OF 1871 AND IX OF 1880).

Act). Bengal Act X of 1871 (Road Cess Act).

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD CESS PAPERS . . . 22 W. R., 192

See FISHERY, RIGHT OF.

(I. L. R., 9 Calc., 183

1. ——— Income tax—Suit for arrears of rent—Set-off—Effect of Act on agreement made before passing of Act.—In 1862, at the time the income tax was in force, A made a patti-settlement of certain lands with B, B agreeing to pay any enhancement of the revenue that might be made by Government at any time, or "any impost in future to be levied by Government, the income tax to be paid by A according to his income, B having nothing to do with the same." In 1870 A brought a suit against B for arrears of rent. B, under the contract, claimed to have set off, as a tax on income, a sum which he had paid under the Road Cess Act, which had been passed in 1871, after the Income Tax Act had been repealed. Held that the tax im-

contracts which shall be directed by the Act, nor vacate con-

v. PUNBESH NARAIN ROY

(I. L. R., 4 Calc., 576

habliah—  
defendants  
1870, which

f in future any chowkidari tax or any other new abwab or tax or fee or kor, or any additional fee or jumma, be fixed upon the mahal by Government, I will pay that separately." In a suit by the zamindar for increase of rent, the defendants claimed to set off a sum representing the amount which the zamindar was bound to contribute under the Road Cess Act and Public Works Cess Act, and which amount they had paid to the Collector. Held that the amount in question came within the terms of the habliah, and that the

claimed by  
arain Roy,  
ABHU NATH  
ABHA CHOW-

11 C. L. R., 140

1. ——— s. 3—Liability of chakran or service tenure for road cess—"Tenure."—A chakran

# BENGAL CESS ACTS (X OF 1871 AND IX OF 1880)—continued.

or service tenure comes within the definition of "tenure" in s. 3 of Bengal Act X of 1871, and is therefore liable for Road Cess and Public Works Cess under that Act. JOY SUNKER ROY v. SIDHI MOHAM . . . 7 C. L. R., 373

2. ——— s. 3 and ss. 9, 10, 23, 25, and 28—Sale for arrears of road cess, Effect of—Right of purchaser—Interpretation clause, construction of.—In a suit on a bond by which certain land admittedly lakhiraj was mortgaged, the purchaser of a portion of the mortgaged property at an auction sale for arrears of road cess due under Ben-

ss. 5, 7, and Part II, sch. A, part II—Bhooli tenures—Suit for rent.—S. 5 of the Road Cess Act requires the holders of any estate or tenure, of which the annual rent shall exceed one hundred rupees, to lodge returns of all lands comprised in an estate or tenure; the will lands are therefore to be included in such returns. Where such a return has not been made, the holder of the estate or tenure is precluded from suing for or recovering any rent due therefor. JUDHOMOTN TEWARI v. FINCH

(I. L. R., 9 Calc., 63; 11 C. L. R., 100

s. 25.

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT.

(I. L. R., 8 Calc., 290

[3 C. W. N., 407

# BENGAL CESS ACTS (X OF 1871 AND IX OF 1880)—continued.

s. 41.—*Landlord and tenant—Cess, liability of tenant to pay, although tenure not assessed.*—When the Collector has determined the annual value in respect of certain land, and a portion of that land is subsequently granted as a tenure to an under-tenant and the Collector has not separately assessed the annual value of the land of the tenure so created, the under-tenant will nevertheless be liable for any cesses in respect of that land. In such a case it is competent to the Court to ascertain the annual value of the land comprised in the defendants' tenure. *HARIMOHAN DALAL v. ASHUTOSH DHUR* . . . . . 4 C. W. N., 778

See SALE FOR ARREARS OF REVENUE—  
SETTING ASIDE SALE—OTHER GROUNDS.  
[I. L. R., 31 Calc., 70  
I. R., 20 I. A., 165

s. 47.

See APPEAL—ACTS—BENGAL TENANCY  
ACT, s. 153.

[I. L. R., 20 Calc., 254

See SPECIAL APPEAL—ORDERS SUBJECT  
OR NOT TO APPEAL.

[I. L. R., 16 Calc., 638

*Sale in execution of decree for arrears of Cess—Procedure—Purchasers, Rights of.*—Although the procedure for the realization of cesses may be the same as the procedure laid down for the realization of rent due upon the tenure, yet it does not necessarily follow that the effect of a sale for cesses should be the same as that of a sale for arrears of rent for which the tenure itself is liable to be sold. *Umachurn Bag v. Ajadannissa Bibee*, I. L. R., 13 Calc., 430, followed. Notwithstanding, therefore, that s. 47 of the Cess Act, 1880, provides that "every holder of an estate or tenure to whom any sum may be payable under the provisions of this Act may recover the same with interest at the rate of twelve and a half per centum per annum in the same manner and under the same penalties as if the same were arrears of rent due to him," the effect of a sale by the Collector in execution of a decree for cesses against some of the owners of a tenure is not to convey to the purchaser the whole tenure, but only the right, title, and interest of the particular persons against whom the decree had been obtained. *MAHANUND CHUCKERBUTTY v. BANI MADHUB CHATTERJEE*

[I. L. R., 24 Calc., 27

ss. 50-71—*Cesses—Rent-free lands—Notice.*—Plaintiffs sued to recover arrears of road and public works cesses on account of certain rent-free land, claiming double the amount under s. 58 of the Cess Act (Bengal Act IX of 1880). It was found that no notice of the valuation had been published as required by s. 52 of the Act, and it was held by the lower Court that the plaintiffs were therefore not entitled to recover double the amount under s. 58. It was then contended that he was, at any rate, entitled to recover the amount of the cesses with interest under s. 62. *Held* that the latter section did not give the holder of

# BENGAL CESS ACTS (X OF 1871 AND IX OF 1880)—concluded.

the estate or tenure a right to recover the cesses payable under s. 56 before publication of notice, and that the plaintiff was therefore not entitled to a decree, and that his suit must be dismissed. *RAS BEHARI MUKERJEE v. PITAMBOHI CHOWDHURANI*  
[I. L. R., 15 Calc., 237

ss. 52, 53—*Evidence Act, s. 114—Presumption.*—Where under an Act certain things are required to be done before any liability attaches to any person in respect of any right or obligation, it is for the person who alleges that that liability has been incurred to prove that the things prescribed in the Act have been actually done. *Held* that the notice provided by s. 52 of the Road Cess Act did not come within the presumption of s. 114, cl. (e), of the Evidence Act, and must be proved. *ASHANULLAH KHAN BAHADUR v. TRILOCHUN BAGCHEE*  
[I. L. R., 13 Calc., 197

s. 58.

See CESS . . . . . I. L. R., 10 Calc., 743  
[I. L. R., 19 Calc., 783

s. 95.

See EVIDENCE—CIVIL CASES—MISCELLA-  
NEOUS DOCUMENTS—ROAD CESS PAPERS.  
[3 C. W. N., 343

# BENGAL CIVIL COURTS ACT (VI OF 1871).

See CASES UNDER SUBORDINATE JUDGE,  
JURISDICTION OF.

Power of High Court to hear appeals.—*Per JACKSON, J.*—The power of the High Court to hear appeals from the Civil Courts in the interior is regulated by Act VI of 1871. *RUNJIT SINGH v. MEHARBAHS KORR*  
[I. L. R., 3 Calc., 662; 2 C. L. R., 391

s. 11—*Court of Subordinate Judge and District Judge.*—The Court of a Subordinate Judge is inferior to the Court of a District Judge within the meaning of s. 11 of the Bengal Civil Courts Act. *PROSAD DOSS MULLICK v. RUSSICK LALL MULLICK*. *PROSAD DOSS MULLICK v. KEDAR NATH MULLICK*

[I. L. R., 7 Calc., 157  
8 C. L. R., 329

s. 15.

See CIVIL PROCEDURE CODE, 1882, s. 2.  
[3 C. L. R., 508

See INSOLVENCY—INSOLVENT DEBTORS  
UNDER CIVIL PROCEDURE CODE.  
[3 C. L. R., 508

s. 17.

See HOLIDAY . . . . . I. L. R., 9 All., 366

s. 19.

See TRANSFER OF CIVIL CASE—GENERAL  
CASES . . . . . 25 W. R., 21

s. 20.

See MUNSHI, JURISDICTION OF.  
[I. L. R., 15 Calc., 104

# BENGAL CIVIL COURTS ACT (VI OF 1871)—continued.

ss 20, 22.

See VALUATION OF SUIT—SUITS.

[I. L. R., 4 All., 320

I. L. R., 13 Calc., 255

I. L. R., 8 All., 438

I. L. R., 12 All., 506

s. 22.

See CASES UNDER VALUATION OF SUIT—APPEALS.

s. 24.

See MAHOMEDAN LAW—DEBTS.

[I. L. R., 11 Calc., 421

See MAHOMEDAN LAW—GIFT—LAW APPLICABLE TO.

[6 N. W., 3: Agra, F. B., Ed. 1874, 286

See MAHOMEDAN LAW—GIFT—VALIDITY.

[6 N. W., 338

I. L. R., 9 All., 213

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—GENERALLY.

[I. L. R., 7 All., 775

See MAHOMEDAN LAW—PRESUMPTION OF DEATH . . . I. L. R., 7 All., 297

See RELIGION, OFFENCES RELATING TO, [I. L. R., 7 All., 461

See RIGHT OF SUIT—CHARITIES. [I. L. R., 5 All., 497

See TRANSFER OF PROPERTY ACT, s. 10. [I. L. R., 7 All., 516

1. —  
medan  
conscience  
or Mahol  
paragrap  
orthodox

gion. The mere circumstance that he calls himself, or is called by others, a Hindu or Mahomedan, as the case may be, is not enough. His only claim to have a special kind of law applied to him is that he follows and observes a particular religion that of itself creates his law for him. If he fails to establish his religion, his privilege to the application of its law falls away, and he must be relegated to that class of persons whose cases have to be dealt with under the latter paragraph of s. 24 of Act VI of 1871 according to justice, equity, and good conscience. *H.* alleging that his family was a joint undivided Hindu family, sued *R.* his father, for a declaration that certain property was joint ancestral property, and for partition of his share according to the Hindu law of inheritance of such property, viz., one moiety. *R.* set up as a defence to the suit that the members of the family were Mahomedans, and were therefore not governed by the Hindu law. The evidence in the suit established that the members of the family were neither orthodox Hindus nor Mahomedans. It also established that the Hindu law of inheritance had always been followed in the family. *Held*, following the principle enunciated above, that the family was being Hindus nor Mahomedans, the rule of decision

# BENGAL CIVIL COURTS ACT (VI OF 1871)—concluded.

applicable to the suit was neither Hindu nor Mahomedan law that equity, and that therefore *H.* was entitled to demand partition of half of the family estate. *Abraham v. Abraham*, 9 Moore's I. A., 192, referred to. *Raj Bahadur v. Bishen Dayal*

[I. L. R., 4 All., 348

2. — Mahomedan Law—Pre-emption.—Under s. 24 of Act VI of 1871, Maho-

a suit for pre-emption between a Mahomedan claimant of pre-emption and a Mahomedan vendee, on the basis of that law, is not precluded by the circumstances of the vendor not being a Mahomedan. *CHUNDO c. ALIMOODDEY* [6 N. W., 28

[Agra, F. B., Ed. 1874, 305

See MOTI CHAND c. MAHOMED HOOSBIN KHAN [7 N. W., 147

s. 29.

See RIGHT OF APPEAL . 16 W. R., 227

# BENGAL EMBANKMENT ACT (II OF 1882).

ss. 6, 76, and 80.

See EMBANKMENT.

[I. L. R., 11 Calc., 570

# BENGAL EXCISE ACT (XXI OF 1856).

See ABETMENT . . . 7 W. R., Cr., 53

1. — Excise Act, X of 1871, Effect of.—Act XXI of 1856 was not repealed, so far as it related to the Lower Provinces of Bengal, by Act X of 1871. *QUEEN c. KHETTER NATH SNAHA* [23 W. R., Cr., 31

2. — Abkari Laws—Realization of fine.—Criminal Procedure Code (Act XXV of 1861), s. 61—Act VIII of 1869—The provisions of s. 61 of the Criminal Procedure Code, 1861, did not apply to fines imposed under Act XXI of 1856; such fines cannot be levied by distress and sale of the offender's property. *QUEEN c. JUNGHI BELDAR* [8 B. L. R., Ap., 47

GOVERNMENT c. JUNGHI BELDAR

[17 W. R., Cr., 7

3. — s. 22.—A Magistrate may impose a fine exceeding Rs. 1,000 under Act XXI of 1856, s. 22 of the Criminal Procedure Code, 1861, notwithstanding. *QUEEN c. SCHOOF CHENDER DUTT* [7 W. R., Cr., 23

4. — ss. 38 and 50—Illegal sale of opium.—Revocation of license.—According to s. 38, Act XXI of 1856, no conviction can be had under

**BENGAL EXCISE ACT (XXI OF 1856)**  
—continued.

s. 50 against a person whose license has not been recalled. *QUEEN v. RAM DASS* 10 W. R., Cr., 60

6. ——— s. 43—*Liability to penalty—Excisees' accounts.*—Under s. 43, Act XXI of 1856, only persons holding licenses, and not their servants, are subject to the penalties specified in the section. *QUEEN v. RAMKISHEN* 8 W. R., Cr., 4

8. ——— *Sale of liquor by agent.*—Where a person sells liquor in contravention of and under colour of a license which stands not in his own name, but in that of the person for whom he is the recognized agent, he cannot be allowed to evade the provisions of s. 43 of Act XXI of 1856 by setting up that it is not a license to himself. In the matter of the petition of *IAHEN CHUNDER SHANHA* 10 W. R., Cr., 34

7. ——— ss. 40, 44—*Sale by servant—Liability of owner of shop.*—Where a sale of an excisable quantity of ganja took place, and the man effecting the sale pleaded that he was only a servant, while the owner contended that he did not conduct the shop, and gave no authority to his servant to sell ganja in excess of his license.—*Held* that the owner of the shop was responsible for the offence committed and liable to the fine which had been imposed on him. *QUEEN v. SHANSHAN SHANHA* 25 W. R., 42

8. ——— ss. 48 and 90—*Distillation of spirits.*—To warrant a conviction under Act XXI of 1856, s. 48, the accused must have manufactured some country spirit made by the native process of distillation as described in s. 20 of the Act, or they must have sold spirituous or fermented liquors or intoxicating drugs. *QUEEN v. KOYLAS BOONA* [22 W. R., Cr., 8

s. 40.

*See SUMMARY TRIAL.*

[I. L. R., 3 Cal., 306; 1 C. L. R., 442

s. 53.

*See OPIUM* 20 W. R., Cr., 54

**BENGAL EXCISE ACT (III OF 1873).**

*See MANDAMUS* 11 B. L. R., 250

**BENGAL EXCISE ACT (VII OF 1878).**

*See CANTONMENT MAGISTRATE.*

[I. L. R., 15 Cal., 452

*See OPIUM* 13 C. L. R., 336

*See STATUTES, CONSTRUCTION OF.*

[I. L. R., 8 Cal., 214

Revenue, Protection of—*Contract Act (IX of 1872), s. 23—Public policy.*—The Bengal Excise Act of 1878 is not an Act framed solely for the protection of the revenue, but is one embracing other important objects of public policy as well. An agreement therefore for the sale of fermented liquors, entered into by a person who has not obtained a license under that Act, is void, and cannot be recovered on. *BOISTON CHURN NATH v. WOOMA CHURN SIN* 1 I. L. R., 16 Cal., 436

**BENGAL EXCISE ACT (VII OF 1878)**  
—continued.

ss. 4 and ss. 40 and 75—*Bengal Excise Act Amendment Act (Bengal Act IV of 1881), s. 3—Right of search—Gurjat ganja—Excisable article—Foreign excisable article—Resistance to wrongful search by police—Penal Code, ss. 141 and 353.*—In a case where an Excise Sub-Inspector attempted to search a house for gurjat ganja, a "foreign excisable article" under the Excise Act (Bengal Act VII of 1878), and resistance was offered.—*Held* that, gurjat ganja being a "foreign excisable article" under s. 4 of the Act as amended by Bengal Act IV of 1881, the Excise Officer had no legal authority to enter and search the house under s. 40 of the Act; he had authority only to enter and search for any "excisable article" as defined in s. 4 of the Act; and that no offence" either under s. 141 or s. 353 of the Penal Code was committed. *Held*, also, that s. 75 of the Act does not apply to a "foreign excisable article." *JAGANNATH MANDHATA v. QUEEN-EMPRESS*

[I. L. R., 24 Cal., 324

1 C. W. N., 233

ss. 9, 58, 74—*Introduction into Calcutta of spirituous liquor manufactured elsewhere—Limits fixed by Collector—Additional punishment—Alternative sentence of imprisonment.*—The provisions of s. 74 of the Bengal Excise Act as to additional punishment, where there has been a "previous conviction for a like offence," contemplate merely the case of the offender having been already convicted of an offence punishable with a fine of Rs200 or upwards, and being again convicted of another offence punishable with the same punishment: it is not necessary that he should have been previously convicted of the same offence. The accused were sentenced by the Presidency Magistrate, under ss. 58 and 74 of the Bengal Excise Act, to a fine of Rs200 each, in default to three months' imprisonment, and in addition to six months' imprisonment, which was the maximum term that could be awarded under s. 74. *Held* that the sentence of imprisonment was not in excess of the powers given to the Magistrate by s. 12 of the Presidency Magistrates Act, the imposition of the additional sentence of imprisonment not affecting the Magistrate's powers as regarded the original sentence under s. 58. No limits with regard to any distilleries in Calcutta having been fixed under s. 9 of the Act within which spirituous liquor manufactured otherwise than in that particular distillery shall be introduced or sold without a special pass, and the fixing of such limits being necessary to a conviction of an offence under s. 58, the convictions in this case were set aside. *RAM CHUNDER SHAW v. EXPRESS*

[I. L. R., 8 Cal., 575  
8 C. L. R., 250

s. 14.

*See CANTONMENTS ACT, 1880.*

[I. L. R., 15 Cal., 452

ss. 15, 17, and 61—*Specified quantity of spirits—Maximum amount.*—Where under s. 15, Bengal Act VII of 1878, the Chief Commissioner of Assam, exercising the powers of the

**BENGAL EXCISE ACT (VII OF 1878)**

—continued.

Board of Revenue, fixed, by a circular order, the limit at six quart bottles of country spirit as allowable for retail sales, and an accused was charged under s. 17 with possessing more than that quantity, but the amount he had was less than the amount stated in s. 16.—*Held* that he was not guilty of any offence under s. 61, and that no lesser quantity than that specifically mentioned in s. 15 of country spirits which might have been declared to be the maximum quantity by any such order made under the provisions of s. 15 could be deemed to be the quantity specified in s. 15 within the meaning of s. 61. *EMPRESS v. KOLA LAKANG*

[I. L. R., 8 Calc., 214  
10 C. L. R., 155]

—ss. 15 and 60—*Sale by wholesale.*—A sale of more than twelve quart bottles or two gallons of spirituous or fermented liquors of the same kind

in the explanation clause of s. 15. *EMPRESS v. NUDDIAR CHAND SHAW*. I. L. R., 8 Calc., 833  
[10 C. L. R., 389]

—ss. 39, 40.

*See ARREST—CRIMINAL ARREST.*

[4 C. W. N., 245]

—ss. 41, 42, and 59—*Sale of liquor by servant—Breach of condition of license—License, Production of.*—The conviction of servants of a licensed vendor of spirits for a breach of the license is not necessarily illegal. *In re Ishur Chunder Shaha*, 19 W. R., Cr., 34, followed. *EMPRESS v. NUDDIAR CHAND SHAW*, I. L. R., 8 Calc., 833; 8 C. L. R., 152, disallowed from. Two servants of a licensed vendor of spirits were charged with having committed two breaches of the conditions of the license, and the maximum fine for each breach was inflicted. It is competent to this manner of conviction of a vendor of spirits that any police officer who may be exercising the powers of an excise officer. IN THE MATTER OF THE PETITION OF HANEF MADHUB SHAW. *EMPRESS v. HANEF MADHUB SHAW*

[I. L. R., 8 Cal., 207; 10 C. L. R., 389]

1. —s. 53—*Sale by licensed vendor contrary to terms of his license.*—s. 53 of the Bengal Excise Act does not apply to sales by a licensed vendor contrary to the terms of his license. That section provides for a breach of the condition of a license not covered by the second clause of s. 59 of the Act. *EMPRESS v. NODOCOOMAR PAL*

[I. L. R., 8 Cal., 621]

2. —*Sale by servant of licensed vendor in presence of master—Liability of servant.*—The accused, who was the servant of a licensed retail vendor of spirituous and fermented liquors under Bengal Act VII of 1878, was convicted of an

**BENGAL EXCISE ACT (VII OF 1878)**

—continued.

The sale was made in the presence of the master, the licensee, the accused merely handing the liquor to the purchaser at his master's request. *Held* that the conviction was bad, as the facts did

3. —*Spirituos liquor—Medicinal preparation containing alcohol.*—The term "spirituous liquor" in s. 53 of the Excise Act (Bengal Act VII of 1878) is not intended to include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition. The case would be different if alcohol were manufactured separately for the purpose of being used in the preparation of a medicine. *GONESH CHUNDER SIKDAR v. QUEEN-EMPRESS*

I. L. R., 24 Calc., 157

*EMPRESS v. GONESH CHANDRA SIKDAR*

[1 C. W. N., 1]

as he directed. The servant was convicted under s. 60, Bengal Act VII of 1878; and the cooly was convicted under s. 61 of the same Act. It was suggested that the servant should have been convicted under s. 53, and that the cooly had committed no offence. *Held* that the conviction of the cooly was illegal, and must be set aside. *Held*, also, that the servant was properly convicted, and whether under s. 60 or s. 53 was immaterial. *In re Ishur Chunder Shaha*, 19 W. R., Cr., 34, and *EMPRESS v. HANEF MADHUB SHAW*, I. L. R., 8 Calc., 207; 10 C. L. R., 389, followed. *EMPRESS v. ISHAN CHUNDER DEB*

[I. L. R., 8 Calc., 847; 12 C. L. R., 451]

—s. 59—*Liability of servant.*—The licensed vendor, and not his servant, is liable under s. 59 of the Excise Act, Bengal Act VII of 1878, for contravention of the Act. IN THE MATTER OF NOMULU AKOND

11 C. L. R., 416

1. —s. 60—*Liability of servant.*—The licensed retail vendor himself is the only person liable to conviction under s. 60. *EMPRESS v. NUDDIAR CHAND SHAW*

[I. L. R., 8 Calc., 833; 8 C. L. R., 153]

*See contra, EMPRESS v. HANEF MADHUB SHAW*

[I. L. R., 8 Calc., 207; 10 C. L. R., 389]

2. —ss. 60, 74—*"Like offence"*—*Punishment on second or subsequent conviction under Bengal Excise Act—Selling retail with wholesale license.*—The offence of selling wine retail by a person who has only a wholesale license is an offence of a like nature to that of selling wine without a license at all, within the meaning of the term "like offence," as used in s. 74 of the Bengal

# BENGAL EXCISE ACT (VII OF 1878) —concluded.

Excise Act. *Ram Churn Shaw v. Empress, I. L. R., 9 Calc., 575*, followed. *SCHIEIN v. QUEEN-EMPRESS* [I. L. R., 18 Calc., 799]

s. 61.

See CRIMINAL PROCEDURE CODE, s. 403.

[I. L. R., 23 Calc., 174]

Imported liquor—Possession—*Pass—Consignee—Agent.*—Certain liquors arrived in Calcutta per S.S. *Navarino*, consigned to M & Co. at Agra, who requested A to pay on their behalf the duty and landing charges and forward the goods to Agra. While on the way from the steamer to the railway station, the goods were seized as being in the possession of A without a pass, within the meaning of s. 61 of Bengal Act VII of 1878, and A was convicted and sentenced to a fine under the provisions of that Act. *Held* that the conviction was bad. IN THE MATTER OF THE PETITION OF KYTE. *EMPRESS v. KYTE*

[I. L. R., 9 Calc., 223; 11 C. L. R., 427]

# BENGAL EXCISE ACT AMENDMENT ACT (IV OF 1881).

s. 3.

See BENGAL EXCISE ACT, 1878, s. 4.

[I. L. R., 24 Calc., 324]

# BENGAL MUNICIPAL ACT (III OF 1864).

Power of Municipal Commissioners to close or divert public highways. —Bengal Act III of 1864, which vested public highways in Municipal Commissioners for the purposes of the Act, did not by so vesting them give power to the Municipal Commissioners, nor, *a fortiori*, to the Vice-Chairman alone, to stop up or divert such public highways. *EMPRESS v. BROJONATH DEX* . . . . . I. L. R., 2 Calc., 425

ss. 6, 79—Power of Municipal Commissioners to administer oath—Order to close burning-ground.—Every Municipal Commissioner, being vested by Bengal Act III of 1864, s. 6, with the powers of a Magistrate under s. 23 of the Criminal Procedure Code, is authorized to administer an oath, if the purposes of the Act require that he should do so. *BRINDABUN CHUNDER ROY v. MUNICIPAL COMMISSIONERS OF SERAMPORE*

[19 W. R., 309]

s. 10—Public highways—Roads vesting in Commissioners—Subsoil of roads, Right to—*Civil Procedure Code (Act XIV of 1882), s. 13—Res Judicata.*—S. 10 of Bengal Act III of 1864 does not deprive a person of any right of private property that he may have in land used as a public road, nor does it vest the subsoil of such land in a municipality; and when such land is no longer required as a public road, the owner is entitled to claim its possession. A decision in a suit brought by the plaintiffs' predecessor in title to recover certain land from a municipality, which had been taken up as a

# BENGAL MUNICIPAL ACT (III OF 1864)—continued.

public road and vested in the municipality subsequently under Bengal Act III of 1864, s. 10, on the ground that the plaintiffs had been ousted therefrom by reason of the municipality stacking stones on a portion thereof, having been dismissed, held not to be *res judicata* in a suit brought by the plaintiffs for ejectment and declaration of title to such land against a purchaser of the land from the municipality. *MODHU SUDAN KUNDU v. PROMODA NATH ROY*

[I. L. R., 20 Cal., 732]

s. 19—Refusal to permit excavation of tanks—Discretion of municipality.—By s. 19 of the bye-laws of the Howrah Municipality, framed under s. 84, Bengal Act III of 1864, and confirmed by the Lieutenant-Governor, it is within the discretion of the municipality to refuse permission for the excavation of a tank, and the Courts have no power to interfere with the *bona fide* exercise of such discretion. *BHAYUB CHUNDER BANNERJEE v. CHAIRMAN OF THE HOWRAH MUNICIPALITY*

[17 W. R., 215]

s. 27—Warrant of arrest—Criminal Procedure Code, 1861, Ch. XV (ss. 257, 272).—A Magistrate or Municipal Commissioner has no power, under Act III of 1864, Bengal Council, to issue a warrant for the arrest of a person who may have failed to appear on a summons to answer a charge, under s. 27 of that enactment, for using premises as a straw or wood depôt without a license. *Per LOCH, J.*—The provisions of Ch. XV of the Code of Criminal Procedure are not applicable to offences under Bengal Act III of 1864. IN THE MATTER OF THE PETITION OF BISSESSUR CHATTERJEE . 16 W. R., Cr., 1

s. 33—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES I. L. R., 1 Calc., 409

1. s. 57—Obstruction of drain by tree blown down.—The obstruction of a drain by a tree blown down by a cyclone is not an obstruction within the meaning of s. 57 of Bengal Act III of 1864. *ANONYMOUS* . . . 3 W. R., Cr., 33

2. Blocking up private drain.—The municipal authorities have no power under s. 57, Bengal Act III of 1864, to impose a fine on a person for blocking up a drain which is not shown to be public property, or along the side of any highway. *QUEEN v. BANU MADHUB BANERJEE* [14 W. R., Cr., 23]

1. s. 63—Right to pull down ruinous house—Notice of action.—By s. 63, Bengal Act III, 1864, Municipal Commissioners, if they deem a house or building to be in a ruinous state, may, after the notice prescribed by that section, cause the same to be taken down. *GOPEE KISHEN GOSSAIN v. RYLAND* . . . 9 W. R., 279

2. Bye-law of municipality—Covering buildings with inflammable material.—A bye-law made by the Howrah municipality in the exercise of the authority vested in it by Bengal Act III of 1864, s. 63, which forbid the erection or renewal of the external roof and walls

**BENGAL MUNICIPAL ACT (III OF 1864)—continued.**

of buildings with inflammable materials, was construed to forbid the renewal even of a portion of the roof with such material. **CHAIRMAN OF THE HOWRAH MUNICIPALITY v. MONTANER BEWAN** [24 W. R., Cr., 70]

—s. 67.

**See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.** 23 W. R., 222

1. — *Fine for suffering premises to be in filthy state—Owners and occupiers.*—The Municipal Commissioners were empowered under

ferred the land to be in a filthy state.—*Held* that the imposition of a fine on owner was not a proper exercise of the discretion given by s. 67 of the Act. **QUEEN v. DWARENATH HAZRA** 8 B. L. R., Ap. 9 [16 W. R., Cr., 70]

2. — *Allowing ground to remain in filthy state.*—The owner of ground is answerable under s. 67, Bengal Act III of 1864, whether his ground was made dirty by himself or by somebody else. **ANONYMOUS** 3 W. R., Cr., 33

Unless he has let it, then the occupiers are liable.

**QUEEN v. PARBUTTY CHURN SIRCAR** [3 W. R., Cr., 57]

**QUEEN v. BROJO LALL MITTER** [8 W. R., Cr., 46]

ss. 67, 73—*Omission to clear away jungle—Power of Magistrate as Municipal Com.*

in possession or to proceed under s. 67 and inflict a fine. **IN THE MATTER OF THE PETITION OF GOOPKE KISHAN GOSSAIN** 24 W. R., Cr., 70

s. 73—*Expense of clearing away jungle after notice to defendant.*—The Municipal Commissioners were held entitled, under s. 73, Bengal

[7 W. R., 213]

1. — s. 77—*Notice of action—Suit against*

the order complained of is not sufficient. **ABDUL NATH BOSH v. THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE MUNICIPAL COMMITTEE OF KHAJURA** 7 W. R., 92

**BENGAL MUNICIPAL ACT (III OF 1864)—continued.**

allegation as to the existence of the yard prior to 1864. **CHAIRMAN OF THE SUBURBAN MUNICIPAL COMMISSIONERS v. UMBICA CHURN MOOKERJEE** [15 W. R., Cr., 84]

3. — *Using premises for offensive trades.*—The words "uses any premises" in s. 77, Bengal Act III of 1864, means using and employing the premises as a place for the carrying on of the offensive trades mentioned in that section. **MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA v. ZAMIR SHERKH** 16 W. R., Cr., 4

the person burning them; such person need not take out a license for that purpose. **IN THE MATTER OF THE PETITION OF SRIBAH CHUNDER HALDAH v. CHAIRMAN OF THE HOWRAH MUNICIPALITY** [20 W. R., Cr., 65]

s. 79—*Procedure—Medical report*—*Closing burning ground*—A proceeding taken under Bengal Act III of 1864, s. 79, is not a judicial proceeding, and the evidence referred to therein means evidence without oath. **Regular reports**

thereof. **BRINDABAN CHUNDER ROY v. MUNICIPAL COMMISSIONERS OF SERAMPORE** 10 W. R., 309

s. 81—*Notice of action—Mistake in notice.*—A notice under any of the sections of Bengal Act III of 1864 preceding s. 81 may, under that section, either be served upon the person ad-

[9 W. R., 502]

1. — s. 87—*Cause of action—Suit for possession against Municipality as wrongdoers.*—Plaintiffs as proprietors sued the Howrah Municipal Committee to recover possession of land from which they alleged they had been ousted by defendants' stacking stones thereon, and they regarded

## DIGEST OF CASES.

( 715 )

## BENGAL MUNICIPAL ACT (III OF 1864)—continued.

their cause of action as arising when the Municipal Commissioners refused to remove the stones. Defendants' case was that the land had been in possession of Government till Bengal Act III of 1864 was extended to Howrah, since which time the Commissioners had held the land. *Held* that the cause of action could not be considered to have first arisen on the refusal of the Municipality to remove the stones. *Held* (by BAYLEY, J.) that the Municipal Commissioners had acted properly under the law, and were entitled to the application of s. 87, Bengal Act III of 1864. *Held* (by PHEAR, J.) that s. 87 could only protect defendants if sued for damages consequent on a wrong done by them in the reasonable belief that they were exercising their lawful powers; not if they were sued by parties kept out of possession by their continued wrong-doing. POORNO CHUNDER ROY v. BALFOUR. 9 W. R., 535

2. Notice of action—Municipal Commissioners.—Municipal Commissioners are entitled to one month's notice of action under s. 87, Bengal Act III of 1864, while they were been acting *bona fide* in the belief that they were exercising powers given to them by that Act; not if their proceedings were not justified by that Act, and only colourably done under cover thereof. GOREE v. KISHEN GOSSAIN v. RYLAND. 9 W. R., 279

3. Suit against Municipal Commissioners for possession of land.—Previous to the institution of the present suit, one of the shareholders of a piece of land brought a suit against the Chairman of the Municipality for recovery of possession of his share. The other shareholders were made *pro forma* defendants in the suit. This suit was dismissed as barred by the law of limitation. After the dismissal of the suit, the plaintiff brought the present suit for recovery of his share of the land, on the allegation that his tenant had relinquished the land within three months in consequence of his having been dispossessed by the Municipal Commissioners. *Held* that s. 87, Bengal Act III of 1864, did not apply. *Semble*—Bengal Act III of 1864, s. 87, relates only to actions brought in respect of acts done by the Commissioners under that Act for the purpose of the Act. PRICE v. KHILAT CHANDRA GHOSE. 5 B. L. R., Ap., 50: 13 W. R., 461

4. Cause of action, Accrual of—Damages for detention of omnibus.—In a suit for the recovery of damages on account of a daily fine imposed by the Municipality of Howrah and the detention of an omnibus, which fine had been set aside by the High Court, and the detention pronounced illegal. *Held* that, if the plaintiff had any cause of action, it accrued upon the seizure of the omnibus, and not upon the order of the High Court, which allowed the conviction to stand as to one rupee, and that he could not under the circumstances treat the continued detention of the omnibus as a fresh cause of action from day to day, and his suit, not having been brought within three months, was barred by s. 87, Bengal Act VI of 1864. HUGHES v. MUNICIPAL COMMISSIONERS OF HOWRAH. [19 W. R., 339

## BENGAL MUNICIPAL ACT (III OF 1864)—concluded.

5. Suit to recover possession of land taken by Municipal Commissioners.—S. 87 of Bengal Act III of 1864 is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers, in the exercise, or honestly supposed exercise, of their statutory powers. The notice in the earlier part of the section is meant to give the defendant an opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation. CHUNDER SIKUR BUNDOPADHYA v. OBHOY CHURN BAGCHI. [I. L. R., 6 Calc., 8

## BENGAL MUNICIPAL ACT (V OF 1876).

s. 32—Municipal Corporations—Commissioners—Right of way—Compensation—Land Acquisition Act, X of 1870.—S. 32 of Act V of 1876, the Bengal Municipal Act, enacts that "all roads, bridges, embankments, tanks, ghats, wharves, jetties, wells, channels, and drains in any municipality (not being private property), and not being maintained by Government or at the public expense, now existing or which shall hereafter be made, and the pavements, stones, and other materials thereof, and all erections, materials, implements, and other things provided therefor, shall vest in, and belong to, the Commissioners." *Held* that the word "roads" in this section does not include the soil beneath the roads. CHAIRMAN OF THE NAIHATI MUNICIPALITY v. KISHORI LAL GOSWAMI. [I. L. R., 13 Calc., 171

s. 216 and ss. 215 and 180—Bench of Magistrates, Power of—Omission to remove obstruction.—A notice was issued under s. 215, Bengal Act V of 1876, requiring A to remove an alleged obstruction. The requisition was not complied with, and A was prosecuted for non-compliance therewith, under s. 216, before a Bench of Honorary Magistrates. *Held* that the Court had power to enquire whether the alleged obstruction was, in point of fact, an obstruction or not. IN THE MATTER OF THE MUNICIPAL COMMITTEE OF DACCA. MUNICIPAL COMMITTEE OF DACCA v. SOMBER. [I. L. R., 9 Calc., 38

s. 234. See BENGAL MUNICIPAL ACT, 1884, s. 2. [I. L. R., 20 Calc., 699

s. 313—Bye-law—"Ultra vires"—Bengal Municipal Act (Bengal Act III of 1884), s. 2—Where a municipality passed a bye-law purporting to be made under the provisions of s. 313 of Bengal Act V of 1876, which was duly sanctioned by the Local Government, to the effect that persons failing to trim trees overhanging tanks which were likely to foul the water with their falling leaves, after service of notice on them to that effect, should be liable to a penalty, and where subsequent to the repeal of that Act by Bengal Act III of 1884 a person was convicted and fined for having disobeyed such bye-law:—*Held* that the conviction was bad, as the bye-law was not one authorized by the terms of s. 313,

# **BENGAL MUNICIPAL ACT (V OF 1878)** —concluded.

and was consequently *ultra vires*, and that s. 2 of Bengal Act III of 1884 could not make valid a bye-law which was originally invalid. *BEZI MADHUN NAG v. MATI LAL DAS*. I. L. R., 21 Calc., 837

# **BENGAL MUNICIPAL ACT (III OF 1884).**

*See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.*

[I. L. R., 24 Calc., 107  
I. L. R., 28 Calc., 811  
3 C. W. N., 73, 608  
I. L. R., 27 Calc., 849]

—Prosecution under—

*See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.*

[I. L. R., 23 Calc., 44]

—s. 2.

*See BENGAL MUNICIPAL ACT, 1870, s. 313.*  
[I. L. R., 21 Calc., 837]

[I. L. R., 20 Calc., 699]

—s. 45 and s. 353—Powers of Chair-

written order. In a prosecution instituted by a Vice-Chairman for obstructing a drain, where it appeared that the Chairman had some months previously verbally given the Vice-Chairman general authority to institute all such prosecutions under s. 353 of the Act,

the express or implied consent of the Chairman obtained both previously and subsequently, within the terms of the proviso to s. 45.—*Held* that the proviso did not apply to the case, that the prosecution had not been

# **BENGAL MUNICIPAL ACT (III OF 1884)—continued.**

—ss. 85, 114, 118.

*See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.*

[I. L. R., 27 Calc., 849]

or servants, would not be separately assessable, by reason of possessing separate incomes. *Held*, also, that the right to obtain a declaration that the plaintiffs were not liable to assessment under the Act was a recurring right, and an action to obtain such a declaration would be maintainable even if brought more than three months after the assessment. *Held*, further, that a refund of the money paid under protest can be claimed under these circumstances without giving a notice under s. 303 of the Act respecting the refund claimed, as the word "act" used in the section refers to tortious acts, and not to any act arising out of a contractual or quasi-contractual basis. *AMBICA CHURN MOZUMDAR v. SATISH CHUNDER SEN* [2 C. W. N., 689]

—ss. 113, 116—Persons occupying holdings—Liability to assessment—Municipal Commissioners, power to tax—Assessment to tax.—The word "liability" in the second paragraph of s. 113 of Bengal Act III of 1884 means liability apart from the question of occupation, and must be taken to refer to the liability to assessment or rating of a person who is the occupier of a holding. The same restricted meaning must be placed upon the word "liability" in s. 116, which section has no application to a dispute as to whether a person assessed to a tax does or does not occupy a holding, and a suit brought to set aside an assessment on the ground that the

*DWARKA* [I. L. R., 21 Calc., 319]

—s. 133—False statement contained in application for license—Municipal Commissioners, Power of, to institute prosecution under Penal Code—Penal Code, ss. 182, 199, 417, and 511—Revisorial power of High Court in pending proceedings.—On the 5th May 1894 C applied in writing under the provisions of s. 133 of Bengal Act III of 1884 to a municipality for a license to be granted to him in respect of two carriages and as

for verification. On the 7th May the *magistrate* reported that C had in his possession eight *pass*

# **BENGAL MUNICIPAL ACT (III OF 1884)—continued.**

one horse. On the 8th May the Chairman of the Municipality passed an order directing *C* to be prosecuted for making a false statement in the schedule to his statement regarding the number of animals in respect of which he applied for the license. On the 9th May *C* presented a petition asking that the tax on the three animals might be received, and stating that he did not think he was liable to take out a license for them, as they were old and diseased and unfit for work. On the 13th May the Chairman passed an order on this application that he had no power to interfere, as the prosecution of *C* had already been ordered. Meanwhile on the 9th May a paper was sent to the Magistrate headed "List of municipal cases under Act III of 1884" in which *C* appeared as charged with an offence under s. 199 of the Penal Code for "filing a false statement, that is to say, putting down in the schedule six ponies only instead of eight ponies and one horse." On the 12th May the Deputy Magistrate directed a summons to issue to *C*, returnable on the 23rd. On the 18th May the District Magistrate passed an order to the effect that the Municipality could not institute a prosecution under the Penal Code, but that the Deputy Magistrate had power to do so, and that he should consider the provisions of ss. 182 and 417, read with s. 511, of the Penal Code as applicable to the facts of the case. On the 19th May the summons was issued, and the case was heard on the 23rd and 24th May and 19th June, on which date formal charges under ss. 199, 182, and 417—511 of the Penal Code were framed. Thereafter the hearing proceeded till the 16th July, when, on an application to the High Court, the proceedings were stayed, and a rule issued to show cause why they should not be quashed. It was contended at the hearing of that rule that the High Court should not interfere at that stage of the proceedings under its revisional jurisdiction. *Held* that the High Court has power to interfere at any stage of a case, and that, when it is brought to its notice that a person has been subjected, as in this case, for over two months to the harassment of an illegal prosecution, it is its bounden duty to interfere. *Held*, further, that it was quite clear that the Municipality had no power to institute the proceedings, and that, having regard to the provisions of s. 191 of the Code of Criminal Procedure, it did not appear that the Deputy Magistrate, having no private complainant before him, had power of his own motion to institute them; but that, whether he had such power or not, the admitted facts of the case did not in law constitute any of the offences with which *C* was charged, and that the whole proceedings must be quashed. The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners, and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code. There is no penalty in the Act attached to the omission to make a return under s. 133, and no words in the Act constituting the making a false return a penal offence; and as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable, the Court has no power to import

# **BENGAL MUNICIPAL ACT (III OF 1884)—continued.**

them. The Municipal Commissioners in such a case have the remedy provided by the Act itself. *CHANDI PERSHAD v. ABDUR RAHMAN*

[I. L. R., 22 Calc., 131]

ss. 142 and 146—"Habitually used," *Meaning of—Liability to pay a fine for non-registration of a cart.*—The accused kept his cart outside the limits of the Chanduria municipality, but used to bring it within the limits twice a week throughout the year. *Held* he could not be said to be "habitually" using the cart within the municipal limits, and was therefore not liable to pay a fine under s. 146 of the Bengal Municipal Act (Bengal Act III of 1884). *LEGAL REMEMBRANCE v. SHAMA CHARAN GHOSH* I. L. R., 23 Calc., 52

ss. 155 and 156—*Ferry, Meaning of—Boat plying for hire without license within prescribed limits of ferry—Right of ferryman to demand tolls.*—The expression "a ferry" in the Bengal Municipal Act means the exclusive right to carry passengers across the stream from one bank to the other on payment of certain prescribed tolls. The object of s. 155 of that Act appears to be to prevent the crossing of passengers from one bank of the river to the opposite bank by a boat plying for hire without a license within the prescribed limits. *Semble*, therefore, that the mere crossing of the bar of a khal leading into the limits of a municipal ferry would not constitute a breach of the Act. A ferryman has no authority to demand tolls from persons who are merely passengers in an unlicensed boat. The remedy against the person who keeps a ferry-boat without a license plying within the prescribed limits is provided by s. 156 of that Act. *GOVERNMENT OF BENGAL v. SENAYAT ALI* I. L. R., 27 Calc., 317 [4 C. W. N., 343]

s. 204—*Projection caused by restoring a portion of an old building which has been pulled down with the object of its being rebuilt—Meaning of the words "which may have been so erected or placed"*—*Metropolis Management Amendment Act, 1862* (25 & 26 Vic., c. 102), s. 75.—S. 204 of the Bengal Municipal Act (Bengal Act III of 1884) does not apply to the case of a projection forming part of a building which is merely in substitution for an old building, which has existed upon the same site before the date on which the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the municipality. The words "which may have been so erected or placed" in s. 204 mean erected or placed for the first time. *ESHAN CHANDER MITTER v. BANKU BEHARI PAL* I. L. R., 25 Calc., 180 [1 C. W. N., 660]

s. 217—*Obstructing road not vested in Municipality over which public have a right of way—Road.*—The term "road" in cl. 5 of s. 217 of Bengal Act III of 1884 is not limited to roads vested in the Municipal Commissioners. A person was charged at the instance of a Municipality under that clause with obstructing a path through

# BENGAL MUNICIPAL ACT (III OF 1884)—continued.

voiced in the Municipal Commissioners. *Held*, for the above reasons, that the conviction was right, and must be upheld. **RAM CHANDRA GHOSH v. BALLY MUNICIPALITY**. I. L. R., 17 Calc., 684

Bengal Municipal Act they directed the plaintiff to remove not only certain huts, but also a pucca privy, inasmuch as the Municipality had a right to require him to remove the privy under s. 224 of the Act. **DUKE v. RAMESWAR MALIA**

[I. L. R., 28 Calc., 811  
3 C. W. N., 508]

as one in contravention of any legal order of the Commissioners issued within the statutory period of six weeks, if such order does not sanction the proposed building; the above appears to be the only reasonable view of s. 233 of the Act. **CHANDRA KUMAR DUTTA v. GONESH DAS AGARWALLA**

[I. L. R., 25 Calc., 419]

s. 320.

See FACTORIES ACT.

[I. L. R., 25 Calc., 484]

s. 337 and ss. 338, 339, 344—*License for a provision market—Market—Order prohibiting use of unlicensed market—Powers of Municipal Commissioners to grant or withhold licenses.*—It is entirely within the discretion of the Municipal Commissioners, under the provisions of s. 339 of the Bengal Municipal Act (Bengal Act III of 1884), to grant or refuse a license for a market, and the Courts have no longer any jurisdiction to control such power, however arbitrarily exercised. **MORAN v.**

# BENGAL MUNICIPAL ACT (III OF 1884)—concluded.

*Chairman of the Motihari Municipality, I. L. R., 17 Calc. 329* approved. A landowner on whose

easy to sell at any market any of the provisions mentioned in that section, and that selling without such license rendered the accused liable to prosecution and fine under s. 344. It appeared, further, that Part X of the Act, which includes s. 337, had been previously extended to the municipality by an order of the Government of Bengal. *Held* that the resolution of the Commissioners was not an order such as is contemplated by s. 337, as it was not sufficiently precise to convey any definite meaning, and purported only to do what the Bengal Government had already done some time previously. *Held*, further, that the conviction and sentence must be set aside, there being no proper order under s. 337. **QUEEN-EMRESS v. MUKUNDA CHUNDER CHATTERJEE**

[I. L. R., 20 Calc., 654]

s. 339—*Obligation of Municipality to grant license—Interpretation of statute—"May," "shall."*—There are no words which render it obligatory on a municipality to grant a license under s. 333 of Bengal Act III of 1884. The word "may" in s. 339 of that Act is not to be construed as "shall." **MORAN v. CHAIRMAN OF THE MOTIHARI MUNICIPALITY**

[I. L. R., 17 Calc., 329]

ss. 353, 318—*Continuous offence—Removal of obstruction.*—The petitioner was convicted of an offence of having erected culverts on pucca drains belonging to a municipality, and prosecution for such offence was made six months after

and that s. 218 had no application to a case of this kind. **LUTTI SINGH v. BENAR MUNICIPALITY**

[1 C. W. N., 403]

# BENGAL MUNICIPAL ACT AMENDMENT ACT (IV OF 1894)

s. 83.

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES. I. L. R., 27 Calc., 849

**BENGAL, N.-W. PROVINCES, AND ASSAM CIVIL COURTS ACT (XII OF 1887).**

See **SONTHAL PERGUNNAHS SETTLEMENT REGULATIONS** I. L. R., 18 Calc., 133

See **VALUATION OF SUIT—APPEALS.**  
[I. L. R., 16 All., 286]

**s. 13.**

See **EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION.**

[I. L. R., 25 Calc., 315  
I. L. R., 27 Calc., 272]

See **SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.**

[I. L. R., 22 Calc., 871]

**s. 19.**

See **VALUATION OF SUIT—SUITS.**  
[I. L. R., 17 All., 69]

**s. 20.**

See **APPEAL—DECREES.**  
[I. L. R., 19 Calc., 275]

**s. 21.**

See **APPEAL—RECEIVERS.**  
[I. L. R., 17 Calc., 680]

See **VALUATION OF SUIT—APPEALS.**  
[I. L. R., 13 All., 320  
I. L. R., 23 Calc., 536]

See **VALUATION OF SUIT—SUITS.**  
[I. L. R., 17 Calc., 680, 704  
I. L. R., 17 All., 69]

**s. 22.**

See **SUBORDINATE JUDGE, JURISDICTION OF** . . . I. L. R., 16 All., 363

**s. 23.**

See **PROBATE—JURISDICTION IN PROBATE CASES** . . . I. L. R., 25 Calc., 340

**ss. 23 and 24.**

See **DISTRICT JUDGE, JURISDICTION OF.**  
[I. L. R., 13 All., 78]

**s. 36—Meaning of the word "officer."**

—The word "officer" in s. 36 of the Bengal, N.-W. P. and Assam Civil Courts Act includes an officer with judicial powers. **HALADHAR MAHATO v. KALI PRASANNA GHOSE** . . . 2 C. W. N., 127

**s. 37.**

See **MAHOMEDAN LAW—PRE-EMPTION, MISCELLANEOUS CASES.**  
[I. L. R., 12 All., 234]

See **MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF—GENERALLY.**

[I. L. R., 16 All., 644]

See **VENDOR AND PURCHASER—PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER** . . . I. L. R., 24 Calc., 897

**BENGAL PRIVATE FISHERIES PROTECTION ACT (II OF 1884).**

**s. 3—Fishing in private waters—Adjoining fisheries—Bond fide dispute as to boundaries—Summary trial—Jurisdiction of the Criminal Court.**—Where, in a charge under s. 3 of the Private Fisheries Protection Act, of having fished in the waters of another person, the matter in dispute was really a claim to a particular fishery, and the accused pleaded a *bond fide* claim to it, and it was shown that there had been various disputes and litigations between the parties:—*Held* that the matter should not be tried by a Criminal Court, and still less in a summary way. Per **STANLEY, J.**, that the Magistrate acted without jurisdiction in going into this charge, and s. 3 of the Fisheries Act was not intended to meet a case of this nature. **SRIDAM CHANDRA ROY v. DINA NATH MUKHOPADHAYA**

[4 C. W. N., 247]

**BENGAL REGULATION—1793—I, s. 9.**

See **JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.**

[13 W. R., 397]

See **RIGHT OF SUIT—REGISTRATION OF NAME** . . . 13 W. R., 397

**III.**

See **CASES UNDER LIMITATION—REGULATION III OF 1793.**

**s. 8.**

See **JURISDICTION OF CIVIL COURT—SOCIETIES** . . . 3 B. L. R., A. C., 91

**IV.**

*Rules for decision in suits regarding Succession, Inheritance, Marriage, Caste, etc.—Law applying to one sect.*—According to the true construction of the rules for decision in suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions provided in Bengal Regulation IV of 1793, *viz.*, that Mahomedan law with respect to Mahomedans, and Hindu law with regard to Hindus, are to govern such decisions, the Mahomedan law of each sect ought to prevail as to the litigants of that sect, and not the general or Sunni Mahomedan law. **DERDAR HOSSEIN v. ZUHOORONNISSA** . . . 2 Moore's L. A., 441

**s. 9.**

See **BENGAL REGULATION XLVIII OF 1793, s. 24** . . . 4 B. L. R., Ap., 44

**s. 15.**

See **RESTITUTION OF CONJUGAL RIGHTS.**  
[8 W. R., P. C., 3  
11 Moore's L. A., 551]

**s. 25—Landed proprietors.**

—S. 25 of Regulation IV of 1793 was applicable to landed proprietors. **ROGHOOBUR DUTT v. GOVERNMENT** . . . 6 W. R., Mis., 60

**VIII.**

See **CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—DEPENDENT TALUKDARS.**

# BENGAL REGULATION-1793-VIII

—concluded.

ss. 5 and 50.

See ENHANCEMENT OF RENT—RIGHT TO  
ENHANCE . I L R, 22 Calc, 214  
[I L R, 21 I A, 131]

See GHATWALI TENURE.

[I L R, 3 Calc, 251]

See ONUS OF PROOF—ENHANCEMENT OF  
RENT . . . 4 B L R, P. C, 8

See RESUMPTION—RIGHT TO RESUME.

[5 Moore's I A, 467]

See SALE FOR ARREARS OF REVENUE—  
PURCHASERS, RIGHTS AND LIABILITIES  
OF . . . 2 B L R, P. C, 28

s. 41.

See JURISDICTION OF CIVIL COURT—RENT  
AND REVENUE SUITS, N.W. P.

[I L R, 8 All, 553]

s. 48—*Suit for recovery of*

*malikana*.—A suit for recovery of *malikana* was  
barred by limitation if the *malikana* has not been  
received for a period of twelve years. *Quare*—  
Whether, under Regulation VIII of 1793, s. 48, a suit  
for recovery of *malikana* will lie at all. *BHULI*  
*SING v. NIRMAL BEHU*

[4 B L R, A. C, 29: 12 W. R, 498]

ss. 54, 55, and 61.

See CESS . . . I L R, 15 Calc, 828  
[I L R, 16 I A, 152: I L R, 17 Calc, 131  
I L R, 17 Calc, 728  
I L R, 22 Calc, 880]

X.

See ACT XI. OF 1838, s. 3 . 18 W. R, 231

s. 33.

See COURT OF WARDS.

[I L R, 1 Calc, 289  
I L R, 8 Calc, 620]

XI.

See HINDU LAW—CUSTOM—INHERITANCE  
AND SUCCESSION.

[I L R, 1 Calc, 186  
19 W. R, 8]

See HINDU LAW—INHERITANCE—IMPART-  
IBLE PROPERTY . . . 9 W. R, P. C, 15  
[12 Moore's I A, 1]

See MAHOMEDAN LAW—CUSTOM.

[3 Moore's I A, 441]

XV.

See MEANS PROFITS—RIGHT TO, AND LIA-  
BILITY FOR.

[R L R, Sup. Vol, 613]

See CASES UNDER MORTGAGE—ACCOUNTS.

1. — s. 6—*Reg. XVII of 1806, s. 3*—  
*Interest, Rate of*.—Under s. 6, Regulation XV of  
1793, interest claimable under a bond must not exceed  
the amount of the principal. S. 3, Regulation XVII  
of 1806, is not inconsistent with the application of

# BENGAL REGULATION-1793-XV

—continued.

[I L R, 1 All, 344]

2. — *Interest in excess*  
*of principal*.—Act XXVIII of 1855.—S. 6, Regula-  
tion XV of 1793 (prohibiting the Courts from award-  
ing as interest a sum larger than the principal) is not  
applicable to a suit instituted after the passing of  
Act XXVIII of 1855. Even under Regulation XV  
of 1793 it was the practice of the Court to allow  
interest in excess of principal where the interest had  
accumulated owing to reasons not ascribable in any  
degree to procrastination on the part of the creditor.  
*MUHAMMAD GOOPITA v. GOBIND COOMAR CHOW-  
DHURY* . . . 5 W. R, 51

3. — *Interest in excess*  
*of principal*.—Regulation XV of 1793 (prohibiting  
award of interest in excess of principal) applies to  
sums decreed only, and not to interest which has  
accumulated through the neglect of the judgment-  
debtor to pay. *SHIB CHANDER GOOPTE v. ALLAD*  
*MOHAR DOSSIA* . . . 5 W. R, Mss, 23

tion was repealed when the suit was brought, yet,  
looking to the time when his contract was made, the  
plaintiff was held not entitled to any further interest  
before suit, but interest upon the principal was  
allowed to him from the date of suit to the date of  
decree. *JEREMATH SINGH v. KUREMUT DIBEE*

[7 W. R, 172]

5. — *Usurious transaction*.—To  
an action for recovery of arrears of rent due to the  
plaintiff under a sub-lease of a *pergunna*, the defen-

below) that it was an usurious transaction, and that  
the suit should be dismissed. *WISS v. KISHAN*  
*KOUMAR BOSE* . . . 4 Moore's I A, 201

1. — ss. 9 and 10—*Rate of interest*.—  
*Usufructuary mortgage*.—In a suit on a bond  
executed together with an assignment to the plaintiff  
of the rent of certain *meahs* farmed out to other  
parties, the Judge dismissed the suit under s. 9,  
Regulation XV of 1793, holding that a deduction of a  
certain sum from the *jamma* of the assignment was  
a device to obtain more interest than the legal rate.  
*Held* that, under the decision of the Privy Council in  
*Asando Mahan Pal Chowdhury v. Kishan Chander*

# BENGAL REGULATION-1793-XV

—concluded.

*Bannerjee*, 8 *Moore's I. A.*, 358, that section does not apply where the transaction of the bond and the assignment are one and the same, and where the plaintiff has a claim to be treated as a usufructuary mortgagee under s. 10 of the same law. *RASSMONEE DOSSEE v. MONSHAR ALLY* . . . 1 *Hay*, 483

2. ——— *Interest—Usury*.—Interference with the rate of interest in India was a thing of positive law and cannot be extended beyond the provisions of the Regulation (XV of 1793). S. 9 of the Regulation does not declare that where an attempt has been made to elude the usury laws the contract is itself void, nor does it direct the return of the pledge without redemption. The mortgagee may retain his pledge until he has received out of it his debt with interest at 12 per cent., the maximum allowed by s. 10 of the Regulation. *SHAH MAHUNLAL v. SRI KRISHNA SINGH* . . . 2 *B. L. R.*, P. C., 44

[11 *W. R.*, P. C., 19; 12 *Moore's I. A.*, 157

*TASADUK HOSSAIN v. BENI SINGH*

[13 *C. L. R.*, 128

## XIX

See ONUS OF PROOF—RESUMPTION AND ASSESSMENT . 4 *Moore's I. A.*, 466

s. 6.—*Dependent talukhdar*  
—*Expiration of settlement, Effect of, on omission to renew lease*.—A lessee whose interest is that which is declared by Regulation XIX of 1793, s. 6, is a dependent talukhdar, and does not forfeit his lease by simply omitting to renew his temporary settlement on its expiration. *JUNMEJOY MULLICK v. GUNGA RAM DUTT* . . . 21 *W. R.*, 26

s. 10.

See GRANT—POWER TO GRANT.

[*B. L. R.*, Sup. Vol., 75, 774  
12 *W. R.*, 251.

*I. L. R.*, 2 *All.*, 545, 732

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[*I. L. R.*, 8 *All.*, 552

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.

[8 *B. L. R.*, Ap., 82 note; 83 note;  
85 note; 87 note; 89 note

See RESUMPTION—RIGHT TO RESUME.

[15 *W. R.*, 483

*B. L. R.*, Sup. Vol., Ap., 8

*B. L. R.*, Sup. Vol., 103

8 *B. L. R.*, 566

## XXVI, s. 2.

See COURT OF WARDS.

[*I. L. R.*, 1 *Calc.*, 289;

*L. R.*, 3 *I. A.*, 72; 25 *W. R.*, 235

*I. L. R.*, 8 *Calc.*, 620

See MAJORITY, AGE OF.

[15 *B. L. R.*, 67; 23 *W. R.*, 208

*L. R.*, 2 *I. A.*, 87

*W. R.*, 1864, 83

5 *W. R.*, 2, 5

7 *W. R.*, 181, 502

# BENGAL REGULATION—continued.

## 1793-XXVII.

See MUNSIF, JURISDICTION OF.

[*I. L. R.*, 19 *Calc.*, 8

See RESUMPTION—RIGHT TO RESUME.

[5 *Moore's I. A.*, 467

See SETTLEMENT—CONSTRUCTION OF SETTLEMENT . *I. L. R.*, 17 *Calc.*, 458

1. ——— s. 5—*Bazars made since 1793*.—S. 5, Regulation XXVII of 1793, had no application to bazars which did not exist in 1793. *AFTABOODEN AHMED v. MOHINEE MOHUN DASS*

[15 *W. R.*, 48

*CHUNDER NATH ROY v. ZEMADAR*

[16 *W. R.*, 268

*RAM MANICK ROY v. ASGUR* . 11 *W. R.*, 112

2. ——— *Contract to collect duties*.—

There is nothing illegal in a contract under a farming lease from the owner of a hat to collect a portion of the proceeds of sale from persons exposing their goods for sale in the hat under temporary sheds or in open places, and such collections are not in the nature of internal duties, but of rent for the use of land. The provisions of Regulation XXVII of 1793 applied only to hats and bazars existing at the time. *BUNGSHO DHUR BISWAS v. MUDHOO MOHULDAH*

[21 *W. R.*, 383

## XXXVI, s. 17.

See REGISTRATION—BENGAL REGULATION XXXVI OF 1793 . 8 *W. R.*, 438

## XXXVII, s. 15.

See GRANT—CONSTRUCTION OF GRANTS.

[2 *Agra*, 284

*I. L. R.*, 15 *Bom.*, 222

## XLIV.

See GHATWALI TENURE.

[13 *B. L. R.*, 124

*L. R.*, *I. A.*, Sup. Vol., 181

ss. 2, 5.

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—DEPENDENT TALUKHDARS . . . *I. L. R.*, 14 *Calc.*, 133

s. 5.

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE . . . *I. L. R.*, 4 *Calc.*, 612

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF . . . 2 *B. L. R.*, P. C., 23

## XLV.

See LIMITATION ACT, 1877, ART. 12 (1859; s. 1, CL. 3) . . . 11 *W. R.*, 261

s. 12.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[8 *Moore's I. A.*, 427

**BENGAL REGULATION—continued.**

1793—XLVIII, s. 14.

*Quinquennial registers*  
*—Attestation of Zillah Judge.*—According to Regulation XLVIII of 1793, s. 14, no counterpart quinquennial registers in the native language are considered authentic unless attested by the Zillah Judge **GOBIND CHUNDER SHAHA v. PUNDO MOYEE DASSER** 17 W. R., 400

of 1793,  
 Regulation IV of 1793,  
 transmit their

decrees to the Collector, but did not authorize those Courts to make any orders on the Collector as to how he shall enter the result of such decrees in his books. **NIMDHARI SING v. KACHUN SING**

[4 B. L. R., Ap., 44: 13 W. R., 182

1795—XIII, s. 15.

*See GRANT—CONSTRUCTION OF GRANT.*  
 [2 Agra, 284

XLI, s. 10.

*See ONUS OF PROOF—RESUMPTION AND ASSESSMENT* 1 Agra, 167

1798—XI.

*See FORFEITURE OF PROPERTY.*  
 [7 W. R., P. C., 18, 47

1797—IV.

*See OFFENCE COMMITTED BEFORE PEWAL CODE* 1 L. R., 1 All., 583  
 [L. R., 3 Calc., 225

s. 34, cl. (2).

*See LIMITATION ACT, 1877, ART. 179 (1859, s. 20)—STEP IN AID OF EXECUTION—MISCELLANEOUS ACTS OF DECREE-HOLDERS* 4 B. L. R., A. C., 158

XVI, s. 4.

*See CASES UNDER APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.*

1798—I.

*See APPEAL—REGULATIONS.*  
 [19 W. R., 122

*See MESNE PROFITS, RIGHT TO, AND LIABILITY FOR* B. L. R., Sup. Vol., 613

*See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.*

[B. L. R., Sup. Vol., 598  
 20 W. R., 387

1799—V, s. 5.

*See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.*  
 [4 B. L. R., Ap., 80

1. — s. 7—*Movable property.*—S. 7 of Regulation V of 1799 only applied to movable property. **SHIB RAM LALL v. RAJ COOMAR MITTER** [8 W. R., 48

**BENGAL REGULATION—1799—V**

—concluded.

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 ser  
 property. *Held* that it should have been made over to the Civil Court under s. 7, Regulation V of 1799,

seate, on her furnishing proper security for the purpose of indemnifying the appellant **H. ASIM HOSSEIN v. REAZUN** 15 W. R., 302

VII.

*See LIMITATION—BENG. REG. VII of 1799.*  
 [B. L. R., Sup. Vol., Ap., 10: 5 W. R., 100

1. — *Decree—Act VIII of 1859, s. 206.*—S. 206, Act VIII of 1859, did not apply to decrees under Regulation VII of 1799. **GOPAL CHANDRA DEY v. PEWU BIRI** [1 B. L. R., A. C., 76: 10 W. R., 104

2. — *Beng. Reg. VIII of 1831—*

away the right to bring a regular suit. **GOBIND CHUNDER MOOKERJEE v. KALLA GAJEE** [B. L. R., Sup. Vol., 626: 3 Ind. Jur., N. S., 119  
**GOBIND CHUNDER MOOKERJEE v. KALLA GAJEE** [7 W. R., 185

s. 25—*“Under-renter”—Sale on default in payment of rent.*—A raiyat holding a jote, for which he pays a particular rent to a Collector, who holds the land under khas management, was an “under-renter” within the meaning of s. 25, Regulation VII of 1799, and if he made default in the payment of rent, the proper procedure for the Collector was to sell his land at the end of the year. **REXOO KOPONDOO v. DEHABUR MUSULMAN** [3 W. R., 303

1800—X.

*See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION* 1 L. R., 1 Calc., 183

*See MAHOMEDAN LAW—CUSTOM.*  
 [2 Moore's I. A., 441

1803—II, s. 18, cl. (3).

*Good and sufficient cause*  
 —*Limitation.*—The words “other good and sufficient

# BENGAL REGULATION—1803—II

—concluded.

cause" in cl. 3, s. 18, Regulation II, 1803, of the Bengal Code, include insanity, whether there has been or is a commission of lunacy or the like or not; and the word "precluded" in the same clause does not mean precluded during the whole term of twelve years or merely at its commencement, but means in effect precluded during any part of it. In computing the twelve years' period of limitation, there should not be reckoned any time elapsing while the person for the time being entitled to seek redress was not free from disability. *TROUP v. E. I. COMPANY. DYCE SOMMER v. E. I. COMPANY.*

[4 W. R., P. C., 111: 7 Moore's I. A., 104

## XXXI, s. 6.

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R., 21 All., 12

## XXXIV.

See MORTGAGE—ACCOUNTS.

[I. L. R., 2 All., 593

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . I. L. R., 8 All., 402

## LII.

See COURT OF WARDS.

[I. L. R., 5 All., 142

9 W. R., P. C., 9

I. L. R., 22 All., 294

## 1805—II.

See LIMITATION—BENG. REG. II OF 1805.

## XII, s. 34.

See JAGHIR . . W. R., F. B., 85

## 1806—XVII.

See LIMITATION ACT, 1877, ART. 135.

[I. L. R., 16 Calc., 693

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE . 11 B. L. R., 301

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[7 B. L. R., 136: 13 Moore's I. A., 560

See ONUS OF PROOF—MORTGAGE.

[B. L. R., Sup. Vol., 415

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[I. L. R., 11 All., 164

Operation of, in Chupra.—Regulation XVII of 1806 came into operation in the district of Chupra on September 11th, 1806. *BUKSHUSH HOSSEIN v. FUZZELONISSA*

[W. R., 1864, 189

## s. 3.

See BENG. REG. XV OF 1793.

[I. L. R., 1 All., 344

## s. 7.

See LIMITATION ACT, 1877, ART. 120.

[I. L. R., 14 All., 405

# BENGAL REGULATION—1806—XVII

—concluded.

See LIMITATION ACT, 1877, ART. 132.

[I. L. R., 20 Calc., 269

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.

[I. L. R., 4 All., 276

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE . 5 B. L. R., 389

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . 3 B. L. R., A. C., 141

[I. L. R., 3 All., 653

I. L. R., 9 All., 20

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[B. L. R., Sup. Vol., 598

I. L. R., 9 All., 20

See TRANSFER OF PROPERTY ACT, s. 2.

[I. L. R., 6 All., 262

I. L. R., 11 Calc., 582

I. L. R., 12 Calc., 583

## s. 8.

See LIMITATION ACT, 1877, ART. 120.

[I. L. R., 14 All., 405

See LIMITATION ACT, 1877, ART. 132.

[I. L. R., 20 Calc., 269

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.

[I. L. R., 11 All., 144

See CASES UNDER MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.

See MORTGAGE—FORECLOSURE—RIGHT OF

FORECLOSURE I. L. R., 16 All., 59

[I. L. R., 23 Calc., 228

L. R., 22 I. A., 183

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE I. L. R., 9 All., 20

See TRANSFER OF PROPERTY ACT, s. 2.

[I. L. R., 6 All., 262

I. L. R., 11 Calc., 582

I. L. R., 12 Calc., 583

I. L. R., 14 Calc., 451, 599

I. L. R., 15 Calc., 357

Notice of foreclosure—Year of grace.—The year mentioned in s. 8 of Regulation XVII of 1806 is to be reckoned from the date of the service of the notice of foreclosure under that section. *MAHESH CHANDRA SEN v. TARIN*

[I. B. L. R., F. B., 15

S. C. MOHESH CHUNDER SEN v. TARINRE

[10 W. R., F. B., 27

## XIX.

Petition under—

See RES JUDICATA—PARTIES—INTERVENORS . . I. L. R., 3 Calc., 705

**BENGAL REGULATION—continued.****1810—XIX.**

See ACT XX OF 1803, s. 18.

15 B. L. R., 167

I. L. R., 19 Calc., 275

See ENDOWMENT I. L. R., 18 All., 227

**1812—V.**

*Notice of suit for arrears of rent—Decree in former suit.*—A suit for arrears of rent at a certain rate decreed in a former suit may be maintained without notice under Regulation V of 1812; the decree itself being held to be sufficient notice. **RAMJEEBUN BOSE v. TRIPPOORA DOSSEE**

[W. R., F. B., 93; Marsh., 396; 2 Hay, 449

ss. 2 and 3.

See CESS . . . I. L. R., 15 Calc., 828

[I. L. R., 17 Calc., 726

See ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT—SERVICE OF NOTICE.

[I. L. R., 11 Calc., 608

s. 26.

See APPRAI—REGULATIONS.

[12 B. L. R., 366

I. . . . . Beng. Reg. V of 1827

*Dispute as to right to collect rents of undivided estate.*—A dispute as to the right to collect the rents of a joint undivided estate in a

ROY . . . . . 18 W. R., Cr., 36

*Joint estate.*—A dispute as to the right to collect the rents of a joint undivided estate in a . . . . .  
or otherwise, was sufficient to bring a case under Regulation V of 1812. **GOOROODAS ROY v. RAMBUNGEER DOSSEE** . . . . . 20 W. R., 54

2. . . . . Beng. Reg. V of

*1827—Manager of joint undivided estate—Power of Judge.*—A Judge had power to order the person appointed under Regulation V of 1812, s. 26, and Regulation V of 1827, to manage an estate, to make over the surplus after payment of revenue and other outgoings to the person or persons entitled to receive the same. **IS THE MATTER OF THE PETITION OF THE COMMISSIONER OF BUNGORH** . . . . . R. L. R., Sup. Vol., 655

[3 Ind. Jur., N. S., 178; 7 W. R., 273

3. . . . . Collector, Powers of—

*Beng. Reg. V of 1827—Powers of Collector.*—A Collector, in taking charge of property which came under attachment by an order of the Civil Court under a 6, Regulation V of 1812, as modified by a 3, Regulation V of 1827, was held to have taken and retained charge on behalf of the parties entitled, and unless and until anything could be shown to have changed the state of things during such

**BENGAL REGULATION—1812—V****—concluded.**

attachment, the parties in possession at the time when it commenced must be held to have continued in possession throughout the attachment. **Purchasers**

the properties in question and two others in attachment and to appoint a person for the due care and management of the same. **Held** that Regulation V of 1827 was not intended to apply to any other cases of attachment of landed property than those provided for in the Regulation mentioned therein, and the order was therefore made without jurisdiction. **COLLECTOR OF NOAKALLY v. PAXWELL** 20 W. R., 78

5. . . . . Beng. Reg. V of 1827—

*Power of Collector after order made by Judge.*—When a Judge has made an order in the terms of Regulation V of 1812, s. 26, as modified by Regulation V of 1827, he is *functus officio*, and it then lies upon the Collector, as manager and holder, to take at his own proper risk and upon his own responsibility everything that he finds to be part of the joint estate. **RAM BUNGEER DOSSEE v. GOOROO DOSSEE ROY** . . . . . 22 W. R., 212

**XVIII, s. 2.**

See CESS . . . I. L. R., 15 Calc., 828

**XX, s. 5.**

See LEXINGTON ACT, 1877, ART. 84 (1850, s. 1, CL 9) . . . . . 9 W. R., 113

*Hundi.*—S. 6, Regulation XX of 1812 (concerning the registration of "bonds, promissory notes, and generally of obligations for the payment of money"), was not applicable to bonds or other similar negotiable instruments. **BOHATER CHITRY DAS v. PRADEEP MOHAI** . . . . . 4 W. R., 63

**1814—I.**

See EVERTON—CIVIL CASES—20000 IN ARREARS AND OTHER OFFENCES  
3 W. R., 55

**XIX.**

See JUDICATURE OF CIVIL CASES—  
1814 CIVIL—PARTIAL

[I. L. R., 15 Calc., 828  
20 W. R., 113  
4 W. R., 63

See CIVIL CASES—

# BENGAL REGULATION—1814—XIX

—concluded.

See SALE FOR ARREARS OF REVENUE—  
SETTING ASIDE SALE—IRREGULARITY.

[8 B. L. R., 230

See SALE FOR ARREARS OF REVENUE—  
SETTING ASIDE SALE—OTHER GROUNDS.

[5 B. L. R., 135 : 17 W. R., 21

— s. 9.

See ENHANCEMENT OF RENT—LIABILITY  
TO ENHANCEMENT—LANDS OCCUPIED BY  
BUILDINGS AND GARDENS.

[3 B. L. R., A. C., 65

## XXVII.

See PLEADER—REMUNERATION.

[1 Ind. Jur., N. S., 334 : 6 W. R., 108

— ss. 13 and 21.

See PLEADER—APPOINTMENT AND AP-  
PEARANCE . I. L. R., 18 All., 240

## XXIX.

See GHATWALI TENURE.

[Marsh., 117 : W. R., F. B., 34

14 W. R., 203

I. L. R., 5 Calc., 389

I. L. R., 9 Calc., 187

I. L. R., 22 Calc., 156

See LAND ACQUISITION ACT, 1870, s. 39.

[18 W. R., 91

## 1816—IX.

See BENGAL ACT VII OF 1863, s. 1.

[I. L. R., 14 Calc., 440

See SALE FOR ARREARS OF REVENUE—  
INCUMBRANCES—ACT XI OF 1859.

[I. L. R., 14 Calc., 440

## XI.

See HINDU LAW—INHERITANCE—IMPART-  
IBLE PROPERTY . 3 W. R., 116

## XIV.

See PRISONS ACT, XXVI OF 1870.

[4 N. W., 4

## 1817—V.

See TREASURE TROVE . 4 W. R., Mis., 8

[7 Mad., 150

7 B. L. R., Ap., 3

15 W. R., 525

## XII, s. 16.

See EVIDENCE ACT, s. 35.

[I. L. R., 23 Calc., 366

See EVIDENCE ACT, s. 74.

[I. L. R., 18 Calc., 534

## XX.

See CONFESSION—CONFESSIONS TO POLICE  
OFFICERS . 2 C. W. N., 637

— s. 21.

See PENAL CODE, s. 188 . 7 C. L. R., 575

# BENGAL REGULATION—1817—XX

—concluded.

*Liability to pay wages of—Land-owner.*—A  
liability on the part of a landholder to pay the  
wages of a village chowkidar appointed under s. 21,  
Regulation XX of 1817, cannot be inferred from the  
fact that the chowkidar's salary was fixed by the  
heads of the village, and apportioned among the  
several house-holders without objection made by any  
of them, but must be proved in order to sustain a  
suit brought by the chowkidar against the land-  
holder. *GOLAMEE v. PASLAN* . 18 W. R., 298

## 1818—III.

See ACT OF STATE . 6 B. L. R., 392

See HABEAS CORPUS.

[6 B. L. R., 392, 459

1. ——— Validity of—*Act XXXIV of 1850 and Act III of 1853—Arrest of native subject—Power of Indian Legislature—13 Geo. III, c. 63, s. 36—37 Geo. III, c. 142, s. 8—21 Geo. III, c. 70—3 & 4 Will. IV, c. 85, s. 43.*—Regulation III of 1818 was applicable only to natives and those subject to the jurisdiction of the provincial Courts. It was passed under 37 Geo. III, c. 142, s. 28, not 13 Geo. III, c. 63, s. 36. It was passed by a legislative authority having full power in that behalf. Considering the circumstances under which it was enacted, Act III of 1853, which extended the effect of that Regulation to Calcutta, was not *ultra vires*. *IN THE MATTER OF AMEER KHAN*

[6 B. L. R., 392

2. ——— *Act XXXIV of 1850—Act III of 1853.*—Assuming the power of a Judge of the High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ,—*Held* that, it appearing that the prisoner was in custody under a warrant in the form prescribed by Regulation III of 1818, the detention was legal. The detention, to be legal, need only be covered by an actually existing warrant of the Governor General in Council in the form prescribed, without regard to the lawfulness of the arrest. The Regulation is not confined to prisoners of war or foreigners held in confinement for political reasons. The substance of Regulation III of 1818 was expressly re-enacted by Act XXXIV of 1850 and Act III of 1853, and therefore, as the result of these later Acts alone, the detention would be legal. These Acts are not contrary to the power conferred on the Indian Legislature by 3 & 4 Will. IV, c. 85, s. 43. *IN THE MATTER OF AMEER KHAN*

[6 B. L. R., 459 : 17 W. R., Cr., 15

3. ——— Warrant of arrest and commitment under—*Effect of.*—The Governor General, in issuing a warrant of commitment under Regulation III of 1818, does not in any way act judicially or as a Court of Justice, nor is he to be considered as having adjudicated that the person placed under personal restraint had been guilty of some specific offence. The proceeding is not in the nature of a conviction of the person placed under restraint; therefore the person so placed under restraint cannot, in any future proceeding taken against

**BENGAL REGULATION-1818-III**

—concluded.

him, plead that he has been already tried, convicted, and punished. *QUEEN v. AMEER KHAN*

[9 B. L. R., 36]

**1818-II.**

See SETTLEMENT—RIGHT TO SETTLEMENT.

[5 B. L. R., 523 note, 523 note]

8 B. L. R., 524

**s. 28.**

See SANAD . . . 12 B. L. R., 120

**s. 30.**

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.

[8 B. L. R., Ap., 83 note, 83 note,

85 note, 87 note, 89 note]

See PARTIES—PARTIES TO SUITS—GOVERNMENT . . . 8 B. L. R., 524

See CASES UNDER RESUMPTION—PROCEDURE.

**VI, ss. 3 and 6.**

See FERRY . . . 4 N. W., 146

**s. 13, cl. (2).**

See FERRY . . . 7 W. R., Cr., 32

See JURISDICTION OF CIVIL COURT—FERRIES . . . 4 N. W., 146

[B. L. R., Sup. Vol., 630]

**VIII.**

See BENGAL TENANCY ACT, sch. III, art. 2.

[I. L. R., 23 Calc., 101]

See LIMITATION ACT, 1877, art. 141—

ADVERSE POSSESSION.

[I. L. R., 19 Calc., 787]

See CASES UNDER SALE FOR ARREARS OF RENT.

**BENGAL REGULATION-1818-VIII**

—continued.

its operation by s. 195 (e) of that Act. *GRANADA KASTHQ ROY BARADUR v. BRON. MOTI DASSI*

[I. L. R., 17 Calc., 163]

**ss. 3 and 6.**

See PAINT TENURE.

[I. L. R., 25 Calc., 445]

**s. 5.**

See BENGAL TENANCY ACT, s. 15.

[I. L. R., 19 Calc., 504]

**s. 6.**

See APPEAL—REGULATIONS.

[I. L. R., 1 Calc., 383]

5 C. L. R., 138]

**s. 8.**

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

[I. L. R., 20 Calc., 66]

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

**s. 13—"Profits"—Adjust-**

means that which is left to the tenure-holder after payment of the rent of the tenure. A person who

See SET-OFF—GENERAL CASES.

[3 C. L. R., 414]

**s. 14.**

See VOLUNTARY PAYMENT.

[I. L. R., 26 Calc., 826]

**s. 15, cl. (1).**

See REGISTRATION ACT, 1877, s. 17.

[I. L. R., 5 Calc., 226]

*v. ESHAN CHUNDER ROY*

1 Hay, 474

**s. 18, cl. (4).**

See LIMITATION—BENG. REG. VII of 1799 . . . B. L. R., Sup. Vol., Ap., 10

See s. 18—Attachment—Attachment for arrears of rent—Wrongful attachment

# BENGAL REGULATION—1819—VIII

—concluded.

—*Liability to account for receipts and disbursements under.*—Under Regulation VIII of 1819, a *sezawal* cannot be deputed and lands attached under its provisions, unless the arrears of rent claimed shall have been actually due for an entire month before the date of attachment. Whenever a person is proved to have exercised the power of attachment alluded to above illegally, he is bound to give a true and full account of all receipts (unauthorized cesses not excepted) and disbursements made by his agents, during his attachment, and only such disbursements as are shown to be necessary and *bona fide* can be allowed. **GOBIND CHUNDER BURMONO v. ALLABUX** . . . . . 2 May, 347

## —1821—I.

See SALE FOR ARREARS OF REVENUE—  
SETTING ASIDE SALE—OTHER GROUNDS.  
[3 Moore's I. A., 100

## —1823—VII.

See CASES UNDER ACT XIII OF 1848.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—ILLEGAL CESSSES.

[1 Agra, 207  
2 Agra, 338

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—GENERAL LIABILITY.  
[I. L. R., 16 Calc., 588

See EVIDENCE ACT, s. 74.  
[I. L. R., 4 Calc., 79

See GOVERNMENT OFFICERS, ACTS OF.  
[4 B. L. R., P. C., 38

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.

[4 N. W., 129  
7 N. W., 9  
15 W. R., 537  
6 C. L. R., 365

See CASES UNDER LIMITATION ACT, 1877, ART. 45.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859.

[14 W. R., 1  
15 W. R., 141

See SETTLEMENT—MISCELLANEOUS CASES.  
[23 W. R., 436  
I. L. R., 16 Calc., 588

See SETTLEMENT—MODE OF SETTLEMENT.  
[2 Agra, 258  
6 C. L. R., 365

## s. 33.

See SURVEY AWARD . . . . . 1 Agra, 267  
[11 W. R., 389

## X.

See BOUNDARY . . . . . 8 W. R., 343  
[9 W. R., 428

# BENGAL REGULATION—continued.

## —1822—XI, s. 9.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.  
[I. L. R., 1 All., 373

## s. 29.

See LIMITATION ACT, 1877, ART. 134.  
[I. L. R., 9 All., 97

## ss. 30, 33.

See CASES UNDER SALE FOR ARREARS OF REVENUE—INCUMBRANCES—BENG. REG. XI OF 1822.

## —1823—VI, s. 5, cl. (2).

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT . . . . . 3 Agra, 77

## s. 5, cl. (4)—Contract to

sow indigo—Default in sowing.—Held that, in a contract to sow indigo, not sowing would be *prima facie* evidence of dishonesty; and that, in order to claim the benefit of cl. 4 of s. 5 of Regulation VI of 1823, it was necessary to show that the negligence to sow had been accidental. **LAL MAHOMED BISWAS v. WATSON** . 1 Ind. Jur., N. S., 3: 4 W. R., 62

## s. 8—Joint liability in contract—Specification of liability.

—In a suit to recover the value of the produce of land from defendants, who had agreed to cultivate it, but had failed to do so, it was held that, as defendants were jointly liable, a specification of liability was not required, as the case did not come within s. 8 of Regulation VI of 1823. **MUNRAJ MURTON v. HUDSON**

[12 W. R., 309

## —1824—I.

See RAILWAY COMPANY 10 B. L. R., 241

—Assessment of land formerly occupied for Government salt-works.

—Upon the relinquishment by the Government of lands, within the ambit of a permanently-settled zamindari, continuously used before and since the perpetual settlement of salt-works from the commencement of salt-making by the Government, until after the passing of Regulation I of 1824, the provisions of that Regulation are applicable to the mutual rights of the zamindar and of the Government. Such lands were held by the officers of the Salt Department, in terms of cl. 11 of that Regulation, "free of rent" and "under a perpetual title of occupancy," whether belonging to a permanently-settled estate or not. The force of the Regulation and the right of the Government to assess such lands are not affected by 'khalari' payments having been made, among other compensations, by the Government to the zamindar; and cl. 11 appears to contemplate some such payment. On a settlement of the relinquished lands, 'khalari' payments, being "sums remitted to the zamindars and to be allowed in perpetuity" within the meaning of cl. 4 of s. 9 of Regulation I of 1824, must be continued to the zamindar; or, if a settlement should be made with others, he should be assessed only for the

**BENGAL REGULATION-1824-I**  
—concluded.

land retained by him. SECRETARY OF STATE FOR  
INDIA IN COUNCIL v. ANANDMOY DEBI  
[1 L. R., 8 Calc., 95]

Reversing the judgment of the High Court in a  
decision unreported given after remand in GUJAN-  
DRO NARAIN ROY v. COLLECTOR OF MIDNAPORE  
[23 W. R., 197]

## —1825-VII, s. 7.

See ATTACHMENT—MODE OF ATTACHMENT  
AND IRREGULARITIES IN ATTACHMENT.  
[20 W. R., 433]

## —IX.

See ACT XIII OF 1848.  
[10 Moore's I. A., 511  
2 B. L. R., P. C., 111]  
See COLLECTOR, JURISDICTION OF.  
[7 N. W., 302]

## —XI.

See CASES UNDER ACCRETION.  
See ACT IX OF 1847 . . . 6 B. L. R., 25  
See BOUNDARY . . . 9 W. R., 428  
See LAND ACQUISITION ACT, 1870, s. 39.  
[1 L. R., 11 Calc., 696]  
See CASES UNDER LANDLORD AND TEN-  
ANT—ACCRETION TO TENURE.  
See SETTLEMENT—EFFECT OF SETTLEMENT.  
[1 L. R., 20 Calc., 732]

## —XIV.

See ONUS OF PROOF—RESUMPTION AND  
ASSESSMENT . . . 4 Moore's I. A., 468

## s. 3.

See SANAD . . . 12 B. L. R., 120

## —XX.

See JURISDICTION OF CRIMINAL COURTS—  
EUROPEAN BRITISH SUBJECTS.  
[13 B. L. R., 474]

## —1828-XII.

See STAMP—BENGAL REGULATION XII OF  
1828 . . . W. R., 1884, 289

## —1827-V.

See CASES UNDER BENGAL REGULATION V  
OF 1812.

## —1828-III.

See BENGAL ACT VII OF 1863, s. 1.  
[1 L. R., 14 Calc., 440]  
See SALE FOR ARREARS OF REVENUE—  
INCUMBRANCES—ACT XI OF 1829.  
[1 L. R., 14 Calc., 440]

See SPECIAL COMMISSIONERS.  
[1 W. R., P. C., 20]  
See SUNDERSBY'S SETTLEMENT REGU-  
TION . . . 2 B. L. R., P. C., 33  
[4 C. W. N., 513]

**BENGAL REGULATION—concluded.**

## —1828-XXVIII, s. 11.

[W. R., F. R., 34]

## —1829-XIV.

See SECURITY FOR COSTS—APPEALS.  
[7 Moore's I. A., 431]

## —1831-VIII.

See BENGAL REGULATION VII OF 1799.  
[B. L. R., Sup. Vol., 826]  
See SALE FOR ARREARS OF RENT—INCUM-  
BRANCES 10 B. L. R., 139, 150 note

## —1832-VII.

See MAHOMEDAN LAW—DOWER.  
[6 B. L. R., 54]

## —1833-IX.

See ACT XIII OF 1843.  
[10 Moore's I. A., 511]  
See JURISDICTION OF CIVIL COURT—  
SWEET AWARDS . . . 3 N. W., 132  
[2 Agta, 340  
4 W. R., 79]

See MORTGAGE—ACCOUNTS.  
[3 Agta, 314]

See RIGHT OF SUIT—AWARDS, SUITS CON-  
CERNING . . . 2 Agta, 340  
[7 N. W., 169]

## —XIII.

See JURISDICTION OF CIVIL COURT—  
REGISTRATION OF TENDERS.  
[13 W. R., 397]

See JURISDICTION OF CRIMINAL COURT—  
EUROPEAN BRITISH SUBJECTS.  
[13 B. L. R., 474]

See RIGHT OF SUIT—REGISTRATION OF  
NAME . . . 13 W. R., 397

**BENGAL RENT ACT, VIII OF 1869 (X  
OF 1859).**

See CASES UNDER RENT, SUIT FOR.

## —Act X of 1859.

See LIMITATION ACT, 1877, s. 14.  
[1 L. R., 18 Calc., 368]

See WITHDRAWAL OF SUIT—SUITS.  
[1 L. R., 21 Calc., 423, 514]

1. —Assam, Rent  
Law.—The Rent Law, Act X of 1859, was held to  
be in force in Assam. Hootanco RACOR v. LOOM  
RACOR . . . 1 L. R., 7 Calc., 440 note  
JULLOW SERMA, PATWARRA v. MADHUS RAM  
ATOI BURHA BRUKET . . . 19 W. R., 202

**BENGAL RENT ACT, VIII OF 1859 (X OF 1859)—continued.**

3. ————— **Dahra Dhoon, District of.**—The Rent Law, Act X of 1859, was held not to be in force in the Dahra Dhoon district. The Dhoon forms part of "the territories not subject to the General Regulations." **DICK v. HESELTINE**

[1 N. W., 198; Ed. 1873, 280]

**Bengal Act VIII of 1859.**

See **LIMITATION ACT, 1877, s. 7.**

[1 L. R., 17 Cal., 283]

See **RIGHT OF OCCUPANCY—LOSS ON FORFEITURE OF RIGHT.**

[1 L. R., 31 Cal., 129]

————— **s. 2 (Act X of 1859, s. 2).**

See **KABULIYAT—FORM OF KABULIYAT.**

[8 B. L. R., 358]

————— **Suit for delivery of pottahs.**—The Rent Act contemplates suits for delivery of pottahs by raiyats in possession only. **BHARAT CHUNDER SEIN v. OSEEMCOBBEN**

[9 W. R., Act X, 56]

————— **ss. 3 and 4 (Act X of 1859, ss. 3 and 4).**

See **CASES UNDER ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION.**

————— **s. 6 (Act X of 1859, s. 6).**

See **CASES UNDER RIGHT OF OCCUPANCY.**

————— **s. 7 (Act X of 1859, s. 7).**

See **RIGHT OF OCCUPANCY—MODE OF ACQUISITION**

[17 W. R., 552]

[25 W. R., 114]

8 B. L. R., 185, 166 note

1. ————— **s. 8 (Act X of 1859, s. 8)**—*Tenant without right of occupancy.*—If a raiyat has a right of occupancy, and insists on that right, he impliedly undertakes to give a kabuliat at fair and equitable rates if his landlord requires him to do so. But if the right of occupancy is absent, the raiyat can only remain on the land by the permission of the landlord, viz., on such terms as may be agreed upon between the landlord and himself. **SUTTO CHURN GHOSAL v. GOURRI PERSHAD ROY** 13 W. R., 117

2. ————— **Right to pottah—Agreement fixing rent.**—A tenant not having a right of occupancy is not entitled to a pottah under s. 8, Act X of 1859, unless there is an agreement with his landlord fixing the rate of rent. **NUBUDEEP CHUNDER SIRCAR v. LALLA SHEEB LALL** Marsh., 325

————— **s. 10 (Act X of 1859, s. 10).**

See **KABULIYAT—REQUISITE PRELIMINARIES TO SUIT.**

[B. L. R., Sup. Vol., 25, 202]

W. R., Act X, 2, 37, 60

5 W. R., Act X, 88

See **KABULIYAT—REQUISITES PRELIMINARY TO SUIT—TENDER OF POTTAH**

[Marsh., 400]

**BENGAL RENT ACT, VIII OF 1859 (X OF 1859)—continued.**

————— **s. 11 (Act X of 1859), s. 10.**

See **SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRACT.**

[1 B. L. R., S. N., 13]

1. ————— **Damages for withholding receipts for rent.**—The damages mentioned in s. 10 of Act X of 1859 are not penalties invariably to be decreed against persons withholding receipts for rent, but they are to be ascertained by an actual enquiry into the circumstances of each particular case, and never to exceed double the amount for which receipts have been withheld. **RASHMONEE DEBEA v. RAMJOY SHAHA**

[2 Hay, 516]

2. ————— **Power to award damages.**—Under s. 10, Act X of 1859, the power of a Judge to award damages for receipts withheld is discretionary only as to the amount to be awarded. The tenant being entitled by law to double the amount paid as rent, the Judge cannot refuse him costs on the ground that he had demanded double what was due to him. **ZOOKEEROODUNNISA KHANUM v. PHILLIPS** **SADUT ALI KHAN v. PHILLIPS**

[1 W. R., 290]

3. ————— **Money paid as rent.**—Damages under s. 10, Act X of 1859, are recoverable only in respect of money actually paid as rent. **SUMHENA BEBEH v. KOYLASH CHUNDER ROY**

[8 W. R., Act X, 79]

4. ————— **Receipt.**—A chalan bearing a mublukbundi or total in figures, and some mark, not a signature, of the tehsildar, is not a "receipt" within the meaning of s. 10, Act X of 1859. **JOHEEROODEEN MAHOMED v. DABEE PERSHAD SINGH**

13 W. R., 22

————— **s. 13 (Act X of 1859, s. 12).**

See **PARTIES—PARTIES TO SUITS—AGENTS.**

[16 W. R., 254]

————— **s. 14 (Act X of 1859, s. 13).**

See **ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT.**

See **LEASE—CONSTRUCTION.**

[1 L. R., 14 Cal., 99]

————— **s. 15 (Act X of 1859, s. 14).**

See **ENHANCEMENT OF RENT—RESISTANCE TO ENHANCEMENT.**

————— **s. 16 (Act X of 1859, s. 15).**

See **ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT AND PRESUMPTION—GENERALLY**

3 B. L. R., Ap., 40

See **ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—DEPENDENT TALUKDARS**

15 B. L. R., 120

————— **ss. 16 and 17 (Act X of 1859, ss. 15 and 16)**—*Districts to which permanent settlement has not been extended*—*Surbarakari tenures*



**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

under s. 26, Bengal Act VIII of 1869, to have his name registered in the lessor's sherista. **WATSON v. GONESH CHUNDER SAHOO** . 3 C. L. R., 240

s. 27 (Act X of 1859, s. 30).

See **BENGAL TENANCY ACT, SCH. III, ART. 3.**  
[I. L. R., 16 Calc. 741]

1. ———— *Act I of 1868.*—In a suit under Bengal Act VIII of 1869 to recover possession of land, on the allegation that the plaintiffs had acquired a right of occupancy, and had been dispossessed, the Court following the interpretation of 'year' given in Act I of 1868, —*Held* that the computation of the limitation must be according to the English calendar. **KHASRO MANDAR v. PREMIAL**

[9 B. L. R., Ap., 41: 18 W. R., 403]

2. ———— *Suit for illegal execution of rent.*—The fact that incidentally the genuineness of a kabuliata has to be determined, does not make a suit for illegal exaction of rent one not determinable under the Rent Act. **KASHEE RAM v. GUNGA PERSHAD** . 2 N. W., 304

3. ———— *Suit for excess rent collected under lease.*—A suit for excess rents collected under a lease under which the lessee was, in consideration of a certain sum of money, to pay the Government revenue, and reimburse himself from the remainder of the assets, and which provided for an annual measurement and assessment, was held not cognizable under the Rent Act as a suit for illegal excess of rent. **SHORAFUT ALI v. RAMZAN**

[W. R., 1864, Act X, 53]

**PROSUNOMOYEE DOSSEE v. SOONDER COOMAREE DEBIA** . 2 W. R., Act X, 30

**MADHUB CHUNDER BIDYABUTTON v. TARA SOONDEREE GOOPTANEE** . 2 W. R., Act X, 92

**NILMONEY SINGH DEO v. SHARODA PERSHAD MOOKERJEE** . 16 W. R., 173

4. ———— *Suit to recover excess of rent—Act X of 1859, ss. 10 and 23, cl. 2—Exaction of sum in excess of rent.*—Contemporaneously with the execution of a pottah, it was verbally agreed that the tenant should supply the zamindar with a certain quantity of rice, and that a deduction should be made from the rent reserved in respect thereof. The zamindar took proceedings against the tenant, under Regulation VIII of 1819, for the recovery of the entire amount of rent, notwithstanding the tenant had supplied the rice and was entitled to the reduction. The tenant, without contesting his liability, or demanding an investigation as to the amount due, paid the entire amount. *Held* that this was not "an exaction from the raiyat of a sum in excess of the rent specified in the pottah" within the meaning of s. 10, Act X of 1859 (Bengal Act VIII of 1869, s. 11), and that a suit was not maintainable in respect of it under the Rent Act. **CHUNDER-MONEE CHOWDRAI v. DEBENDERNAUTH ROY CHOWDRAI** . Marsh., 420: 2 Hay, 519

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

5. ———— *Suit against zamindar for excess rents collected under zur-i-peshgi lease.*—A zamindar, after he had granted a zur-i-peshgi lease, collected the rent from the raiyats. *Held* that the lessee was entitled to recover from the zamindar the amount of rents so received in excess of the rent due under the lease, and that a suit to recover such excess was properly instituted under the Rent Act. **RAMPERSHAD VOGUT v. RAMTOHUL SINGH** . Marsh., 655

6. ———— *Suit to contest notice of enhancement.*—A suit under s. 14, Act X of 1859 (s. 15, Bengal Act VIII of 1869), to contest a notice of enhancement is properly instituted under the Rent Act, though *quare* whether it is a suit for illegal exaction of rent. **SOROOP CHUNDER PAUL v. DURUP DE DOMBAL** . 1 W. R., 72

7. ———— *Suit by sub-lessee to recover from lessor malikana which he was compelled to pay.*—A suit brought by a sub-lessee to recover from his lessor the amount of malikana which he was compelled to pay, and which was properly payable by his lessor, is not one for illegal exaction of rent, and should not be brought under the Rent Act. **TARSANAH v. KADHAREY LAL** . 5 N. W., 1

8. ———— *Suit for rent illegally exacted.*—Plaintiff took from defendant a lease of a certain quantity of land at a stipulated rate. Finding, however, that the land fell short of the quantity specified in the lease, and that defendant notwithstanding realized the full rent from him, he obtained a decree for abatement under Act X of 1859. The present suit was brought for the excess rent levied from plaintiff between the date of taking possession and of the Act X decree. *Held* that, if the suit did lie at all, it would be a suit for an illegal exaction of rent, and should be brought under the Rent Act. **SURBO CHUNDER DOSS v. WOOMANUND ROY** . 11 W. R., 412

9. ———— *Suit to recover money deposited to pay rents.*—A suit to recover money deposited with the defendants to be applied in payment of rents (the deposit having been unsuccessfully pleaded in a suit for rent) should not be brought under the Rent Act. **DABEE GOLAM SINGH v. CHUNDER KANT MOOKERJEE** . 3 W. R., 109

10. ———— *Suit for money paid in excess of road cess—Limitation Act (XV of 1877), sch. II, art. 96.*—In a suit to recover money alleged to have been paid by the plaintiffs to the defendants in excess of the sum demandable by the latter from the former on account of road cess, —*Held* (reversing the decisions of the Courts below) that the suit was governed, not by the special law of limitation contained in s. 27, Bengal Act VIII of 1869, but by art. 96, sch. II of the Limitation Act, XV of 1877. **MATHURA NATH KUNDU v. STEEL**  
[I. L. R., 12 Calc., 533]

11. ———— *Suit for abatement of rent—Land, Diluviation of.*—A suit for abatement of jumma and refund of excess rents paid on

BENGAL RENT ACT, VIII OF 1869 (X  
OF 1850)—continued.

account of diluviated lands is cognizable under the Rent Act. **BARRY v. ABDOL ALI**

[W. R., 1864, Act X, 64]

12. ————— *Suit for abatement of rent.*—So is a suit for abatement of rent by a patnidar **MAN GURODINEE DOSSEE v. KHETIUR CHUNDER GHOSE** . . . 2 W. R. Act X, 47

2 W. R., Act X, 47

PROSUNOMYEE DOSSEE v. SOONDUR COOMAREE  
DEBIA . . . . . 2 W. R., Act X, 30

2 W. R., Act X, 30

13. \_\_\_\_\_ Suit for abatement of

ground of the erroneous description ought to be brought under the Rent Act. NEELMOKEY SINGH DEO v. GORDON STUART & Co.

[1 Ind. Jur., N. S., 350]

6 W. R., 153

14. \_\_\_\_\_ Suit for abatement of

[20 W. R., 347]

to a share of the rent, is not a suit for abatement under Bengal Act VIII of 1869, and therefore not subject to the rule of limitation prescribed by a 27 of that Act. CHAND MONI DAS v. LOKENATH CHATTERJI. 8 C. L. R. 494

U. S. C. L. R. 48-2

18. Ejectment, Suit for.—A suit by a proprietor to recover his possession of land against a tenant who has sold his rights and interests to a third party may be brought under the Rent Act. *KEDAR MONKE DOSSEN v. CHUNDER KOOBAR HOOR* 3 W. R. Act X. 75

3 W. R. Act X, 75

**BENGAL RENT ACT, VIII OF 1869 (X  
OF 1859)—continued.**

18. ——— Suit for ejectment.—  
Suit for ejectment cannot be brought under the  
Rent Act in the following cases:—

Suit for dispossession between raiyats, RADHANATH  
MOZOOMDAR v. PURNKHIT BODHIK

[W. R., 1804, Act X, 60]

KALLY DOSS BAKERIE & BOMMAIAH DOSS

U. S. DEPARTMENT OF COMMERCE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C.

ОДНОЕ СПЕЦИАЛЬНОЕ СЪЕДИНЕНИЕ НАЗЫВАЕТСЯ

DATE SIGNED  
J W. R. 101

MODHOO SOODEN CHICKERBUTTY v. NUTUB  
BAWUL . . . . . I W. R. 199

1 W. R. 108

BRUGGABUTTY CHURN MOOKERJEE & HUSBANDS  
HUSBANDS MOOKERJEE 3 W. R. Act X. 55

2 W. R. Act X. 55

TEERLUCK CHUNDER OSWAL & GOURCHUNDER  
SHAH 3 W. R. Act X. 100

W. R. Act X, 100

10. ————— Suit for ejectment of a raiyat who, the plaintiff alleges, possesses no right of occupancy. *RUPNATH DAS v. HIRSWANT SINGH*

14 N. W. 69

20. ————— Suit where the tenant is  
a mere tenant-at-will. GOOR BUNSH & CHOONSOO  
LALL . . . . . 1 Agra. Rev. 70

1 Agta. Rev., 70

**RAJARAM ROY**

[3 B. L. R., Ap., 28: 11 W. R., 37]

22. *Suit for possession of land.*—Nor should a suit by a landlord to recover possession of land from a raiyat who had ceased to pay rents, but whom the landlord had omitted to sue when he first ceased payment, and set up an adverse title. **SHRI PERSHAD CHUCKERBUTTY v. MUDEN MOHLY CHUCKERBUTTY**

[W. R. 1884. Act X, 80]

See contra, *UMA KISHOREN DAS v. HURO GOBIND SHARMA*, 5 W. R. Act X, 95

5 W. R. Act X, 95

Д У. В. 232

24. ——— Suit for possession against alleged trespasser who sets up a permanent rajvill tenure.—Nor is a suit which is brought to recover possession of lands with mere profits from one who is alleged to be in possession as a trespasser, notwithstanding the defence set up is that in respect of part of the land the defendant has a permanent rajvill tenure. **HARI NATH DAS v. ASHUT ALI**

[G. B. L. R. Ad. 118:13 W. R. 171]

being brought under the Rent Act. MATUNGINEE  
Dosses v. HARADHNY Doss 5 W. R. Act X. 60

§ 5 W. R., Act X, 60

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

**25.** ———— *Suit for possession against trespasser.*—Where plaintiff alleged that defendant was a trespasser, and on the ground of that trespass sued for possession, the suit should not be brought under the Rent Act. **NOMIN CHUNDER ROY CHOWDHURY v. PHOWANER PERSHAD DOSS**

[W. R., 1884, Act X, 52]

**GOMIND CHUNDER MOZOOMDAR v. BISAMPHERSEE DOSSER** . . . . . 3 W. R., 5

**BANER MADHUS BANERJEE v. JOY KISHEN MOOKERJEE** . . . . . 4 W. R., Act X, 10

**26.** ———— *Suit to eject raiyat.*—A suit by a zamindar to eject a raiyat who holds on after the period of his lease is not cognizable under the Rent Act. **SADAT ALI v. SADATFARISSA**

[3 B. L. R., Ap., 101; 12 W. R., 37]

**27.** ———— *Suit against transferee of tenure.*—Nor is a suit for possession against an occupant by transfer, whom the landlord does not recognize as his tenant. **TARAMONEE DOSSER v. BIRHANSUR MOZOOMDAR** . . . . . 1 W. R., 86

**28.** ———— *Suit for ejectment and possession for forfeiture of lease.*—Nor a suit by a proprietor for possession and ejectment of the lessee, on the allegation that, by cancellation of his lease, the lessee, after having resigned his lease, has forcibly taken possession of the demised property. **KAFARMOOLLAH KHAN v. FUTTEH ALI**

[1 Agra, Rev., 28]

**29.** ———— *Suit for ejectment for forfeiture by transfer of tenure.*—Unless it be proved that by express contract or local custom an alienation by the tenant by way of sale or mortgage renders the holding liable to be forfeited, a suit for ejectment on such ground should not be brought under the Rent Act, but the remedy of the zamindar is by suit to have the transaction set aside. **RAMDIAL v. JANKEY DOSSY** . . . . . 3 Agra, 274

**NUTHOO v. DAN SUHAI** . . . . . 2 Agra, 279

**IMAM BUKSH v. MOON ALI** . . . . . 3 Agra, Rev., 8

**30.** ———— *Suit for ejectment for forfeiture by transfer of tenure.*—A suit for ejectment against tenants who are alleged to have illegally alienated their tenant rights cannot be brought under the Rent Act against the vendor because he is alleged to be out of possession, nor against the vendee because he is not the plaintiff's tenant. **CHUMMAN SUHAI v. ISHREE PERSHAD NARAIN SINGH** . . . . . 4 N. W., 175

**31.** ———— *Suit for ejectment for nonpayment of arrears of rent.*—Where a lessor sued to eject the lessees for non-payment of arrears of rent, and to the amount claimed joined a claim for arrears due at the commencement of the leases, the latter claim being based on a stipulation contained in the leases that the lessees would pay such arrears, or on failure would pay the expenses of the servants of the lessors who might be sent to realize such arrears, —Held that the claim was not one cognizable under the Rent Act. **GULABI SINGH v. RAI NORMAL CHUND** . . . . . 6 N. W., 342

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

**32.** ———— *Suit for ejectment—Act X of 1859, s. 30.*—In 1857 the plaintiff gave a lease of a garden to defendant, who agreed to plant, within five years from the date thereof, 2,000 betel-nut trees. The defendant failed to do so. In 1867 the plaintiff brought the present suit for ejectment on account of the breach of the contract entered into by the defendant. Held that by s. 30, Act X of 1859, the suit was barred by limitation. **KALI KAMAL MAZUMDAR v. SHIH SUHAI SUKUL**

[3 B. L. R., Ap., 47; 11 W. R., 452]

**33.** ———— *Suit to eject for breach of contract—Act X of 1859, s. 30.*—Held that a suit to eject a cultivator for a breach of contract by planting a bagh must be brought within one year, under s. 30 of Act X of 1859, from the date of the first accruing of the cause of action. **RUMTMOOLLAH v. TUFFEZZOOL HOOSSEIN** 1 Agra, Rev., 67

**34.** ———— *Breach of contract in planting trees on land let for agricultural purposes.*—S. 27 of Bengal Act VIII of 1869 only relates to such suits as could be brought either by the landlord or tenant under Act X of 1859, and will not apply to an alternative claim, put forward in a suit for ejectment, to compel the defendant to remove trees from certain lands leased to him for agricultural purposes. Art. 120 of sch. II of Act XV of 1877 is applicable to such claims. **GUNESH DOSS v. GONDOUN KOONMI**

[1 L. R., 9 Cal., 147; 12 C. L. R., 418]

**35.** ———— *Suit to eject raiyat for making a well—Act X of 1859, s. 30.*—Held that the limitation of one year under s. 30, Act X of 1859, in a suit by a landlord to eject a cultivator for sinking a well, should be computed from the date when the building of the well has assumed such a form that there can be no doubt of the purpose for which it was intended. **HEERA KOONER v. NOOR ALI** . . . . . 3 Agra, Rev., 1

**36.** ———— *Suit for possession after refusal to give possession under award in arbitration.*—Where the parties agree to refer the question of title to arbitration, and the award being adverse to the defendant he refuses to give up possession, a new cause of action arises, and one of a different character from any mentioned in Bengal Act VIII of 1859, s. 27. **RAJ NARAIN ROY v. MONHOO SOODUN MOOKERJEE** . . . . . 20 W. R., 19

**37.** ———— *Suit to cancel lease and for arrears of rent.*—A suit to cancel a lease for breach of the conditions and for arrears of rent should be brought under the Rent Act. **BEHAREE COOMAREE v. SOODRUN SINGH** . . . . . 2 W. R., Act X, 12

**RAMCHUNDER DUTT v. DIN DAYAL PORAMNICK** . . . . . 2 W. R., Act X, 16

**38.** ———— *Suit to set aside lease—Act X of 1859, s. 23, cl. 5.*—A suit to set aside a lease as null and void is not cognizable under the Rent Act, even though plaintiff mentions that a balance of rent is due by defendant. **TAJEN MAHOMED PURDHAN v. JOGENDRO DEB ROYKUT**

[8 W. R., 368]

# BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

39. ———— *Suit to cancel zur-i-pahgi lease.*—A suit to cancel a zur-i-pahgi, by which the lessee was to receive the usufruct as interest for his advance, and to repay the principal by the rent reserved, is of the nature of an usufructuary mortgage, and as such cannot be brought under the Rent Act. **BUTTON SINGH v. GREEDHARE LALL**

[8 W. R., 310

**MAHOMED ALI v. BATOSH DAO NABAIN SINGH**  
[1 W. R., 52

40. ———— *Suit to get release from*

41. ———— *Suit where lease is alleged to be forged.*—Nor where the lease is said to be a forgery. **MAHMOOD LUSKUR v. FAKAR KHAN**

[Marsh, 498

42. ———— *Suit for possession after*

possessory actions against the person entitled to receive the rent, and not to suits in which the plaintiff acts out his title and seeks to have his right declared and possession given him in pursuance of that title. **GOOROODOS ROY v. RAMNARAIN MITTAR.**  
**GOOROODOS ROY v. BISHTOO CHURN BHUTTA.**  
**CHARJEN** R. L. R., Sup. Vol., 628

[3 Ind. Jur., N. S., 113; 7 W. R., 186

**SERAF MUNDUL v. BISHTOO CHUNDER ROY**  
[7 W. R., 459

**GUNGA GOBIND ROY v. KALA CHAND SERRA**  
**GANGOOOLY** 20 W. R., 455

**LALLJEN SAHOO v. BHUGWAN DOSS**  
[8 W. R., 337

*Contra*, **GOOROO CHURN COOMAR v. KHETTER**  
**MORUN ROY** W. R., 1864, Act X, 79

and in **PEDDOLAH DHO v. OROORAM SINGH**  
[W. R., 1864, Act X, 30

it was held that a suit to try whether the tenant had been rightly evicted was properly tried under the Rent Act.

43. ———— *S. 23 of 1859.*—  
a Full  
majority  
R., 156,  
of 1859.

s. 23, it was held that the same words in Bengal Act VIII of 1869, s. 27, described only possessory actions against persons entitled to receive rent, and not suits setting out title, and seeking to have right declared and possession given in pursuance thereof; and that consequently the limitation prescribed by s. 27 applied only to simple cases of

# BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

possessory action. **NISTARINER v. KALEE PERSHAD DOSS CHOWDHRY** 21 W. R., 53

**SURJOO PERSHAD v. KASHER BANUF**  
[21 W. R., 121

**BROJO KISHOR BAKHIT v. BASHI MUNDUL**  
[21 W. R., 251,

**ASMAN SINGH v. ABZEDODDEEN**  
[23 W. R., 460

**RAMJOY MUNDUL v. RAM SUNDER MUNDUL**  
[3 C. L. R., 4

44. ———— *Suit for possession.*

tion under s. 27 of Bengal Act VIII of 1869. That section only applies to cases where the relation of landlord and tenant exists, and cannot be pleaded in bar by a defendant who does not admit that such relation has existed. **NIRMADUR SHANHA v. SHINIBASH KUMOKAR**

[L. L. R., 7 Calc., 442; 9 C. L. R., 137

45. ———— *Suit for possession after ejectment.*—When the dispute between the parties was whether the plaintiffs, who, by themselves and their ancestors, had long held the land in dispute, could be lawfully dispossessed by the defendant, who claimed it under a pottah recently granted by the zamindar, *Held* that the matter was not one for adjudication under the Rent Act, not being a question between landlord and tenant. **APA KHAN v. KISHEN MOONJOHER DOSSER**

[W. R., 1864, Act X, 17

**MORFIZEL HOSSEIN v. TUSOODUR ALI KHAN**  
[W. R., 1864, Act X, 60

**UPSTROODHEN v. AKBER ALI**  
[3 W. R., Act X, 77

46. ———— *Suit by purchaser against raiyats and zamindar.*—A suit by the purchaser of a mokufari tenure against the raiyats and the zamindar for illegal disposssession and for establishing permanent title to the property should not be brought under the Rent Act. **NOBBO DOORJA DEBER v. KISTABERINER DOSSER** 1 W. R., 49

**KANATE MOLLAN v. DEBNATH ROY**  
[3 W. R., Act X, 161

**OOMADREN BHUT v. MAHOMED LUTEEF**  
[1 W. R., 229

**GOROOL PERSHAD v. HAJENDUR KISHOR SINGH** W. R., 1864, Act X, 4

47. ———— *Suit for confirmation of title and possession.*—A suit for confirmation of the plaintiff's title and possession as shikim talukdar under the defendant is not cognizable under the

# BENGAL RENT ACT, VIII OF 1880 (X OF 1859)—continued.

Rent Act. BROJO SOONDUR MITTER v. RAM CHANDER ROY . . . 2 W. R., Act X, 40

48. ——— Suit for confirmation of possession by raiyat.—Suits by raiyats for confirmation of possession in a tenure which is threatened are not cognizable under the Rent Act. RITROO RAY RAY v. JUDGESHUR RAY . . . 1 N. W., Part 2, p. 40: Ed. 1873, 98

49. ——— Suit by transferee for declaration of title as tenant.—A suit by the purchaser of a permanent transferable tenure for a declaration of his title as tenant to possession is not cognizable under the Act. NOBEN KISHEN MOOKERJEE v. SHUB PERSHAD PATTECK . . . 8 W. R., 96

50. ——— Suit where purchaser is opposed.—Suit against zamindar by purchaser of transferable tenure.—A case where the zamindar opposes the entry of the purchaser of a transferable raiyat's tenure would come under the Rent Act. DEGUMDUR RAY v. SHAMSOONDUR DEBBA . . . [W. R., 1864, Act X, 8]

51. ——— Suit for land.—Suit for declaration of right to share in produce of trees.—Act X of 1859, s. 23, cl. 6.—A suit for the declaration of the right of the plaintiff to a share in the produce of certain trees, on the allegation that these trees were planted by a person whose rights had passed to the plaintiff by a bill of sale, is not cognizable under the Rent Act. RAMZAN ALI v. ANWAR ALI . . . [2 B. L. R., Ap., 19: 11 W. R., 50]

52. ——— Suit to establish right to use and cut trees.—Held that a suit by a cultivator to establish his right to cut and make use of the trees situate on the borders of his holding was not a suit in the nature triable under the Rent Act. PUCHOOA MAHOMED TALA ASSUD-ODDAH . . . 2 Agra, 21

53. ——— Suit for maintaining possession.—There must have been ejection, therefore a suit for maintenance of possession in the holdings from which the plaintiff was not actually ejected does not come within the Act. DOWLAT RAI v. GY5 MISSEH . . . 2 Agra, 9

54. ——— Suit by holder of lease who has never been in possession.—Nor does a case where a plaintiff sued to recover possession of land on which he had never been in possession, but which he claimed under a pottah alleged to be valid, on the allegation that he had been illegally ejected. JOD01 NATH GHOSE v. SOOKMOYE DOSSEE . . . 1 W. R., 21

55. ——— Suit by purchaser who has never obtained possession.—So with a purchaser of an under-tenure who has never obtained any substantive possession. ANUND NATH ROY v. J40 MEJOY BISWAS . . . 8 W. R., 2

56. ——— Ejection of cultivators.—Dispossession of farmer.—The disturbing or dispossessing the cultivators is tantamount to ejecting them disturbing in the receipt of rent the farmer to whom

# BENGAL RENT ACT, VIII OF 1880 (X OF 1859)—continued.

they pay rent, for which a suit will lie under the Rent Act. LUNGT MAITON v. RAMESHUR ROY . . . [W. R., 1864, Act X, 54]

57. ——— Mode of dispossession.—It matters not how the ejection is brought about, whether under colour of award of a Criminal Court or otherwise; so long as it is between landlord and tenant, the suit to recover possession can be brought under the Rent Act. MATHOORANATH KOOND v. SAMEERUDEE MOLLAH . . . 1 W. R., 42

UMMET LALL BANERJEE v. BHOOBEN MOHINEE DOSSEE . . . 7 W. R., 24

58. ——— Dispossession irregularly made.—Act X of 1859, s. 23, cl. 6.—Where a zamindar pursues his right to eject in a manner which is not legal, possession will be restored, although, if the zamindar had proceeded legally, he could have ejected his raiyat; such cases are contemplated by s. 23, cl. 6, of Act X of 1859, and Bengal Act VIII of 1859, s. 27. GUNGA GOBIND ROY v. KALA CHAND SURMA GANGOOLY . . . 20 W. R., 455

59. ——— Suit to set aside illegal ejection.—Cause of action.—Where a tenant was restored to his holding by a decree to set aside the auction sale of his right.—Held that the cause of action for the tenant to sue under cl. 6, s. 23, Act X of 1859, arose on the zamindar's refusal to admit him into possession of his holding; and a suit brought within one year from the date of such refusal, which was practically an illegal ejection by the zamindar, would not be barred under s. 30 of that enactment. LUCHMEN SINGH v. MAHOMED HOSSEIN . . . [1 Agra, Rev., 42]

60. ——— Suit by tenant.—Suit by shikmi talukdar for possession.—A shikmi talukdar may sue under the Rent Act to recover possession. RAJ CHUNDER SURMA GOSSAIN v. ALI NEWAZ KHAN . . . W. R., 1864, Act X, 133

Provided he sue the zamindar, and not only in respect to a portion of his tenure. HUR PERSHAD v. MATA BUKSH . . . 3 Agra, 225

61. ——— Suit by lakhirajdar.—A suit by a lakhirajdar does not come within the Act. GOOROO PERSHAD ROY v. NIMAYE CHAND PULSHANI . . . 3 W. R., Act X, 5

62. ——— Suit by patnidar.—But a suit by a patnidar against the zamindar may be brought under it. THAKOOR DOSS MOZOOMDAR v. RADHA SOONDERY DOSSEE . . . 2 W. R., Act X, 3

63. ——— Suit by dar-maurasidar.—Where a zamindar sold a maurasi tenure for arrears of rent, and purchased it himself, and then evicted the dar-maurasidar, and made a fresh settlement for the tenure with a third party.—Held that a suit for ejectment by the dar-maurasidar against the zamindar was cognizable under the Rent Act. WOOMA SUNKORY v. ALLY ASHRUFF . . . [W. R., 1864, Act X, 96]

64. ——— Suit by tenant with right of occupancy.—So is a suit to recover possession by a

# BENGAL RENT ACT, VIII OF 1869 (X OF 1869)—continued.

tenant with a right of occupancy, illegally ejected by the zamindar, with or without the assistance of the Collector. **RAM BHUTY BHUKT v. KETAYE RAM CHOWDHRY** . 6 W. R., Act X, 21

**TABAKATH BHUTTACHARJEE v. OROH CHURN HALDAR** . 7 W. R., 471

[1 Agra, 212]

never having been in possession, he claims as heir by Hindu law to succeed to the occupancy right, he should not. **PRM KOOR v. UPPER BALEE SINGH**

[2 N. W., 88]

87. ——— *Suit by zamindar to establish his right against masfeedar and for possession—Act X of 1859, s. 23, cl. 6.*—Held that the Rent Act, which refers to suits to recover occupancy in any land, farm, or tenure from which a raiyat, farmer, or tenant has been illegally ejected by a person entitled to receive the rent, does not apply to a suit brought by a zamindar against a masfeedar to establish his right as such, and to recover possession and malikana allowance secured to him at the time of settlement. **RAJHA MOONKEE v. KISHNA** . 3 Agra, Pt. II, 188

68. ——— *Ejection—Limita-*

one year from the ejection. **GOLAROLE v. KOOTOSBOOLLAH SIRCAR** . 1 L. R., 4 Calo., 527

69. ——— *Suit to recover possession after ejection.*—Where a raiyat, having a mere right of occupancy in certain land, has been wrongfully dispossessed by the zamindar, his suit to

[1 L. R., 5 Calo., 248; 4 C. L. R., 443]

70. ——— *Possession under surety mortgage—Landlord and tenant—Limitation.*—Where the plaintiff claimed a right to enjoy possession of certain land for a term of years on the footing of a mortgage transaction (suretyship), it having been a part of his contract with

# BENGAL RENT ACT, VIII OF 1869 (X OF 1869)—continued.

the mortgagor-defendants that he should repay himself the money advanced by taking the rent reserved on the surety mortgage during its pendency.—Held that the relation between the parties was different from that of landlord and tenant contemplated in Bengal Act VIII of 1869, s. 27, and that the suit could not be governed by the limitation prescribed in that law. **PABLO DUTT ROY v. FEROO ROY**

[19 W. R., 160]

ejected by the person entitled to receive the rent of the land or tenure. **RAJ COOMAR SINGH v. RAJ-BUNSEE KOOR** . W. R., 1864, Act X, 108

**LUCKEE PREHA DABRA v. JUGGODENBA DABRA** . [3 W. R., Act X, 8]

**HOSSEINER KHANTUM v. RUBIA KHANTUM** . [5 W. R., Act X, 14]

**DEBBANI DOSSI v. SHITAL KAREGGUT. NILTY. DEB SEN v. HARANUND SOOREE**

[W. R., 1864, Act X, 10]

**GOBIND MONI v. RAJENDRO KISHORE CHOWDHRY** . 15 W. R., 18

72. ——— *Suit against jadaran—Act X of 1859, s. 30*—A suit on the ground of illegal ejection can be brought where the defendant is the jadaran entitled to the rents. **GOBIND MONI v. RAJENDRO KISHORE CHOWDHRY** . 15 W. R., 18

See **BAJOJO MONUM DE SIRCAR v. DREGU**

[7 C. L. R., 141]

— a case under s. 27, Bengal Act VIII of 1869, where it was held that "person entitled to receive the rent" means "all the persons" if there are more than one; and when the suit was brought against one jadaran only out of several, it was held that the section would not apply.

73. ——— *Ejection—Limita-*

towards ejecting the tenants, either personally or by his servants, or by joining with those who actually ejected them. **JOKISSAY MOOKERJEE v. MRDOOSODDY KULLIAR** . W. R., 1861, Act X, 90

**WISE v. HURO CHUNDER SHAHA** . [3 W. R., Act X, 90]

**AMJAD ALI KHAN v. GHOLAM HYDER KHAN** . [1 W. R., 313]

**MRDOOSODDY CHUCKERBUTTY v. NUTER BAWAL** . [1 W. R., 1861]

wards ignore, he is not in a position to set up a special plea of limitation under the Rent Law

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

(Bengal Act VIII of 1869, s. 27). KALIDA PER-  
SHAD DUTT v. RAM HARI CHUCKERBUTTY  
[I. L. R., 5 Calc., 317]

**75.** — *Ejectment not by zamindar.*—A suit by plaintiff complaining of having been ejected by the defendants, who were not the zamindars of the land in dispute, or the persons entitled to collect rent from the plaintiff, cannot be entertained under the Rent Act. The mere allegation of the defendants that they were the zamindars, unless admitted to be true by the plaintiff, will not give jurisdiction under that Act. KISHUN MOHUN SINGH v. TOOLSEE SINGH  
[2 N. W., 102]

RAM DEHUL PANDEY v. KASHEE RAYUT  
[14 W. R., 232]

HURISH CHUNDER ROY v. SHONASHEE DALAL  
[14 W. R., 466]

**76.** — *Suit by raiyat for possession against transferees of zamindari.*—The ownership of a zamindari having changed hands under a decree, a raiyat with a right of occupancy brought a suit on the ground of illegal dispossession by the new zamindars. Held that the suit was maintainable under the Rent Act. SHEO PROKASH MISSEK v. FUKER ROY  
[13 W. R., 20]

**77.** — *Suit after ejectment by purchaser from Government.*—The Government purchased the zamindari rights in a pergunnah, under Regulation XXI of 1822, at a sale for arrears of Government revenue, and re-settled one of the talukhs in the pergunnah, which talukhs had been created subsequently to the Decennial Settlement, with the plaintiffs as talukhdars. Subsequently, and after the expiration of the terms for which they had re-settled the plaintiffs, the Government sold their zamindari rights to the defendant, who ejected the plaintiffs. In a suit by the plaintiffs for possession, Held that it was properly brought under the Rent Act. ASSANOULLAH v. OBHOY CHURN ROY  
[13 W. R., P. C., 24: 13 Moore's I. A., 317]

**78.** — *Suit against other than person entitled to rent.*—If a tenant in a suit to recover possession of land from which he has been ejected finds it necessary to implead a person other than the person entitled to receive the rent of the land, he should not bring his suit under the Rent Act. RITTOO RAJ RAE v. JUGGESHUR RAE  
[1 N. W., Pt. II, p. 40: Ed. 1873, 98]

NURFER MYTEE v. MONOHUR SIRDAR  
[13 W. R., 334]

AMIRTA v. NUND KISHORE  
BUSHEEROODDEEN v. DAL CHUND  
[3 Agra, 238]

As for instance, a person alleged to be in collusion with the zamindar to eject. SOWANTEE v. SEWA RAM  
[2 N. W., 35]

MUGNEE ROY v. LALL KHOONEE LAL  
[6 W. R., Act X, 19]

MADHUB CHUNDER DEY v. RAM DYAL GUHO  
[8 W. R., 303]

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

MAHOMED JAKEE v. GOPEE ROY . 10 W. R., 5  
SREEKANT ROY CHOWDHRY v. KITABOODDEEN  
[10 W. R., 49]

SIRDAR

**79.** — *Suit by shikmi raiyat against tenants.*—A suit by a shikmi cultivator, or under-tenant, to recover possession of land from which he has been illegally ejected by the defendants, themselves only tenants, and not zamindars, is cognizable under the Act. JAY SINGH v. MOORLEE  
[2 N. W., 98: Agra, F. B., Ed. 1874, 194]

**80.** — *Suit for possession of land assigned as security for a loan—Act X of 1859, s. 23, cl. 6, and s. 25.*—Neither cl. 6, s. 23, nor s. 25 of the Rent Act, applies to a suit for recovery of possession on expiry of assignment of land assigned over for a term of years as security for a loan and as the means for its repayment. KHETTUR MOHUN PAUL v. RAM COOMAR PAUL  
[5 W. R., Act X, 2]

**81.** — *Suit against person entitled to rent for wrongful ejectment—Act X of 1859, s. 23, cl. 6.*—A, after the grant of a pottah of the same land to B, fraudulently granted a pottah of the same land to his own daughter, and by means thereof she intervened in a suit by B against A raiyat for rent, and prevented B from recovering in the suit. Held that this was evidence to support a suit by B against A under Act X of 1859, s. 23, cl. 6, for illegally ejecting him from the tenure, and the pottah being a mere device. Notwithstanding the daughter was joined as a defendant in the suit, the suit could be entertained under the Rent Act. HUREE DYAL CHUKKE v. BIRJESSUREE DOSSEE . Marsh., 604

**82.** — *Question of title—Ejectment—Limitation.*—S. 27 of Bengal Act VIII of 1869 applies only to such suits for possession as the Court is asked to decide irrespectively of any title, but simply on the ground that the plaintiffs have been ousted otherwise than by legal means. FORBES v. SREE LAL JHA . I. L. R., 8 Calc., 365

**83.** — *Suit for possession—Title—Limitation.*—The limitation provisions of s. 27, Bengal Act VIII of 1869, have no application to a case in which the plaintiff relies upon his title, and seeks to recover possession upon the strength of that title, and in which the defendant denies that title. Gooroo Dass Roy v. Ramnarain Mitter, B. L. R., Sup. Vol., 628: 7 W. R., 186, Nistarinee v. Kali Pershad Dass Chowdhry, 21 W. R., 53, and Nimadhub Shah v. Srinibash Kurmohar, I. L. R., 7 Calc., 442, referred to. JOYUNTI DAS v. MAHOMED ALLY KHAN  
[I. L. R., 9 Calc., 423]

**84.** — *Landlord and tenant—Possession, Suit for, on dispossession by landlord—Title, Claim for declaration of.*—Where a suit by a tenant against his landlord is both in form and substance one to recover possession on the ground of illegal dispossession by the landlord, and no question of the plaintiff's title is raised, the insertion in the plaint of a claim for declaration of

# **BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

the plaintiff's title is not sufficient to prevent the application of the limitation prescribed by s. 27 of Bengal Act VIII of 1869. *Dhurgobutt Chowdhra v. Chunaroo Mondul*, 25 W. R., 217, distinguished. *IMAM BUKSH MONDUL v. MOMIN MONDUL*

[I. L. R., 9 Calc., 280]

85. ——— Suit for possession on

[25 W. R., 217]

fits, brought against a shareholder of the talukh in which the lands are situated, a former talukdar, and certain raiyats who paid rent to the first defendant, is not a suit to recover the occupancy of the land from which the plaintiff has been illegally ejected by the person entitled to receive the rent, within the meaning of s. 27 of Bengal Act VIII of 1869, and is not governed by the limitation provided by that section. *ASHADDOOLAH v. RAMDHONY BHUTTA-CHARGE* [I. L. R., 1 Calc., 325]

87. ——— Question of title—Limitation.—In a suit to recover possession of certain

one year from the date of the dispossession. *Held* that the suit involved a question of title, and that the limitation of a year prescribed by s. 27 of the Rent Act, therefore, did not apply. *TAMIZUNNIS MUMSIT v. HIRONATH PAL* [9 C. L. R., 253]

88. ——— Suit for possession—Question of title—Limitation.—Where the plaintiff alleged that he was the holder of a jete under the defendant by whom he had been forcibly dispossessed, and sued for declaration of his title and for restoration to possession; and the defendant did not question the plaintiff's tenure, nor his original title, but denied the forcible dispossession, and alleged that the

# **BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

plaintiff had relinquished the land.—*Held* that the suit was not one to try a question of title, but was governed by the one year's period of limitation prescribed by s. 27, Bengal Act VIII of 1869. *Jonarjun Acharjee v. Haradun Acharjee*, B. L. R., Sup. Vol., 1020 9 W. R., 513, and *Imam Buksh Mondul v. Momin Mondul*, I. L. R., 9 Calc., 280, approved. *SRINATH BHATTACHARYA v. RAM RATAN DE* [I. L. R., 12 Calc., 600]

89. ——— Limitation—Suit for possession—Question of title.—Where the plaintiff alleged that he was the holder of a jete under

the date of the cause of action. *Srinath Bhattachary v. Ram Ratan De*, I. L. R., 12 Cal., 606, distinguished. *BARABUT ALI v. ALTAF HOSSAIN*

[I. L. R., 14 Calc., 624]

90. ——— Wrongful distraint—Suit for damages—Act X of 1859, s. 143.—A suit for recovery of damages, by reason of wrongful distraint, is cognizable under s. 143 of the Rent Act, X of 1859, s. 99 (Bengal Act VIII of 1869). *RAM CHANDRA CHOWDURY v. SUBAL PATRO* [3 B. L. R., Ap., 74: 11 W. R., 639]

*SHRIMBHOONATH BANERJEE v. TARIKER CHURN BOSE* [6 W. R., Act X, 33]

91. ——— Wrongful distraint—Act X of 1859, ss. 139, 143, and 323.—A distrainted the paddy of B, alleging that it belonged to C, who was A's raiyat. It was found that there was no relation of landlord and tenant between A and B, and that C was acting in collusion with A. B attempted, under s. 139, Act X of 1859, to get possession of the distrainted paddy from D and E, to whose custody it had been made over under s. 118 of Act X of 1859 against suit was Act X.

was cognizable under the Rent Act. All suits which are specially provided for by Act X of 1859, and which arise out of the exercise of the power of distraint, or out of any acts done under colour of the exercise of the said power, are within the provisions of s. 23 of that Act. *JOY LALL SRIKISH v. BROJOWATH PAUL CHOWDHURY* [9 W. R., 162]

92. ——— Wrongful distraint—Suit for damages by under-tenant.—A suit for damages for an illegal distraint upon an under-tenant who has paid his rent, for rent due from his lessor to the superior landlord, lies under the Rent Act. *GURUALLY v. NENDAYA* [Marsh., 264: 2 Har., 225]

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## BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

93. *Wrongful distraint—Suit to set aside collusive decree for rent.*—Question of title.—A suit by A to set aside an alleged collusive decree for rent obtained by B against C, under which decree A was ejected from his lands and his crops seized, is distinguishable from a case of illegal distraint by a landlord. Such a suit raises a question of title, and should not be brought under the Rent Act. *GOOPENATH DUTT v. PREONATH SIRCAR* [8 W. R., Act X, 7]

94. *Wrongful distraint—Suit for property illegally distrained.*—A suit by a raiyat for the recovery of the value of his property illegally distrained as the property of another raiyat is one which should be brought under the rent Act. *RAM BHISTO ACHARJEE v. CHEYT LALL TEWARY* [15 W. R., 451]

95. *Wrongful distraint—Illegal distraint of crops.*—Suit for damages.—Certain sub-lessees sued the zamindar and others employed by him for the value of crops seized and carried away under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. *Held* the suit was properly brought under the Rent Act. *RADHA MOHAN NASKAR v. JADU NATH DAS* [3 B. L. R., A. C., 261; 12 W. R., 68]

96. *Wrongful distraint—Misappropriation of distrained crops.*—The Rent Act makes no provision for a case where, before the sale of the distrained property, because the defaulter paid the debt demanded by the landlord, the crops distrained and alleged by the plaintiff to be his were made over to the raiyat, who, the plaintiff stated, had misappropriated them. In such a case a suit for damages cannot be brought under that Act. *GURBUNGOOLAH v. SYEFOOLLAH* [7 W. R., 41]

1. *s. 28 (Act X of 1859, s. 31) —Suit to determine rate of rent.*—Offer to give pottah.—Conditional offer.—A suit under s. 28, Bengal Act VIII of 1869, asking the Court to determine the rate of rent which plaintiff is entitled to receive, and offering to execute a pottah at that rate, must be accompanied by an unconditional offer by the plaintiff to execute a pottah at the rate directed by the Court. The omission of such an offer is fatal to the claim, and plaintiff has no right to make it a condition to the execution of such a pottah that all previous arrears should be paid at the rates to be so fixed. *REIFY v. JUDOO NATH GHUTTUCK* [25 W. R., 175]

2. *Suit by co-parcener to assess sir land.*—Act X of 1859, s. 23, cl. 1.—*Held* that a suit by plaintiff, a co-parcener in the land in question, against another co-parcener holding as his sir land, to assess the same, was not one cognizable under the Rent Act. *JODHA SINGH v. OMAD SINGH* [2 Agra, Rev., 5]

3. *Resumption, Effect of—Creation of tenancy.*—In a suit in a Civil Court a decree was obtained in 1863, declaring the land of

## BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

the defendant "to be resumed and subject to assessment of revenue, the amount to be fixed by the Collector,"—*Held* that the decree was conclusive; that the lands were not considered mal at the time of the settlement in 1790; and, further, that their resumption in 1863 did not create a tenancy, and that therefore s. 28 of Act VIII of 1869 did not apply. *FORBES v. BRUJLOO ROY* [6 C. L. R., 301]

s. 29 (Act X of 1859, s. 32).  
See CASES UNDER LIMITATION ACT, 1877, ART. 110 (1859, s. 1, CL. 8).

1. *Suit for rent.*—The limitation in a suit for arrears of rent brought under the Rent Act, X of 1859, was that provided by s. 32 of that Act, and not that provided by Act XIV of 1859. *UNNODA PERSAUD MOOKERJEE v. KRISTO COOMAR MOITRO* [15 B. L. R., P. C., 60 note; 19 W. R., 5]

*POULSON v. MODHUSUDAN PAL CHOWDERY* [B. L. R., Sup. Vol., 101; 2 W. R., Act X, 21]

2. *Special period of limitation.*—The period of limitation specified in Act X of 1859 has reference exclusively to suits brought under that Act. *PROSONNO COOMAR PAL CHOWDERY v. MUDDUN MOHUN PAL CHOWDERY* [11 B. L. R., Ap., 31 note; 13 W. R., 390]

*SURESSUR DEY v. MAHOMED SIRCAR* [7 W. R., 243]

3. *Computation of time according to English calendar.*—*Held*, in accordance with former decisions of the High Court, that, for the purpose of computing the period of limitation prescribed by s. 29 of Bengal Act VIII of 1869, the calculation is to be made according to the English calendar. *MAHOMED ELAHEE BUKSH v. BROJO-KISHORE SEN* [I. L. R., 4 Calc., 497; 3 C. L. R., 398]

And "month" means a calendar month. *LUCH-MEERTT SINGH BAHADOOR v. RAJCOOMAREE DABEA* [23 W. R., 275]

*KASHEE PERSHAD SEN NEOGEE v. JAMIR PAIKAR SARODA PERSHAD GANGULI v. PATIALI MAHANTY* [I. L. R., 10 Calc., 913]

4. *Act X of 1859, s. 32—Construction of "after passing of the Act."*—The words in Act X of 1859, s. 32, limiting suits for arrears of rent due at the passing of the Act to a period of "three years after the passing of the Act," refer to the date when the Act passed, and not to the subsequent date fixed for its coming into operation. *PRARY MOHUN DOSS v. MCARTHUR MARSH*, 637 [W. R., 1864, Act X, 5]

*MORAN v. BINDUBASINEE DEBIA* [W. R., 1864, Act X, 19]

*WATSON v. RUTNOKANT ROY* [W. R., 1864, Act X, 19]

5. *Act X of 1859, s. 32—Suit brought for period preceding Act.*—When a suit

# BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

was brought within three years from the passing of Act X of 1859, for arrears of rent of 1266 to 1269, and three months of 1269.—*Held* that the suit was not barred by limitation under s. 32, and that the claim for the arrears of 1266, which were not due till 1267, was in time, though that was a period preceding the passing of the Act. **MASHNUTREE DOSSEE v. RAM SAGUR SINGH**

[W. R., 1884, Act X, 69]

end of the month of Jeyt of the Fulli or Willayat year for which such rent was claimed. **JORMOKE DASKE v. HURBONATH ROY**

[2 W. R., Act X, 51]

See **HURBONATH ROY v. GOOROO DOSA BISWAS**  
[3 W. R., Act X, 19]

[2 W. R., Act X, 63]

8. — Act X of 1859, s. 32—*Suit for arrears of rent.*—Act X of 1859 does not

rent. **DOORGA DOSS CHATTERJEE v. NOSHIN MOHUN GHOSAL** . . . 6 W. R., Act X, 63

9. — Act X of 1859, s. 32—*Suit for arrears of rent.*—S. 32, Act X of 1859, does not authorize the recovery of only three years' rent, but requires suits for the recovery of rents to be instituted within three years from the end of the Bengali or Fulli year, as the case may be. **GOSWAMI UMTRA NARAIN POOREY v. ARBUT LALL alias HARBOO JAN** . . . 7 W. R., 301

10. — Act X of 1859, s. 32—*Suit for arrears of rent.*—Under s. 32, Act X of 1859, the rent of any portion of one year (1273) is recoverable at any time up to the last day of the third year (1276) after its close. **BYKUNT RAM ROY v. SHUBROODISSA BEGUM** . . . 15 W. R., 523

11. — *Award of damages in former suit.*—Cause of action.—Where rents are not sued for within three years from the end of the year for which they are alleged to be due, the fact that damages were awarded against the plaintiff in a former suit for not giving receipts for that year will not create a cause of action. **HUSO PARSHAD ROY CHOWDREY v. WOOMA TARA DEBEE**

[15 W. R., 194]

# BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

was held to be barred by s. 32, Act X of 1859. **HUREE KISHORE GHOSH v. KOMODINE KANT BANERJEE** . . . 10 W. R., 41

[15 B. L. R., 56; 23 W. R., 153]

claimed. **GLASSCOTT v. RAJCHUNDER MOOCHY MUNDUL** . . . 23 W. R., 381

to which s. 29 of Bengal Act VIII of 1869 applies. **KISHENDUTTY MISHRA v. ROBERTS**

[16 W. R., 287]

12. — *Suit for arrears of rent.*—Act XIV of 1859, s. 1, cl. 16.—*Pro forma defendants.*—Limitation.—The plaintiffs sued the defendants, who were *ijaradars* of the property in which they were co-sharers, for arrears of rent extending over a period of six years. The suit was first brought in the Revenue Court, and as their co-sharers had not joined in the suit, the plaintiffs made them defendants, and their being defendants preventing the plaintiffs from continuing the suit in the Revenue Court, they instituted it afresh in

s. 1, Act VIII of 1859, and that six years' rent could be decreed. *Held*, on special appeal to the High Court, that the fact of the co-sharers being made *pro forma* defendants did not alter the real character of the suit, which was to recover arrears of rent, and that, therefore, the provisions of s. 23, Act VIII of 1859, were applicable, and a decree for three years' rent only was given. **GHOSIA GOBIND SING v. GOBIND CHUNDER DASS**

[11 B. L. R., Ap., 31; 19 W. R., 347]

# **BENGAL RENT ACT VIII OF 1869 (X OF 1859)—continued.**

**17.** ———— *Suit for arrears of rent—Limitation.*—The period of limitation within which a suit for arrears of rent may, under Bengal Act VIII of 1869, s. 29, be instituted, must, in the absence of any special agreement, be calculated from the last day of the year following the expiration of the year for which such rent is claimed. **WOOMESH CHUNDER BOSE v. SOORJEE KANTO ROY CHOWDHRY**

[I. L. R., 5 Calc., 713; 6 C. L. R., 49]

**18.** ———— *Suit for arrears of rent—Limitation.*—The last day on which a suit for the recovery of arrears of rent can be instituted under s. 29, Bengal Act VIII of 1869, is the last day of the third year from the close of the year in which the rent became payable. The word "arrear" in that section means "rent in arrear." **Woomesh Chunder Bose v. Soorjee Kanto Roy Chowdhry** I. L. R., 5 Calc., 713; 6 C. L. R., 49, overruled. **KASIKANT BHUTTACHARJI v. ROHNIKANT BHUTTACHARJI**

[I. L. R., 6 Calc., 325; 7 C. L. R., 342]

**19.** ———— *Suit for arrears of rent—Suit against registered tenant.*—A suit having been brought in 1284 for arrears of rent of a dar-patni for the years 1281-83 and part of 1284 against A as the widow and heiress of the former dar-patnidar, who died in 1256, A pleaded that she was not the representative of her husband, as in 1276 she had adopted a son. Whereupon, in 1285, more than three years from the time the rent of 1281 became due, the son was made a defendant. It appeared that from the time of her husband's death A had allowed her own name to remain on the sherista of the plaintiffs, and that the plaintiffs had no notice of the adoption. *Held*, reversing the decision of the lower Appellate Court, that the claim for the rent for the year 1281 was not barred as against A and the tenure, but that no decree could be made against the son in respect of it. **DWARKANATH MITTER v. NONONGO MONJORI DASSI**

[7 C. L. R., 233]

**20.** ———— *Suit for arrears of rent—Limitation.*—It having been decided in a former case that the zamindar's claim against defendants for the rent of 1271, being a suit for arrears of rent recoverable upon a liability arising out of matters not within the cognizance of a Revenue Court, was not governed by the special limitation prescribed by s. 32, Act X of 1859, but by the ordinary law of limitation, Act XIV of 1859,—*Held*, that the zamindar's present claim of a precisely similar nature against the same parties in respect of the year 1272 was not barred by the special limitation prescribed by s. 29, Bengal Act VIII of 1869, corresponding to s. 32, Act X of 1859. **PROSUNNO COOMAR PAL CHOWDHRY v. RAMDHUN CHATTERJEE**

18 W. R., 8

**21.** ———— *Suit for arrears of rent—Limitation.*—Certain suits brought in the Collector's Court for rent of 1270 and subsequent years having been dismissed in consequence of the

# **BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

defendant's plea that the whole of the estate had been resumed, and that there was no distinct land for which plaintiff was entitled to any separate rent, plaintiff was obliged to bring a civil suit to establish his right to recover those rents. Having obtained a decree, he brought a suit for arrears of rent from 1271 to 1279, but obtained a decree for the rents of three years only, the cause of action for the years previous to 1277 having been considered to be barred. *Held* that this decision was right, as there was nothing to prevent the plaintiff from including in the civil suit which he brought, or any previous suit, a claim for rent as well as for declaration of right. **BURODA KANT ROY v. CHUNDER COOMAR ROY**

[23 W. R., 281]

**22.** ———— *Act X of 1859, s. 32—Suit to recover rent in cash and kind with declaration of plaintiff's right.*—A suit to recover rent in cash and kind which comprehended a claim to have a particular share of the rent declared as the property of the plaintiff was held to be one which a Collector, acting under Act X of 1859, would have refused to entertain, and therefore to be governed not by the limitation prescribed by Bengal Act VIII of 1869, s. 29, but by the ordinary law of limitation. **HEERA SINGH v. MEER AKBUR ALI**

[24 W. R., 382]

**23.** ———— *Act X of 1859, s. 32—Pendency of suit for enhancement—Limitation.*—The three years' limitation provided by s. 32, Act X of 1859, is in general terms, and does not admit of any exceptions, e.g., the pendency of a suit for enhancement for 1265 will not save limitation in respect to the rent for 1266. **NOBOKANTH DEX v. BORODAKANTH ROY**

1 W. R., 100

**DAKHINA DABEA v. ROMESH CHUNDER DUTT**

[1 W. R., 142]

**24.** ———— *Grant of perwannah—Contingency.*—When a person lets land under a kabuliat, and subsequently grants a perwannah, undertaking not to ask for rent till a certain contingency occurs, the perwannah will not alter the original agreement so far as to prevent limitation applying to a suit for rent. **BEBEE v. MAHOMED GHONSI**

1 Ind. Jur., N. S., 31

**25.** ———— *Act X of 1859, s. 32—Cause of action—Suit for enhancement of arrears of rent.*—A suit for arrears of rent at an enhanced rate, brought more than three years after the rent had accrued due, was held to be barred by lapse of time under s. 32 of Act X of 1859, notwithstanding that it was commenced within one year from the date of a decree made in a suit brought in the Civil Court declaring that the plaintiff was entitled to enhance. The cause of action was the non-payment of the rent at the enhanced rate, and not the declaration of the Civil Court that the plaintiff had a right to enhance. **DOYAMOYEE CHOWDRANEE v. BROJANATH GHOSE**

[B. L. R., Sup. Vol., 592; 6 W. R., Act X, 77]

**26.** ———— *Act X of 1859, s. 32—Suit for arrears of rent.*—The plaintiff

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

had sued the defendant at the end of the year

...  
tiff's claim for the rents of 1273 was not barred by the lapse of three years, under a. 32, Act X of 1859. **DINDAYAL PARAMANIK v. RADHA KISHORE DEBI** 8 B. L. R., 538: 17 W. R., 415

**ISHAN CHANDRA ROY v. KHAJA ASHANULLA**  
(8 B. L. R., 537 note: 18 W. R., 79

*Contra*, **MADHUR CHUNDER GHOSE v. RADHIKA CHOWDHRAIN** 7 W. R., 405

Rejecting review of same case in  
[9 W. R., Act X, 43

**HIRONATH ROY CHOWDHRY v. GOLUCKNATH CHOWDHRY** 18 W. R., 18

27. ———— *Act X of 1859, s. 32—  
Sale for arrears of rent—Sale afterwards set aside—Subsequent suit for arrears of rent.*—A zamindar, sold the rights of B, his patnidar, for arrears of rent under Regulation VIII of 1819. This sale was subsequently set aside at the suit of B for irregularity. A then sued B for the arrears under Act X of 1859, and B raised the defence that the suit was barred, more than three

the estate subject to the obligation to pay the rent, and that the particular arrears of rent claimed must be taken to have become due in the year in which that restoration to possession took place, and plaintiff could sue within three years from the close of that year. **SWARNAMAYI v. SHASHI MUKHI BARMANI** 9 B. L. R., P. C., 10: 11 W. R., P. C., 5:  
[13 Moore's L. A., 244

**ISHAN CHUNDER ROY v. KHAJA ASSANULLAH**  
(10 W. R., 79

29. ———— *Act X of 1859, s. 32—  
Suit for arrears of rent—Assignment of rent in payment of loan.*—Plaintiff, a zamindar, being indebted

claim for the rent of 1273 was not barred by limitation, because brought within three years from the time

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

of 1273. **MOHESH CHUNDER CHAKRABARTY v. GUNAMONER DOSSEE** 18 W. R., 59

30. ———— *Suit delayed pending final decision as to rent.*—A previous suit was brought in 1859, which was not finally decided in

enactment. *Held* that the plaintiff's cause of action for rent did not accrue until ascertainment of the rent by that decision, and that her present suit for

31. ———— *Act X of 1859, s. 32—  
Suit for arrears of rent.—Deduction of time when bond fide suing defendant as a trespasser.*—A landlord can be allowed a deduction in respect of limitation for the time he is suing a tenant as a trespasser, only when he is acting under a *bond fide* belief that the tenant is a trespasser, and not in suits when, from the circumstances of the case, he must have known of the defendant's right to hold as a tenant. **HIRONATH ROY CHOWDHRY v. GOLUCKNATH CHOWDHRY** 19 W. R., 18

for the year 1868, not upon the basis of the paid lease, but for use and occupation, treating the tenants as mere trespassers. This suit was dismissed on the ground that the plaintiff ought to have sued on the lease. In 1875 the plaintiff brought the present suit for the rent of 1868 on the paid lease. The

33. ———— *Deduction of time whilst another suit was pending—Limitation.*—A suit for

**BENGAL RENT ACT, VIII OF 1859 (X OF 1859)—continued.**

5. ———— *Agent, Suit against—Gen.*

6. ———— *Agent, Suit against—Agent*

DOORGA CHURN ROY . . . 5 W. R., Act X, 79

7. ———— *Agent, Suit against—Suit for accounts from heir of agent.—Semble—A suit for the delivery of accounts under the Rent Act, X of 1859, lay against the heir of an agent, the Act being intended to facilitate the recovery of accounts by zamindars, and to make the heir of an agent equally responsible with the agent. GOWHAR HOSSAIN v. RAM COOMAR CROWDHRY . . . 8 W. R., 481*

8. ———— *Agent, Suit against—Suit against agent for rent received and misappropriated*

13 W. R., Act X, 105

9. ———— *Act X of 1859, s. 33—Agent, Suit against—Accounts.—S. 33, Act X of 1859*

S. C. before remand  
[2 B. L. R., A. C., 270 note: 9 W. R., 329]

10. ———— *Discovery of fraud—Agency—Suit for an account and for money misappropriated by agent.—Where the plaintiff alleged that the fraud committed by the agent*

the case came within the provision of s. 33 of Act X of 1859, and the suit was not barred by limitation. *Held*, further, that in suits for money misappropriated by an agent where fraudulent accounts have

must, therefore, in every such case, ascertain when the

**BENGAL RENT ACT, VIII OF 1859 (X OF 1859)—continued.**

11. ———— *Act X of 1859, s. 33—Suit on account stated—Agent.—By s. 33 of Act X of 1859*

See PEAREE MOHUN GHOSH v. JARDINE, SKINNER & CO. . . . 22 W. R., 339

12. ———— *Act X of 1859, s. 33—Suspension of agent—Determination of agency.—If a principal suspends an agent, the agency must be held to have been determined within the meaning of s. 33, Act X of 1859. MEDDIE MOHUN ROY v. GOPIN MOHUN ROY . . . W. R., 1864, Act X, 8*

MAHATAB CHAND v. JUDOO MOHUN MITTER  
[5 W. R., Act X, 61]

13. ———— *Act X of 1859, s. 33*

HURO CHURN NARAIN SINGH v. BROOKE DORSET  
[6 W. R., Act X, 30]

14. ———— *Act X of 1859, s. 33—Suit against surety of agent for losses occasioned by embezzlement.—A suit under Act X of 1859 against the surety of an agent employed in the collection of*

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)** continued.

prescribed by s. 30, namely, "one year from the date of the accruing of the cause of action." **BELLAMONTE v. NESSEERDOLAH** . **Marsh., 410: 2 Hay, 510**

**15.** — *Admission of amount by agent*—Cause of action.—The principal requires no fresh cause of action against the agent from the date on which the agent admitted the amount which was due from him, and executed an agreement to pay it. **MAHATAN CHAND v. JUDOO MOHUN MITTER** . **5 W. R., Act X, 91**

**16.** — *Fraud preventing knowledge of rights*.—In a suit against an agent under s. 33, Act X of 1859, where fraud is alleged, before applying the limitation prescribed by that section, the plaintiff should have an opportunity of proving that by the fraud of the defendant he was kept from a knowledge of his rights. **RAM KANT CHOWDHRY v. BROJO MOHUN MOZOOMDAR** . **6 W. R., Act X, 20**

**17.** — *Suspension of agent*.—In a suit for the recovery of money in the hands of an agent, the limitation prescribed by s. 33, Act X of 1859, counts from the date of the suspension of the agent. **RADHIKA PERSHAD CHATTERJEE v. RAMDHUN POOROHET** . **6 W. R., Act X, 27**

**18.** — *Claim against sureties of deceased agent* for misappropriation of money.—S. 30, and not s. 33, Act X of 1859, is applicable to the case of sureties of a deceased agent against whom a claim is made for moneys appropriated by him, and the cause of action accrues from the time when the plaintiff had means of knowing what was the amount due to him from the deceased agent, i.e., from the date on which his accounts were put in by his sureties, and not from the date of his death. **PURSE SOONDY DEBIA r. BHOLANATH ROODRO** . **8 W. R., 159**

**19.** — *Cause of action*.—In a suit against an agent for moneys received on plaintiff's account, in which defendant set up a plea of limitation, plaintiff sought to extend the period of limitation on the ground that fraudulent accounts were delivered. *Held* that the Judge should have found specifically when the fraud was first known to the plaintiff; limitation in such a case running from the date of knowledge of the fraud, not merely from that of suspicion of the fraud, or of delivery of accounts. **DHUNPAT SINGH DOOGUR r. RUHMAN MUNDUL** . **9 W. R., 329**

**[2 B. L. R., A. C., 270 note**  
**GOOROO v. ANUND CHUNDER**  
**5 W. R., Act X, 63**

**HUREE MOHUN MOOKERJEE**

**20.** — *Suit against surety of deceased agent*.—In a suit by the manager of a factory to recover from a surety certain sums collected as rent by a deceased patwari, in which suit the defendant pleaded limitation, *Held* that plaintiff was not entitled to reckon the year which the law gave him to bring the suit from the date on which he acquired from the surety information of the state of his accounts. If a person's

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)**—continued.

ignorance of the state of his accounts is owing to his own negligence, he can claim no benefit under s. 33, Act X of 1859. **BIDDELL v. CHUTTERDHARE LALL** . **[12 W. R., 116**

**21.** — *Suit against agent for accounts*.—A suit under s. 30, Bengal Act VIII of 1869, against a gomashita to obtain accounts after the agency has determined, must be brought within a year from such determination. The proviso in that section refers to suits for money, and under that proviso, where a fraudulent account has been given in by the agent, concealing the fact of the receipt of certain moneys, the zamindar has one year from the discovery of the fraud to bring his suit for such money. **JAN ALI CHOWDHRY v. ISHAN CHUNDER SEIN** . **16 W. R., 149**

**22.** — *Suit to contest an account against gomashita*.—In a suit to contest an account brought against a gomashita under Bengal Act VIII of 1869, the only ground on which the plaintiff can claim an allowance of time beyond the period of limitation provided in s. 30 is by showing that there was fraud in the case, and that he came to the knowledge of it within a year before the date of his action. **RADHA KISHORE ROY v. AMJER CHUNDER MOOKHORY** . **20 W. R., 388**

**23.** — *Suit against agent—Delay after discovery of fraud of agent*.—A suit against an agent for the recovery of money under Bengal Act VIII of 1869, s. 30, though brought within three years after the termination of the agency, was held to have been barred as not having been brought within a reasonable time from the date of the discovery of the fraud alleged against the agent. **JAN ALI CHOWDHRY v. TARINI CHURN RUKHEET** . **[21 W. R., 107**

**24.** — *Suit against zamindari agent*.—There is no limitation but that prescribed by s. 30, Bengal Act VIII of 1869, to the bringing of a suit against an agent with regard to zamindari matters (e.g., tahsildar and collector of rents) for the recovery of money or the delivery of accounts and papers. **RAM BHUROSIA CHOWDHRY v. HUNOOMAN SINGH** . **[21 W. R., 240**

**25.** — *Suit for account—Subsequent suit for amount falsely entered—Res judicata*.—Plaintiff brought a suit for collection papers against the defendant, his agent, and got a decree. Having received and inspected the papers, he brought another suit for moneys which, he alleged, the defendant had falsely entered as expended. *Held* that the suit was barred. *Quere*—Whether the Rent Act, s. 30, contemplates the bringing of two successive suits, one for an account, and the other for the amount due on that account. **GOLOKE NATH SEN BISWAS v. RAM KANT DEY SIRCAR** . **3 C. L. R., 444**

**26.** — *Suit against agent—Change of employment*.—A suit against an agent, under Act X of 1859, s. 24, was resisted on the ground that the defendant's employment as tahsildar had terminated by the plaintiff

**BENGAL RENT ACT, VIII OF 1860 (X OF 1859)—continued.**

27. ———— *Suit against agent.*—The

**MORUN GHOSH v. JARDINE, SKINNER & Co.**  
[22 W. R., 338]

*See* CHOWDERY CHATTERPAUL SINGH v. FOUDAR ROY  
Marsh., 405; 2 Hay, 509

28. ———— *Fraud of agent, Evidence of—Not filing accounts in proper time.*—In a suit

29. ———— *Suit for an account against an agent—Limitation.*—A suit for an ac-

acknowledgment or account stated, signed by a

**DASS BISWAS** . . . . . I. L. R., 5 Calc., 314

30. ———— *Principal and agent—Account, Suit for—Zamindar—Limitation.*—A suit by a zamindar against his land agent, for payment of sums not accounted for by the latter, must, under s. 30 of Bengal Act VIII of 1860, be brought within three years from the termination of the defendant's agency. The zamindar should never bring a suit of this kind for an account merely, or for the delivery of accounts or account papers merely; but the suit should be framed for an account and for payment of

31. ———— *Suit against talukdar—Special agreement—Limitation.*—The defendant was

**BENGAL RENT ACT, VIII OF 1860 (X OF 1859)—continued.**

talukdar of one of the plaintiff's zamindaris, and after his dismissal on the 24th of August 1876 he submitted an account which was found to be incorrect, and time was given to him to make good certain items on his executing an ikrar promising to pay whatever balance should be found due from him to the plaintiff. In a suit brought on the 28th of

32. ———— *Suit against administra-*

June 1882, D sued the Administrator General of Bengal as administrator of A's estate, to recover certain sums of money set forth in detail in the plaint as having been received by A and not accounted for, stating that they had been misappropriated by A. Held that in respect of such sums as were received by A in virtue of his position as manager under the registered agreement, the limitation of six years applied; but that in respect of the sums received by him in the course of trans-

s. 31 (Bengal Act VI of 1862,  
s. 6).

*See* BENGAL RENT ACT, 1860, s. 47.  
[18 W. R., 120]

*See* LIMITATION ACT, 1877, s. 6  
[I. L. R., 7 Calc., 690]

*See* PARTIES—PARTIES TO SUITS—RENT SUITS FOR, AND INDEMNITIES IN, SUCH SUITS . . . . . 21 W. R., 277

1. ———— *Bengal Act VI of 1862, s. 6—Suit for enforcement of rent.*—The limitation of six months prescribed by s. 6, Bengal Act VI of 1862, applies to deposits made after rents have become due, and does not interfere with the limitation for suits for enhanced rent, as prescribed by a s. 32, Act X of 1853. **TANAMOVER KOONWARER v. JEESUN MUDGAR**

[10 W. R., Act X, 98]

2. ———— *Bengal Act VI of 1862, s. 6—Applicability of Act—Deposit of rent.*—Bengal Act VI of 1862 applies to cases where the amount which the raiyat thinks due is deposited by

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him, and the landlord may either accept it or sue for whatever he himself may deem due to him for the same period for which the deposit is made; but not to suits for rent for the year preceding that for which the deposit is made. **MAHOMED SHUHROOLAH CROWDERY v. ROOMYA BIBEE** . 7 W. R., 487

3. ————— *Bengal Act VI of 1862, s. 6—Suits for enhanced rent after notice.*—Bengal Act VI of 1862, s. 6, refers to the period within which suits on account of rent which has accrued prior to the date of the deposit under s. 5 may be brought, and not to suits for rent at an enhanced rate after notice. **ARMED HOSSEIN v. KERANUT** [8 W. R., 353]

4. ————— *Notice of payment or deposit in Court—Suit for arrears of rent—Limitation.*—By a condition in the lease of a talukh, additional rent became payable in respect of all lands which, not being in a state of cultivation at the time of the lease, should be subsequently brought into cultivation so soon as the lessee had enjoyed them rent-free for the space of seven years. Rent having become due under this condition on certain lands which had not been in a state of cultivation at the time of the making of the lease, the lessee deposited in Court, as the entire rent payable in respect of the talukh, the same amount as he had paid in previous years. In a suit brought a year after the lessor had notice of such deposit, to recover the entire rent payable in respect of the lands newly brought into cultivation,—*Held* that such suit, having been instituted more than six months after service of notice of such deposit on the lessee, was barred under s. 31 of Bengal Act VIII of 1869. **RAM SUNKER SENAPATTY v. BIR CHUNDER MANIKYA** [I. L. R., 4 Calc., 714]

5. ————— and ss. 46, 47—*Limitation—Deposit of rent—Suit for enhancement of rent.*—To bring into operation the special limitation enacted in s. 31 of Bengal Act VIII of 1869, where deposit had been made under s. 46, the deposit could only have been effectively made of rent that had accrued due before the date of such deposit. **SURJA KANT ACHARJYA v. HEMANTA KUMARI** [I. L. R., 20 Calc., 498  
L. R., 20 I. A., 25]

s. 32 (Act X of 1859, s. 69).

*See PARTIES—PARTIES TO SUITS—AGENTS.*  
[I. L. R., 9 Calc., 450  
11 W. R., 43]

ss. 33 and 34.

*See BENGAL RENT ACT, 1869, s. 102.*  
[23 W. R., 171  
I. L. R., 3 Calc., 151]

s. 34.

*See EXECUTION OF DECREE—DECREES UNDER RENT LAW.*  
[I. L. R., 7 Calc., 748]

*Suits for rent—Act VIII of 1859, s. 119.*—S. 119 of the Civil Procedure Code (Act VIII of 1859) was made applicable to rent

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

suits under Bengal Act VIII of 1869 by the provisions of s. 34 of the latter Act. **DRABAMAYI GUPTA v. TARACHARAN SEN**

[7 B. L. R., 207; 16 W. R., 17]

s. 37 (Bengal Act VI of 1862, s. 9).

*See APPEAL—MEASUREMENT OF LANDS.*  
[6 B. L. R., 1]

*See EXECUTION OF DECREE—DECREES UNDER RENT LAW* . 7 C. L. R., 345

*See CASES UNDER MEASUREMENT OF LANDS.*

s. 38 (Bengal Act VI of 1862, s. 10).

*See APPEAL—MEASUREMENT OF LANDS.*  
[24 W. R., 171]

*See CASES UNDER MEASUREMENT OF LANDS.*

*See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.*  
[I. L. R., 10 Calc., 507]

s. 41 (Bengal Act VI of 1862, s. 11).

*See CASES UNDER MEASUREMENT OF LANDS.*

s. 44 (Bengal Act VI of 1862, s. 2).

*See DAMAGES, SUIT FOR—RENT SUITS.*  
[I. L. R., 8 Calc., 290  
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1 W. R., 100, 290, 343  
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1. ————— s. 46 (Bengal Act VI of 1862, s. 4)—*Patni talukhdars—"Under-tenants."*—Bengal Act VIII of 1869, s. 46, applies to patni talukhdars, the term "under-tenant" being wide enough to include them. **THAKOOR DASS GOSSAIN v. PEAREE MOHUN MOOKERJEE** . 22 W. R., 431

2. ————— *Bengal Act VI of 1862, s. 4—Deposit of arrears—Tender—Registration of transfer—Act X of 1859, s. 27.*—O S purchased from the former raiyat his jotedari right and entered into possession of the land. H M, the talukhdar, had notice of this; but while O S was in possession, he sued the former tenant and obtained a decree against him for arrears of rent, under which he sold the tenure in execution. O S had deposited the amount of the arrears, but by mistake as payable to "D (the wife of H M's brother) of Lodi Sydpore," instead of to "H M of Lodi Culpo." H M was aware the amount had been deposited. *Held* the deposit was a sufficient tender under s. 4, Bengal Act VI of 1862, and that registration of the transfer of the raiyati tenure was not necessary, inasmuch as s. 27 of Act X of 1859 did not apply, the tenure not being one "intermediate between the zamindar and the cultivator." **UMACHARAN SETH v. HARI PROSAD MISRY** . I B. L. R., S. N., 7

**BENGAL RENT ACT, VIII OF 1860 (X OF 1859)—continued.**

8 C. WOONA CHUN SETT v. HUREE PERSHAD MISSEER . . . 10 W. R., 101

3. ———— *Bengal Act VI of 1862, s. 4—Tender of payment of rent.*—A raiyat's tender of payment to be valid must be made at the proper place and to a person authorized to receive the same. ESHAN CHUNDER ROY v. KHAJAN ASSANULLAH . . . [18 W. R., 79]

4. ———— *Bengal Act VI of 1862, s. 4—Tender not followed by deposit or payment—Power to award interest.*—Act VI of 1862 does not forbid the Court to advert or give effect to a tender not followed by a deposit or payment into Court of the money, nor does it alter or affect the discretionary power of the Court to award interest or costs in a decree for arrears. BISSOYATH DEY v. HUREE PERSHAD CHOWDHURY 2 W. R., Act X, 68

5. ———— *Bengal Act VI of 1862, s. 4—Transfer of tenure.*—Act X of 1859, s. 27—Registration of transfer.—S. 4, Bengal Act VI of 1862, applies only to under-tenants and raiyats of whose possession there can be no doubt. DULLI CHAND v. MEHER CHAND SAHOO . . . 8 W. R., 138

6. ———— *Bengal Act VI of 1862, s. 4—Set-off—Deposit of arrears of rent.*—In a suit for . . . mal-kacheri was situated, giving notice to plaintiff under a s. 5.—Held that defendant was entitled to a set-off. GRISHM CHUNDER SEN v. EASTERN BENGAL JUTE MANUFACTURING COMPANY . . . 10 W. R., 402

7. ———— *Bengal Act VI of 1862, s. 4—Deposit of arrears of rent—Omission to tender.*—A party is not entitled to benefit from a . . . [10 W. R., 4]

1. ———— a. 47 (Beng. Act VI of 1862, s. 5) and a. 31—Notice of deposit on account of rent—Form of notice.—The omission of the words "you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be . . .

2. ———— *Bengal Act VI of 1862, s. 5—Limitation—Suit for accrued rent.*—S. 5, . . .

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be brought, not to suits for rent at an enhanced rate after notice. AHMED HOSSAIN v. KERAMUT . . . [8 W. R., 353]

—s. 52 (Act X of 1859, s. 78).

See LANDLORD AND TENANT—EJECTMENT—GENERALLY I. L. R., 14 Calc., 33

See RECEIVER I. L. R., 11 Calc., 406

1. ———— "Reversed." Meaning of.—The word "reversed" in Bengal Act VIII of 1860, ss. 52 and 54, means reversed in respect of that part of the arrears which is contested in the Appellate Court. PATTARY SIRCAN v. BIRNO MOTER . . . [24 W. R., 185]

2. ———— *Act X of 1859, s. 78—Suit for cancellation of lease—Condition for forfeiture.*—S. 78, Act X of 1859, applies to all cases of suits for the ejectment of a raiyat or the cancellation of . . .

ment between the parties. JAN ALI CHOWDHURY v. NITYANUND BOSE . . . [B. L. R., Sup. Vol., 972; 10 W. R., F. B., 12]

3. ———— *Act X of 1859, s. 78—Ejectment for non-payment of rent.*—S. 78 of Act X of 1859 authorizes the joinder of a claim for rent in an ejectment for non payment of rent. Held that the section does not empower a landlord to eject . . .

SHIRAM BISWAS v. JUGGERNATH DOSS . . . [1 Ind. Jur., N. B., 187; 6 W. R., Act X, 45]

4. ———— *Act X of 1859, s. 78—Breach of condition for forfeiture.*—Where in a perpetual lease there was a condition that, on default being . . .

Affirming decision of High Court in DULLI CHAND v. MEHER CHAND SAHOO . . . 8 W. R., 138

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5. ———— *Act X of 1859, s. 78—Suit for ejectment of raiyat for non-payment of rent.*—The provisions of the last clause of s. 78, Act X of . . .

6. ———— *Act X of 1859, s. 78 and s. 22—Suit for ejectment after realizing arrears.*—

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

him, and the landlord may either accept it or sue for whatever he himself may deem due to him for the same period for which the deposit is made; but not to suits for rent for the year preceding that for which the deposit is made. **MAHOMED SHUHROOLAH CHOWDHEE v. ROOMYA BIBEE** . 7 W. R., 487

**3. ————— Bengal Act VI of 1862,**

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[8 W. R., 353]

**4. ————— Notice of payment or**

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**1. ————— s. 46 (Bengal Act VI of 1862,**

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8 C. WOOMA CHURN SETH v. HUREN PERSHAD MISER . . . . . 10 W. R., 101

3. ———— *Bengal Act VI of 1862, s. 4—Tender of payment of rent.*—A raiyat's tender of payment to be valid must be made at the proper place and to a person authorized to receive the same. ESHAN CHUNDER ROY v. KHAJAN ASSANOOLAH [18 W. R., 79

4. ———— *Bengal Act VI of 1862, s. 4—Tender of payment of rent.*—Tender of payment of 1862 does not have effect to discharge the debt of money into Court of the money, nor does it alter or affect the discretionary power of the Court to award interest or costs in a decree for arrears. BISNONATH DEY v. HUREN PERSHAD CHOWDHURY 2 W. R., Act X, 89

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6. ———— *Bengal Act VI of 1862, s. 4—Set-off—Deposit of arrears of rent.*—In a suit for payment of arrears of rent, a tenant is not entitled to set off a sum due from the landlord against the arrears of rent. . . . .

7. ———— *Bengal Act VI of 1862, s. 4—Deposit of arrears of rent—Omission to tender.*—A party is not entitled to benefit from a . . . . . [10 W. R., 4

1. ———— *s. 47 (Beng. Act VI of 1862, s. 5) and s. 31—Notice of deposit on account of rent—Form of notice.*—The omission of the words "you must institute a suit in Court for the establishment of such claim or demand within six calendar . . . . .

2. ———— *Bengal Act VI of 1862, s. 6—Limitation—Suit for accrued rent.*—S. 6, Bengal Act VI of 1862, refers to deposits by tenants of the rent which they consider to be the full amount of rent due from them, and s. 6 refers to the period within which suits on account of rent which has accrued prior to the date of the deposit under s. 5 may

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be brought, not to suits for rent at an enhanced rate after notice. AHMED HOSSEIN v. KERAMUT [8 W. R., 353

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1. ———— *"Reversed" Meaning of.*—The word "reversed" in Bengal Act VIII of 1869, ss. 52 and 54, means reversed in respect of that part of the arrears which is contested in the Appellate Court. PATTARY BIRGAR v. BURNIO MOTER [24 W. R., 185

2. ———— *Act X of 1859, s. 78—Suit for cancellation of lease—Condition for forfeiture.*—S. 78, Act X of 1859, applies to all cases of suits for the ejectment of a raiyat or the cancellation of a lease for non-payment of rent, whether such ejectment or cancellation be sought under the provision of ss. 21 and 22, respectively, or under an express stipulation in that behalf contained in the engagement between the parties. JAN ALI CHOWDHURY v. NITYANAND ROSE [B. L. R., Sup. Vol., 972; 10 W. R., F. B., 12

3. ———— *Act X of 1859, s. 78—Ejectment for non-payment of rent.*—S. 78 of Act X of 1859 authorizes the joinder of a claim for rent in an ejectment for non-payment of rent. Held that the action does not empower a landlord to eject his tenant for non-payment of rent due in the middle of the Bengal year, but that an ejectment for such default is maintainable only for arrears due at the end of the year under s. 21. SABI v. CHAND BICKAR [Marsh., 348; 3 Hay, 439

SHIRAM BISWAS v. JUGGENNATH DASS [1 Ind. Jur., N. S., 187; 5 W. R., Act X, 45

4. ———— *Act X of 1859, s. 78—Breach of condition for forfeiture.*—Where in a perpetual lease there was a condition that, on default being made in payment of a certain number of instalments . . . . .

though the defence set up was false in fact. DULLI CHAND v. MEHER CHAND SAHOO [12 B. L. R., P. C., 439

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See AMBER KOOLKE KHAN v. RUSICK LALL SINGH . . . . . 8 W. R., 495

5. ———— *Act X of 1859, s. 78—Suit for ejectment of raiyat for non-payment of rent.*—The provisions of the last clause of s. 78, Act X of . . . . .

6. ———— *Act X of 1859, s. 78 and s. 22—Suit for ejectment after realizing arrears.*—

# **BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

A landlord cannot sue for cancelment of lease and ejectment under s. 22, Act X of 1859, after he has sued for and realized the arrears of rent due **WOMESH CHUNDER CHATTERJEE v. KUMUROOBEEN LUSKUR** . . . **7 W. R., 20**

**7.** ————— *Act X of 1859, s. 78—Receipt of rent after decree for ejectment.*—A landlord cannot execute his decree for ejectment obtained under s. 78, Act X of 1859, if he has accepted the rent from the tenant. **NUBO KISHEN MOOKERJEE v. HURISH CHUNDER BANERJEE** . . . **7 W. R., 142**

**8.** ————— *Act X of 1859, s. 78—Cancelment of lease—Ejectment.*—S. 78, Act X of 1859, applies equally whether the raiyat's liability to be ejected arises under s. 21 of that Act or under special stipulation in the contract between him and his landlord. **MAHOMED HOSSEIN v. BOODHUN SINGH alias ROOPNARAIN SINGH** . . . **7 W. R., 374**

**9.** ————— *Act X of 1859, s. 78—Forfeiture for default in payment of rent.*—Plaintiff sued defendant under cl. 5, s. 23, Act X of 1859, for direct or khas possession of a farm (for which the latter had paid a bonus), stating that the contract between them was that, on default in payment of the farming rent as per kistbundi, a suit was to be instituted for the arrears, and in execution of the decree the lease was to be forfeited, and the plaintiff, the lessor, entitled to enter upon khas possession, unless the amount was paid within 15 days. It was further urged that defendants, the lessees, had defaulted; that plaintiff had obtained decrees; and that defendants, having failed to pay within fifteen days, had violated the lease and were liable to be ejected. *Held* that the terms of the contract were in strict accordance with the provisions of s. 78, Act X of 1859, and the plaintiff ought to have brought his suit under that section, and obtained a decree for ejectment. From the date of such decree, specifying the amount of arrear, the lessors would have fifteen days for payment. **RUGHOO MOHINEE DOSSEE v. KASHEENATH ROY CHOWDHRY. KASHEENATH ROY CHOWDHRY v. SABITREE SOONDEREE DOSSIA** . . . **10 W. R., 156**

**10.** ————— *Act X of 1859, s. 78 and s. 22—Erroneous decree, Effect of.*—*Held* by **NORMAN, J.**, that a Deputy Collector's decree for rent cancelling a mokurari tenure, with reference to s. 22, Act X of 1859, as not creating a permanent or transferable interest, though erroneous, cannot be treated as a nullity or as passed without jurisdiction. The tenure, however, is not cancelled as long as the decree is not executed. **LALLA SHAM SOONDUR v. SOORAJ LALL** . . . **13 W. R., 441**

**11.** ————— *Act X of 1859, s. 78—Failure to rely on s. 78.*—Where a judgment-debtor fails to invoke the protection of s. 78, Act X of 1859, against a decree-holder, he cannot afterwards in special appeal claim the fifteen days' time allowed under that section. **CHOONEE MUNDUR v. CHOONEE LALL DASS** . . . **14 W. R., 178**

**12.** ————— *Act X of 1859, s. 78—Decree for ejectment—Effect of erroneous decree—Suit to question its validity.*—Where in a suit for

# **BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

arrears of rent of a transferable tenure, to which a person claiming as mortgagee was no party, a decree for ejectment, under s. 78, Act X of 1859, was made instead of a decree for sale.—*Held* that the decree for ejectment could not confer upon the decree-holder (the purchaser in execution of a decree against the mortgagor) the right to avoid the mortgage by the ejectment of the mortgagor, and was no bar under s. 2, Act VIII of 1859, to a suit by the mortgagee to question the validity of that decree, and to show that the Collector had no power under Act X of 1859 to make a decree for ejectment. **TIBBHOBUN SINGH v. JHONO LAL** . . . **18 W. R., 206**

**13.** ————— *Act X of 1859, s. 78—Term of grace—Condition in lease.*—The fifteen days' grace allowed to a lessee prior to ejectment cannot be negated by any condition in the lease. **MADHUB CHUNDER ADIF CHOWDHRY v. RAM KALOO BAPAREE** . . . **16 W. R., 151**

**14.** ————— *Act X of 1859, s. 78—Suit for ejectment of raiyat and for arrears of rent—Person paying rent in position of subordinate proprietor.*—In a suit under s. 78, Act X of 1859, to eject the defendant from certain land, and to recover arrears of rent, the defendant was in the habit of receiving the rents of his tenants, and was bound only to pay a certain sum on account of Government revenue and village expenses. He was also competent to sell or mortgage his rights. *Held* that he was not a tenant, but a subordinate proprietor, and that, therefore, the suit could not be brought under the above section. **BATOO L BEBEE v. JAGUT NARAIN** [4 N. W., 172]

**15.** ————— *Act X of 1859, s. 78—Execution of decree for arrears of rent against purchaser at an execution sale.*—A zamindar, in execution of a decree, sold the rights and interests of his tenant. He subsequently ejected the purchaser at that sale under a decree (dating prior to the above sale) for arrears of rent and ejectment under s. 78, Act X of 1859, which latter decree became complete on the expiry of fifteen days without deposit of the arrears due. *Held* that, until the purchaser adopted means to have his name registered in the zamindar's sherista, the latter was not bound to give him notice to pay the arrears due on the tenure which he purchased before proceeding to give effect to the decree. **BHUBO TARINEE DOSSIA v. PROSONOMOYEE DOSSIA** . . . **10 W. R., 304**

Reversed on Review in **PROSUNOMYEE DOSSIA v. BHUBO TARINEE DOSSIA** . . . **10 W. R., 494**

**16.** ————— *Act X of 1859, s. 78—Cancelment of lease for breach of stipulation in payment of rent.*—The property in suit had been sub-let to defendant on the stipulation that, if the rent was in arrear for three kists, the lease would be liable to cancelment. Plaintiff sued to eject the lessee on the allegation that the lease was forfeited. *Held* that, as the only ground given for cancelment was non-payment of arrears of rent, the case fell under s. 78, Act X of 1859; and as the amount due had been

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paid into Court, defendant was entitled to the protection afforded by the latter portion of that section.

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[11 W. R., 201

17. — *Act X of 1859, s. 78—Ejectment for forfeiture of lease by breach of its conditions—Suit for cancellation of lease.*—M...

paid into Court the amount of the arrears on the 18th of September, i.e., within fifteen days from the date of the decree, and in the course of the suit under s. 23, cl. 5. In special appeal the suit was dismissed, it being held that the circumstances of the case brought it within the operation of the provisions of ss. 21 and 78 of Act X of 1859, which were applicable in deciding it. RAMDYAL v. MCHSTAK AHMAD. 8 N. W., 320

18. — *Act X of 1859, s. 78—Modification of decree in review—Date from which time for payment runs.*—A decree in a suit for...

MCINDLE v. BUCKSHEE BEGUM

[Marsh., 471; 2 Hay, 595

10. — *Act X of 1859, s. 78—Suit for ejectment—Stay of execution.*—The latter part of Act X of 1859, s. 78, which enacts that "In all cases of suits for the ejectment of a raiyat, or cancellation of a lease, the decree shall specify the amount of arrears; and if such amount, together with interest and cost of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed," applies not only to suits for ejectment of the raiyat or cancellation of the lease on account of the non-payment of arrears of rent, but to all suits for ejectment brought by the lessor on account of a breach of the conditions of his lease by the defendant. FRIZZATRICK v. GOWAN

[1 Ind. Jur., N. S., 420; 6 W. R., Act X, 64

20. — *Act X of 1859, s. 78—Omission to specify previous unsatisfied decree.*—Where in a suit for the rent of the current year and for ejectment under s. 78, Act X of 1859, supported by a previous unsatisfied decree, a decree was

**BENGAL RENT ACT, VIII OF 1859 (X OF 1859)—continued.**

21. — *Act X of 1859, s. 78—Computation of time.*—In calculating the fifteen days allowed for payment of arrears of rent by s. 78 of Act X of 1859, the day on which the decree was passed should be excluded from the computation. SHROPALAUL SINGH v. NABER ASHRAF KHAN

[3 N. W., 342

22. — *Act X of 1859, s. 78—Stay of execution.*—It is not necessary to declare in a decree given under s. 78 of Act X of 1859 that fifteen days' time should be allowed to the tenant. But the decree must specify the amount of the arrears, and payment of this, with costs and interest as a decree, within fifteen days, ipso facto stays execution. SURETIL SINGH v. THAKOOR TEWARY

[1 N. W., Part 2, p. 31; Ed. 1873, 89

ALI HOSSEIN v. NANDAB KHAN. 2 N. W., 62

23. — *Act X of 1859, s. 78—Interest on deposit.*—When a tenant is sued for arrears of rent, even though he should deposit the rent in Court during the pendency of the suit, he is still liable to have the decree passed against him, as the arrear was admittedly due when the suit was brought. Interest to date of deposit in Court and costs of suit being paid within fifteen days, execution would be avoided. SNEO NATH SINGH v. RAM TRUL RAE. 1 N. W., Part 2, p. 39; Ed. 1873, 97

24. — *Act X of 1859, s. 78—Stay of execution—Private agreements.*—Suits to enforce.—S. 78 of Act X of 1859 contains a positive direction of law by which the Revenue Courts are

25. — *Act X of 1859, s. 78—Stay of execution of decree.*—The Court has discretion to stay execution on other grounds than those on which it is bound to do so under s. 52 of Bengal Act VIII of 1860. RAO RANJITRAM v. RANJIT SHAN. 10 B. L. R., App. 2; 18 W. R., 412

NREOKISTO MOORLIT v. RANJITR GOOWD

[18 W. R., 412

26. — *Act X of 1859, s. 78—Stay of execution—Payment of arrears by a third party.*—Execution may be stayed on a decree for arrears of rent by payment of the amount of the arrears of rent by a third party from the date of the decree.

# BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

interest in the terms. SARODAPERSAD ROY CHOWDHRY v. NOBINCHAND DUTT

[Marsh., 417 : 2 Hay, 527

27. ———— *Payment into Court—Liability to ejectment.*—Payment into Court by a judgment-debtor, within fifteen days from the date of decree, of rent, interest, and costs, with a protest as to the sum improperly charged against him as interest, is a sufficient payment, under s. 52, Bengal Act VIII of 1869, to save him from liability to be ejected from his tenure. SHREESTEEDHUR DEY v. DOORGA NARAIN NAG . . . 17 W. R., 462

28. ———— *Act X of 1859, s. 78—Stay of execution as to part of decree—Extension of time for payment.*—The Court, whose duty it is to execute a decree, is bound to execute it in the shape in which the decree comes before it, and has no authority to permanently stay the execution of any portion thereof,—e.g., where a decree is for money and for ejectment in the event of non-payment within fifteen days, the Court executing is not competent to extend the period for payment in order to save the judgment-debtor from the alternative consequence. SUNKUR SINGH v. HUREE MOHUN THAKOOR

[22 W. R., 460

29. ———— *Act X of 1859, s. 78—Stay of execution—Payment into Court—Extension of time when Court is closed—Decree—Suit for arrears of rent.*—When a tenant has been sued for arrears of rent and a decree obtained against him under Bengal Act VIII of 1869, s. 52, which provides for the stay of execution if the amount of the arrears, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, and the Court is closed on or before the last day of the period so limited, the tenant is at liberty to pay into Court the arrears, interest, and costs on the first day that the Court re-opens; and if he does so, execution must be stayed. HOSSEIN ALLY v. DONZELLE

[I. L. R., 5 Calc., 906 : 6 C. L. R., 239

30. ———— *Act X of 1859, s. 78—Forfeiture—Stay of execution of decree.*—The provisions of s. 52 of Bengal Act VIII of 1869 are exactly similar to those of s. 78 of Act X of 1859, and applicable to the case of a mokurari lease; and therefore a decree passed in conformity therewith, which allowed fifteen days for the payment of the arrears of rent found due and interest thereon, was a good decree. MAHOMED AMEER v. PERYAG SINGH

[I. L. R., 7 Calc., 566 : 9 C. L. R., 185

31. ———— *Mokurari lease—Covenant to forfeit lease if rent be unpaid—Payment of rent after suit, but before decree—Relief against forfeiture.*—S. 52 of Bengal Act VIII of 1869 is applicable both to cases where the right to cancel a lease arises under the provisions of the Act and to cases where the right arises under agreement between the parties. But the object of the section being to prevent forfeiture, if the rent be paid within the time specified by the section, the Courts

# BENGAL RENT ACT, VIII, OF 1869 (X OF 1859)—continued.

will grant relief against a forfeiture where the rent is so paid. DULI CHAND v. RAJKISSORE

[I. L. R., 9 Calc., 88 : 11 C. L. R., 326

32. ———— *Ejectment—Right of occupancy—Forfeiture—Landlord and tenant.*—The mere omission to pay rent for five years does not of itself amount to forfeiture of a raiyat's right of occupancy, and will not be sufficient to sustain an action by the landlord for the recovery of the raiyat's holding. A raiyat having a right of occupancy cannot be legally ejected, unless under an order regularly obtained under s. 52 of the Rent Law,—that is, under a decree for arrears of rent unsatisfied within fifteen days from the passing of the decree. Duli Chand v. Rajkissore, I. L. R., 9 Calc., 88 : 11 C. L. R., 326, followed. MUSYATULLA v. NOORZAHAN

[I. L. R., 9 Calc., 808

S. C. BROJENDRO KUMAR ROY CHOWDHRY v. BUNGO CHUNDER MUNDOL . 12 C. L. R., 389

33. ———— *Ejectment proviso in lease for forfeiture—Release from effect of forfeiture.*—A se-patni was granted to B by A, who held a dar-patni containing the following conditions, viz.: "I shall pay rent month by month; should I fail in that, I shall pay interest on instalments overdue at 1 per cent. per month. I shall pay the rent in full by the close of every year; should I neglect to make the payments, you will, of your own authority, take over possession of the said dar-patni talukh after the expiration of one month of the next succeeding year, and I shall have no complaint against your doing so." Upon non-payment of rent for the year 1281, a suit for khas possession of the lands was brought against A and B. The defendants claimed an equitable right to prevent forfeiture by paying all arrears according to the terms of the dar-patni, together with all costs. Held that, whether or not the provisions of the Rent Law actually applied to the case, the Court was bound by the analogy of that law to apply in favour of the defendants an equity similar to the equity there given, and accordingly a decree was passed, that if the defendants should pay the whole of the rent due up to date, with interest according to the conditions of the dar-patni, together with the costs in the High Court and Courts below, they should be released from the effect of the forfeiture. MOTHOR MOHUN PAL CHOWDHRY v. RAM LAL BOSE

[4 C. L. R., 469

34. ———— *Suit for ejectment from land assigned under a contract for building.*—The only suits for ejectment contemplated by Bengal Act VIII of 1869 are those consequent on the non-payment of arrears of rent, but not a suit for ejectment from land assigned for building purposes brought upon a contract (a kabuliat) by which the defendant had bound himself to give up the land when required by the plaintiff to do so on receipt of a year's rent and the cost of carrying away the building materials. RAMNARAIN MITTER v. NOBIN CHUNDER MOORDA-FARASH . . . 18 W. R., 208

35. ———— *Suit for ejectment—Tenant with right of occupancy.*—Where tenants have

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

obtained a right of occupancy under Bengal Act VIII of 1869, s. 6, a suit for ejectment against them can only be brought under that Act. **JOWAN HOSSEIN v. MOHABBER SAHEE** . 23 W. R., 412

**37. ——— Suit for arrears of rent**

**MAN v. DIGAMBER DOSSIE** . 18 W. R., 477

**38. ——— Decree for arrears of rent and ejectment.—A party who is under an obligation****39. ——— Act X of 1859, s. 78—Execution of decree for ejectment for arrears of rent.—Where a Munsif gave, under Act X of 1859,****40. ——— Decree for rent, Execution of—Appellate Court, decree of, Effect of—Liability to ejectment—A decree under s. 62,****BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

could be taken, the tenant (judgment-debtor), having paid the decretal amount within fifteen days of that decree, was protected from ejectment. **NOOR ALI CHOWDHURI v. KORI MEAH**

[I. L. R., 13 Calc., 13]

**41. ——— Liability to ejectment—Payment of amount of decree, but not amount due.—Where a judgment-debtor complied with the terms of a****42. ——— Suit for ejectment for arrears of rent—Bhooli tenure.—Under the provisions of Bengal Act VIII of 1869, a suit in ejectment will lie for arrears of rent due on a bhooli tenure. A suit which is in reality a claim for compensation for use and occupation of lands cannot be described as a suit for arrears of rent under s. 62 of Bengal Act VIII of 1869. **KISHEN GOPAL MAWAR v. BARNES****

[I. L. R., 2 Calc., 374]

**43. ——— Ejectment—Decree for arrears of rent, ejectment, and damages.—A decree which gave damages in addition to a decree for arrears of rent and ejectment in default of payment upheld, as being a decree which conformed substantially to s. 62 of the Rent Act, though it was doubtful whether the Court exercised a wise discretion in adding damages to the decree. In the spirit of the Rent Law, a decree for ejectment operates as an award of damages. **HEERAMUN ROY v. JUMBOO SINOH** . 23 W. R., 611****s. 53.**

**See LANDLORD AND TENANT—EJECTMENT—GENERALLY** I. L. R., 5 Calc., 135

**s. 58 (Act X of 1859, s. 62, and Bengal Act VI of 1862, s. 17).**

**See LIMITATION ACT, 1877, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS**

[I. L. R., 14 Calc., 385]

**1. ——— Act X of 1859, s. 62, Construction of—"Issued"—Execution of decree.—The word "issued" in the sentence, "no process of execution of any description whatever shall be issued," at the commencement of a s. 62 of Act X of 1859, is to be interpreted to mean "sued out" or "applied for with success"; that is, no application for a process of execution shall be successful unless the application for it is made or it is sued out within the fixed time. (BAYLEY and KEMP, JJ. dissenting) **RUIDOY KRISHNA GHOSE v. KAILAS CHANDRA BOSE****

[4 B. L. R., F. B., 62; 13 W. R., F. B., 3]

**HERALD SEAL v. PORAN MATTYAN**

[8 W. R., Act X, 84]

**IN THE MATTER OF HOSSEIN ALI**

[13 W. R., 205]

# **BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

2. *Value of stamps.*—In considering whether a "judgment" under this section is under R500 or not, the value of the stamps necessary in taking out execution is to be included in the judgment on the principle of ss. 187 and 188 of Act VIII of 1859. **CAMPBELL v. ABDUL HUQ . 6 W. R., Act X, 8**

3. *Interest.*—In ascertaining the amount of a judgment with a view to the applicability or otherwise of Bengal Act VIII of 1869, s. 58, the interest which accrues subsequently to the date of the decree is not to be included. **BRINDABUN DUTT v. BEHAREE MOHUN SEN . 24 W. R., 442**

4. *Division of joint decree to bring case within s. 58.*—A joint decree against two defendants for a sum exceeding R500 cannot be divided so as to fall within the scope of Bengal Act VIII of 1869, s. 58. **SYEFOOLAH KHAN v. FORBES . 25 W. R., 55**

5. *Limitation.*—A decree in a suit instituted under Bengal Act VIII of 1869 for execution was made on the 18th of February 1876, but no process of attachment or sale was issued until the 2nd of April 1876. *Held* that the attachment was valid, and not void as barred by limitation, under s. 58, Bengal Act VIII of 1869. **Heera Lal Seal v. Poran Matteah, 6 W. R., Act X, 84, Rhedoy Krishna Ghose v. Koylash Chunder Bose, 4 B. L. R., F. B., 82: 13 W. R., 3, and Lala Ram Sahoy v. Dodraj Mahto, 20 W. R., 395, cited. DEODHARY SINGH v. DOWLAT RAM . 3 C. L. R., 189**

6. *Limitation.*—The holder of a rent decree having made application for attachment and sale within three years from the 3rd September 1868, the date of decree, attachment was effected and an order passed fixing 21st November 1871 as the date for sale. On consent of parties and part payment, postponement of sale was allowed for three months. After the lapse of this period, the judgment-debtor delayed two months longer and then applied for sale. The application was refused. *Held* that the judgment of the lower Court was right, proceedings having been barred by Bengal Act VIII of 1869, s. 58. *Quare*—Had the Court any power, on consent of parties or otherwise, to extend the period of time prescribed by the statute of limitation? **LALLA RAM SAHOY v. DODRAJ MAHTO . 20 W. R., 395**

7. *Release of property from attachment.*—Decree in suit to set aside order releasing it.—Where property has been released from attachment in execution of a decree, and in a subsequent suit brought for the purpose, a decree is obtained declaring it liable to be attached and sold in execution of the former decree, the effect of the decree in the latter suit is to set aside the order which released the property from attachment, thus leaving matters as they were before that order was passed, and therefore, it being unnecessary to issue further process of

# **BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

execution, the execution proceedings are not barred under s. 58 of Bengal Act VIII of 1869. **WOOMA CHURN CHATTERJEE v. KADAMBINI DABEE . 3 C. L. R., 146**

8. *Failure to carry out order for execution.*—Limitation.—On a decree for rent dated 18th July 1870, execution process was taken out on 21st April 1873. On 24th October following, an order was passed for talabana to be deposited within seven days, but before that time expired (i.e., on 27th October), the case was struck off by an order which was not appealed against. The next execution process was taken out on the 6th December 1873. *Held* that, as the last process, being for a set-off, was not of the same nature as the first, which was for attachment of property, it could not be considered to be a carrying out of the former; and as the order of 27th October 1873 remained uncanceled, the decree was barred under the Rent Law, s. 58. **AKRAM SHERE v. LAJEE SINGH . 24 W. R., 16**

9. *Limitation.*—Per GARTH, C.J., and MORRIS, J. (PRINSEP, J., dissenting).—The words "from the date of such judgment," in s. 58 of Bengal Act VIII of 1869 should be read as if they were "from the date when the rent is adjudged to be payable." *Per* PRINSEP, J.—The "date of such judgment," in s. 58 of Bengal Act VIII of 1869, means the date on which the judgment was delivered. **GUREEBULLAH SIBKEAR v. MOHUN LALL SHAHA . 7 C. L. R., 409**

10. *Execution of decree.*—Limitation.—Where an application has been made and granted by the Court which passed the decree, but no application for execution is made to the Court to which the decree has been transferred within three years from the date of the decree, the execution of the decree will be barred by limitation, under the provisions of Bengal Act VIII of 1869, s. 58. **BHOJANATH ROY v. NURENDRO NATH ROY . 12 C. L. R., 58**

11. *Execution of decree.*—Limitation.—On the 10th of July 1878, a rent-decree was passed in favour of certain parties for the sum of R168, payable in two equal instalments, on the 4th of June 1879 and the 30th of October 1879, respectively. On the 18th July 1881, the decree-holders applied for execution of the decree. *Held* by the majority of the Full Bench (GARTH, C.J., and MITTER, J., dissenting) that the application was barred by limitation under the provisions of s. 58, Bengal Act VIII of 1869. **Gureebullah Sircar v. Mohun Lal Shaha, 1. L. R., 7 Calc., 127: 8 C. L. R., 409, dissented from. MAMTAZUL HUQ v. NREBHAI SINGH . 9 Calc., 711: 12 C. L. R., 318**

12. *Application for execution of decrees for arrears of rent.*—Proper application.—Civil Procedure Code (Act XIV of 1882), ss. 235

# BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

237, 245—*Limitation*—Within the period of three years from the date of a decree for arrears of rent

13. — *Application for execution of decree for arrears of rent*—Circular Order, 101, July 1874—*Limitation*.—The words "no process of execution of any description whatsoever shall be issued on a judgment in any suit . . . after the

14. — *Execution of decree Delay and laches—Costs—Limitation*.—In a suit for arrears of rent under Bengal Act VIII of 1869, a

in execution of another decree and the execution

application for execution was made on 19th August 1873. *Held* that the costs of the appeals in the execution-proceedings should not be added to the decree, and, therefore, the decree being for less than

# BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

R500, the provisions of s. 53, Bengal Act VIII of 1869, applied to it. *Held*, also, that the attachment

15. — *Execution of decree—Suit for rent not brought under Bengal Act VIII of 1869—Decree of Court of Foreign State—Civil Procedure Code, 1852, s. 431—Limitation*.—The law of limitation applicable to the execution of a decree of the Civil Court of Cooch Behar, for rent for a sum under R500 in a suit not brought under the Rent Act, is by s. 434 of the Civil Procedure Code which gives the Courts in British India power to execute decrees passed by the Courts of a Foreign State, s. 53 of Bengal Act VIII of 1869. That section is not confined to suits brought under that Act. *IN THE MATTER OF THE PETITION OF HUKUM CHAND ASWAL HUKUM CHAND ASWAL v. GYANENDU CHUNDER LAHARI* . . . I L R, 14 Calc., 570

Reviewing S. C. . . I L R, 13 Calc., 85

ss. 59, 60 (Bengal Act VIII of 1865, ss. 4 and 5).

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

See SALE FOR ARREARS OF RENT—PORTION OF UNDER-TENURE, SALE OF

See SALE FOR ARREARS OF RENT—UNDER-TENURE, SALE OF.

ss. 59, 60, 68.

See ONCE OF PROOF—SALE FOR ARREARS OF RENT . . . I L R, 13 Calc., 1

ss. 59 61 (Act X of 1859, s. 105).

See EXECUTION OF DECREES UNDER RENT LAW.

[I L R, 7 Calc., 748

I L R, 8 Calc., 875

I L R, 10 Calc., 547

See CASES UNDER SALE FOR ARREARS OF RENT—INCUMBRANCES.

See CASES UNDER SALE FOR ARREARS OF RENT—UNDER-TENURE, SALE OF.

ss. 59, 61, 65.

See EXECUTION OF DECREES—DECREES UNDER RENT LAW I L R, 14 Calc., 14

s. 62 (Bengal Act VIII of 1865,

s. 6).

See SET-OFF—GENERAL CASES.

[2 C. L. R., 414

s. 63 (Act X of 1859, s. 106).

See RIGHT OF SET—ORDERS, SETS TO SET AND . . . 3 C. L. R., 146

1. — *Act X of 1859, s. 106—Sale of under-tenure—Suit to establish proprietary right—ss. 106 and 107, Act X of 1859, apply only to cases in which the existence of the under-tenure*

# BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

and the decree-holder's right as landlord are admitted, not where they are denied and an adverse proprietary title is set up by the claimant as owner of the land. The remedy open to the owner of the land in such a case is under s. 77 before the decree is made, but after he allows it to be made, he cannot have it set aside in execution. *GOLAM CHUNDER DEY v. NUDDIAR CHAND ADHEEKAREE* . 16 W. R., 1

## 2. ——— Act X of 1859, s. 106— *Suit by purchaser for possession of under-tenure.*—

A suit by an auction-purchaser to obtain khas possession of an under-tenure which had been sold under Bengal Act VIII of 1865 was dismissed on the ground that the suit in which the zamindar had obtained the decree was a fraudulent one and the purchaser knew that it had been against the wrong party. In special appeal, Act X of 1859, s. 106, was pleaded in justification of the zamindar. *Held* that the zamindar could not bring such a suit as he had brought against a person other than the one whom he knew to be the proprietor of the under-tenure, and from whom for a series of years he had been receiving rent. *NOBIN CHUNDER SEN CHOWDHRY v. NOBIN CHUNDER CHUCKERBUTTY* . 22 W. R., 46

*WOOMA CHURN CHATTERJEE v. KADOMBINI DABER* . 3 C. L. R., 146

s. 64 (Act X of 1859, s. 108).

See SALE FOR ARREARS OF RENT—PORTION OF UNDER-TENURE, SALE OF.

[15 W. R., 6, 524

22 W. R., 67, 414

24 W. R., 313

2 C. L. R., 325

I. L. R., 12 Calc., 464

s. 66 (Bengal Act VIII of 1865, s. 16).

See CASES UNDER SALE FOR ARREARS OF RENT—INCUMBRANCES.

s. 68 (Act X of 1859, s. 112).

See DISTRESS . 4 N. W., 76

ss. 71, 74 (Act X of 1859, ss. 115, 118).

See DISTRESS.

[1 N. W., Pt. 3, p. 53: Ed. 1873, 108

ss. 72, 74, 76 (Act X of 1859, ss. 116, 118, 120).

See CRIMINAL TRESPASS.

[I. L. R., 7 Calc., 28

s. 80 (Act X of 1859, s. 124).

See DISTRESS . 21 W. R., 37

s. 98 (Act X of 1859, s. 142).

See DISTRESS . 9 W. R., 162

[W. R., 1864, Act X, 77

See WRONGFUL DISTRAINT.

[3 B. L. R., A. C., 261

10 W. R., 70

5 W. R., Act X, 68

8 W. R., 291

# BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.

*Suit for value of crops—Distraint—Jurisdiction—Small Cause Court.*—The plaintiff made a complaint to the Magistrate against the defendant, his landlord, for forcibly carrying away his crops; whereupon the defendant was tried, convicted of theft, and punished. The plaintiff then instituted a suit against the defendant in the Munsif's Court, apparently under s. 95 of Bengal Act VIII of 1869, and obtained a decree declaring the distraint to be illegal, and directing the crops to be given up to him. The defendant offered to give up a smaller quantity than was mentioned in the decree. The plaintiff refused to take the same, and brought a suit in the Small Cause Court to recover the value of the quantity he had claimed before the Munsif and something additional. *Held* that the Small Cause Court had no jurisdiction, and that the suit ought to have been brought under s. 98 of Bengal Act VIII of 1869. *HYDER ALI v. JAFAR ALI* [I. L. R., 1 Calc., 183: 24 W. R., 222

s. 99 (Act X of 1859, s. 143).

See WRONGFUL DISTRAINT.

[3 B. L. R., A. C., 261

5 W. R., Act X, 67, 68

9 W. R., 162

15 W. R., 543

s. 100 (Act X of 1859, s. 144)—

*Cause of action—Suit for wrongful distraint—Limitation.*—The time limited by Act X of 1859, s. 144, for suing in respect of distraints for rent, "namely, three months from the date of the occurrence of the cause of action," was to be reckoned, in the case of a suit for a wrongful distress afterwards abandoned, from the abandonment of the distress, and not merely from the date of the original seizure. *THUKREE ROY v. HEERAMUN SINGH*

[Marsh., 470: 2 Hay, 597

*TARINEE CHURN BOSE v. SHUMBHOONATH PANDAY* . 3 W. R., Act X, 139

s. 101 (Act X of 1859, s. 145).

See PENAL CODE, s. 206.

[2 B. L. R., S. N., 4: 10 W. R., Cr., 46

See WRONGFUL DISTRAINT.

[20 W. R., 445

*Act X of 1859, ss. 145 and 160—Complaint—Suit.*—A complaint under s. 145 of Act X of 1859 is not a suit, and did not fall within the description of the suits in which, under s. 160, an appeal was given to the Zilla Judge. *IN THE MATTER OF THE PETITION OF AMANATULLA* [6 B. L. R., 589: 15 W. R., 136

1. ——— s. 102—"Suit"—*Appeal in execution proceedings.*—The word "suit" in Bengal Act VIII of 1869, s. 102, is intended to cover all proceedings prior to decree and subsequent ones in execution. *KRISHTO COOMAR CHUCKERBUTTY v. ANUND COOMAR DUTT* . 19 W. R., 307  
*KEDARNATH BISWAS v. HURO PERSHAD ROY CHOWDHRY* . 23 W. R., 207

# BENGAL RENT ACT, VIII OF 1869 (X OF 1869)—continued.

2. ————— *Intention of section—Effect of decree under.*—S. 102 of Bengal Act VIII of 1869 was enacted in order to protect parties

SEN v. RAM LALL CHHUTAB

[L. L. R., 7 Calc., 330

S. C. DURGA NARAIN MISSEER v. GOSURDHUN GHOSH 9 C. L. R., 86

3. ————— *Special appeal—Power of Bengal Legislature.*—Bengal Act VIII of 1869 (ss. 33, 34) gives jurisdiction to Civil Courts to try

1100 except in certain circumstances. *Question.*—Has the Bengal Legislative Council power to give to the High Court any appellate jurisdiction not conferred by the Charter? POORNO CHUNDER ROY v. KRISTO CHUNDER SINHA 23 W. R., 171

4. ————— *Special appeal—Practice.*—In a suit for arrears of rent and ejectment, the right of appeal is taken away by s. 102, Bengal Act VIII of 1869, only when it is shown that the amount sued for and the value of the property claimed is less than R100. Unless that fact appears, either from the finding of the District Judge or

5. ————— *Special appeal—Sale in execution of decree for rent.*—No appeal lies under s. 102, Bengal Act VIII of 1869, from the order of a District Judge on an application connected with the sale of a tenure in execution of a decree for arrears of rent below R100. DEB COOMAR DASGUPTA v. GUNGADHAR DEB 17 W. R., 189

6. ————— *Special appeal.*—In suits for recovery of rent below R100, a special appeal lies to the High Court from the decision in appeal by a Subordinate Judge. MAHOMED MUHAMMAD v. JYBUNER

[10 B. L. R., Ap., 29: 19 W. R., 200

7. ————— *Special appeal.*—In a suit for arrears of rent below R100, an appeal lies to the High Court from a decree passed in appeal by an Additional Judge. NOBOKISTO KOOKDOO v. MAHOMED SHEIKH

[10 B. L. R., Ap., 30: 19 W. R., 202

8. ————— *Special appeal—Suit for rent under R100—Civil Procedure Code, 1859, s. 372—Held by the Court (JACKSON, J., dissenting) that no appeal lies to the High Court from the decision of a District Judge in a suit for*

# BENGAL RENT ACT, VIII OF 1869 (X OF 1869)—continued.

rent under R100, when no question of right to enhance or vary the rent is raised.

LAKHESSEER KOER v. SOOKHA OJHA

[C. L. R., 39

9. ————— *Special appeal—Suit for ejectment and rent under R100.*—An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than R100. Nor can an application, made to eject the tenant on his default to pay into Court the moneys due under the decree within the time fixed by s. 52 of Bengal Act VIII of 1869, confer such right of appeal. PARBUTTY CHATTERJEE v. MONDARI

[L. L. R., 5 Calc., 594: 5 C. L. R., 513

10. ————— *Special appeal—District Judge—Subordinate Judge—Act XVI of 1869.*

strict Judge may make over appeals filed in his Court. DOTAL CHAND SAHAY v. NARIN CHANDRA ADHIKARI 8 B. L. R., 180: 18 W. R., 235

11. ————— *Special appeal—Additional Judge—District Judge—Bengal Civil Courts Act (VI of 1871)—Appeal.*—Held (JACKSON, J., dissenting) that an Additional Judge invested

ISHAN CHUNDER GHOSH v. NOSTY PAL

[13 B. L. R., 377 note

12. ————— *Special appeal—Right to enhance or vary the rent.*—The question in a suit for arrears of rent as to a right to convert the money-rent into a rent payable in kind is a question which, if determined, renders the suit appealable. ELAKHER BUKSH v. JAFFER ALY

[1 N. W., 100: Ed. 1873, 187

13. ————— *Special appeal—Right to enhance or vary rent.*—A special appeal was held to lie to the High Court under s. 102, Bengal Act VIII of 1869, in a suit for rent below R100 in which the question of right to enhance had been determined. WATSON & Co. v. RAM DUTTA GHOSH

[17 W. R., 405

14. ————— *Special appeal—Question of title.*—In this case the Judge dismissed plaintiff's suit on the ground that no notice had been served on defendant, the nature of the suit being not one for enhancement, but to recover rent at rates previously

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

settled, and no notice being therefore required. The value of the suit was under R100, and the High Court held that the Judge had not decided any right to vary or enhance the rent, and therefore they could not interfere, there being no appeal under Bengal Act VIII of 1869, s. 102. **GOLUCK CHUNDER DUTT v. MEAH RAJA MIJEE** . . . 17 W. R., 119

15. ————— *Special appeal—Question between parties having conflicting claims.*—In a suit for rent less than R100, the decision turned upon whether, in a former suit against the plaintiff by a third party, a decree had been recovered for possession of a portion of the land now in dispute. *Held* that, as neither the land nor the rent of such portion was claimed by the defendant, the question as to title was not decided between parties having "conflicting claims" thereto; consequently there was no right of appeal. **REEDONATH DOORIPA v. PRBDO LOCHUN CHUCKERBUTTY** . . . 22 W. R., 205

16. ————— *Special appeal—Question of title.*—The issue whether or not there has been a binding enhancement of rent, and whether or not the tenant has paid at the enhanced rate, involves no question of title or of right to enhance or vary the rent, and the appeal in such a suit properly lies to the Collector. **BAHADUR SINGH v. HURA** 3 N. W., 73

**AGER SINGH v. BOOJHAWUN** . . . 4 N. W., 61

17. ————— *Special appeal—Decision as to varying rent.*—In a suit for arrears of rent on the basis of a shironamah, where the raiyat denied that he had executed that document, and produced evidence to show that the rates mentioned in it were not correct,—*Held* that there was no question of right to vary the rent, and that the case therefore did not come under Bengal Act VIII of 1869, s. 102. **NITRESSUR SINGH v. JHOTEE TELY** 23 W. R., 343

18. ————— *Special appeal—Decision as to varying rent.*—Where the amount of jumma is not disputed, but there is a question as to whether it is payable by instalments or in a lump sum, the decision cannot be said to involve a question of "right to enhance or vary the rent." **PEARI MOHUN MOOKHOPADHYA v. MADHUB CHUNDER BABOO**

[23 W. R., 385]

19. ————— *Special appeal—Question of fact—Question of nature of rent.*—In a suit for arrears of rent, where the question was whether the defendants were holding on payment of nugdi rents or as bhoul tenants,—*Held* that the decision was a finding of fact. *Held*, further, that, as the suit was for an amount under R100, and as no question to vary the rate was determined, nor any question of title as between parties having conflicting claims thereto, there was no special appeal. **SHUABUL SINGH v. TOONDUN SINGH** . . . 24 W. R., 469

20. ————— *Special appeal—"Right to vary rent."*—A suit for rent under R100 is not taken out of the purview of Bengal Act VIII of 1869, s. 102, by the fact of the rate of rent having been varied by the decision of the Court, unless the Judge determined "the right to vary the rent." **WATSON & Co. v. MOHENDRO NAUTH PAUL** 23 W. R., 436

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—continued.**

**SREENATH ROY v. AINOODDEEN SHAHA**

[25 W. R., 103]

21. ————— *Special appeal—Question as to whether rent has varied.*—Bengal Act VIII of 1869, s. 102, does not apply where the point decided is simply whether the rent fixed by a previous decision has been subsequently altered and a new arrangement come to. **NURUDESSUR PERSHAD ROY v. JUNGLE**

[24 W. R., 49]

22. ————— *Special appeal—Question as to variation of rent.*—In a suit for arrears of rent under R100, in which the question was whether the landlord had the right to raise and had raised the rent, and the Judge decided that there had been no alteration in the rent,—*Held* no appeal lay to the High Court. **ROY JUNG BAHADOOR v. JUNGEO ROY**

[25 W. R., 247]

23. ————— *Special appeal—Question of title.*—Where the Judge practically came to no determination at all, on the erroneous supposition that a review had been wrongly admitted by the Munsif, a special appeal was held to be not barred. **GOON DIAL ROY v. DEKA NOONYA** . . . 22 W. R., 446

24. ————— *Special appeal—Co-sharer—Suit for rent.*—The plaintiff, one of several co-sharers of a talukh, sued to recover her share of rent, making her co-sharers, who resisted her claim, defendants. The first Court raised and tried questions of title between the plaintiff, her co-sharers, and the raiyat, and decided in favour of the plaintiff. The lower Appellate Court, without expressing any opinion on the rights of the parties, dismissed the suit on the ground that it was not maintainable. On special appeal, it was contended that no appeal would lie, as the amount of the claim was less than R100, and no question of title was determined by the judgment; but this objection was overruled on the ground that the decree of the lower Appellate Court, dismissing the suit, had the effect of deciding the question of title against the plaintiff. On appeal under cl. 15 of the Letters Patent,—*Held* that the judgment, rather than the decree, is to be looked at in applying s. 102, Bengal Act VIII of 1869. No appeal lay from the judgment of the lower Appellate Court, inasmuch as that judgment showed not only that no question of title was determined, but that the Judge did not even consider it. **KARIM SHEIKH v. MUKHODA SOONDERY DASSEE** . . . 15 B. L. R., 111 : 23 W. R., 268

Reversing decision in **MOKHODA SOONDERY DOSSEE v. KUREEM SHEIKH** . . . 23 W. R., 11

25. ————— *Special appeal—Question of title.*—Where in a suit under Bengal Act VIII of 1869, s. 82, to contest the demand of the distrainer, a question as to area was raised merely as subordinate to the issue as to the amount of rent due without any dispute as to the relationship of landlord and tenant, the case was held not to come within the provisions of s. 102. **HURO PERSHAD CHUCKERBUTTY v. SREEDAM CHUNDER CHOWDHRY** . . . 20 W. R., 15

**HURISH CHUNDER CHUCKERBUTTY v. HURREE BEWAH** . . . 20 W. R., 16

**BENGAL RENT ACT, VIII OF 1859 (X OF 1859)—continued.**

26. ————— *Special appeal—Question of title.*—In a suit for rent under R50, in which the defendant claimed title by prescription, the plaintiff sought a decree for possession of the land. The lower Court held in favour of the plaintiff. On appeal, the defendant sought to set aside the decree on the ground that the plaintiff had not proved his title. The Court held that the plaintiff had proved his title by prescription, and the decree was affirmed. [25 W. R., 14]

27. ————— *Special appeal—Question of title.*—In a suit for rent under R50, in which the defendant claimed title by prescription, the plaintiff sought a decree for possession of the land. The lower Court held in favour of the plaintiff. On appeal, the defendant sought to set aside the decree on the ground that the plaintiff had not proved his title. The Court held that the plaintiff had proved his title by prescription, and the decree was affirmed. [25 W. R., 14]

28. ————— *Special appeal—Decision.*—In a suit for rent under R50, in which the defendant claimed title by prescription, the plaintiff sought a decree for possession of the land. The lower Court held in favour of the plaintiff. On appeal, the defendant sought to set aside the decree on the ground that the plaintiff had not proved his title. The Court held that the plaintiff had proved his title by prescription, and the decree was affirmed. [25 W. R., 14]

29. ————— *Special appeal—Question of title.*—In a suit for rent under R50, in which the defendant claimed title by prescription, the plaintiff sought a decree for possession of the land. The lower Court held in favour of the plaintiff. On appeal, the defendant sought to set aside the decree on the ground that the plaintiff had not proved his title. The Court held that the plaintiff had proved his title by prescription, and the decree was affirmed. [25 W. R., 14]

30. ————— *Special appeal—Question of title.*—In a suit for ejectment valued under R100, the defendants, who were sued as yearly tenants, replied that their tenure was a mansab gajasta tenure, and in proof of their allegation adduced evidence which was not displaced by the plaintiffs. The lower Court considered that the defendants' allegation was well founded. Held that, although the value of the suit was under R100, an appeal was not barred. [25 W. R., 14]

31. ————— *Special appeal—Question of title.*—Separate suits for rent by A and B having been instituted against the tenants of certain land to which both laid claim, a suit was filed by A to establish his title against B, and pending that suit

**BENGAL RENT ACT, VIII OF 1859 (X OF 1859)—continued.**

the rent suits which were each for a sum under R100,

such suits, and that consequently no second appeal lay. *DURGA NARAIN MISSEY v. GONDRON GHOSH* [9 C. L. R., 88]

32. ————— *Special appeal—Parties having conflicting claims.*—Where there was a question of title, and the parties had conflicting claims, the Court held that a second appeal was not barred. [25 W. R., 14]

33. ————— *Special appeal—Suits for arrears of rent.*—D C S, the zamindar, brought a suit against B, a raiyat, for recovery of arrears of rent valued below R100, to which N C A, who claimed under a mokurari title, was made a party under s. 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff. On appeal by N C A, which was heard and decided by the Sudder. [25 W. R., 14]

*DILBIR v. ISSUR CHUNDER ROY* . 21 W. R., 36

*NANKOO KOEBER v. NUND COOMAR PATRY* [23 W. R., 328]

*KASHEE RAM DOSS v. SHAM MOHINEE* [23 W. R., 227]

*KRIPAMOYEE DEBIA v. DEOTULDER CHOWDHRAIN* [24 W. R., 213]

33. ————— *Special appeal—Suits for arrears of rent.*—D C S, the zamindar, brought a suit against B, a raiyat, for recovery of arrears of rent valued below R100, to which N C A, who claimed under a mokurari title, was made a party under s. 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff. On appeal by N C A, which was heard and decided by the Sudder. [25 W. R., 14]

34. ————— *Special appeal—Decision of varying rent.*—Where a Judge found in a rent suit that, although R30-6-0 had for a great number of years been paid by the tenant, R25-15 only was the true rent. The Court held that a second appeal was not barred. [25 W. R., 14]

35. ————— *Special appeal—Claims by plaintiff as zamindar, and defendant as mortgagee, to rent.*—In a suit in which plaintiff claims rent as zamindar, and defendant, admitting his own tenancy, claims it as mortgagee, there cannot be said to be conflicting claims to a title to, or some interest in, land within the meaning of Bengal Act VIII of 1859, s. 102. *RAJAKISHEN MOOKERJEE v. PRANEE MOHONY MOOKERJEE* . 24 W. R., 114

36. ————— *Special appeal—Question against intervention.*—The circumstance that a question has been determined at the hearing of the

**BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—concluded.**

appeal in a rent suit, by which an intervenor may be injuriously affected, will not make the appeal cognizable as a special appeal, unless the decision has involved some title or interest in land of parties having conflicting claims thereto. **RAJ KISHEN MOOKERJEE v. SREENATH DUTT** . 23 W. R., 408

**37. —Special appeal—Rent suit under R100—Title.**—*A and B, both of whom set up a claim to certain land, brought separate rent suits against the tenants. In none of these suits did the amount claimed exceed R100. Subsequently to the institution of the rent suits, A sued B to establish his title to the land in dispute. The District Judge, before whom the rent suits came on appeal, allowed them to stand over until the decision in the suit between A and B. That suit was decided in favour of B, and the Judge then decided the rent suits instituted by B in his favour, and dismissed the suits instituted by A. Held that no second appeal would lie in the rent suits, as no question of title between parties having conflicting claims was decided in them.* **DOORGA NARAIN SEN v. RAM LALL CHHUTAR** . I. L. R., 7 Calc., 330

**S. C. DURGA NARAIN MISSEER v. GOBURDHUN GHOSE** . 9 C. L. R., 86

**38. —Special appeal—suit for rent below R100—Landlord and tenant.**—In a suit for rent below R100, the defendant set up the title of a third person (the third person was, however, no party to the proceedings), and the lower Court, finding that relationship of landlord and tenant existed between the parties, and that the rent was unpaid, decided the suit on that ground in favour of the plaintiffs. The defendant appealed to the District Judge, who decided that the defendant had paid the rent, and reversed the decision of the Court below. The plaintiffs appealed to the High Court, but were met with the objection that no special appeal would lie. *Held* that s. 102 of Bengal Act VIII of 1869 prohibited the appeal, the case being one between landlord and tenant, and there consequently being no question relating to title as between parties having conflicting claims. **ROMAPROSAD ROY v. SHORUP PARAMANTOK** . I. L. R., 8 Calc., 712

**s. 103—Civil Procedure Code, 1859, s. 119—Ex-parte decree—Re-hearing.**—S. 103 of Bengal Act VIII of 1869 does not apply to applications for a re-hearing after an *ex-parte* decree on the ground of ignorance of the suit. **DRABAMANI GUPTIA v. TARACHARAN SEN**

[7 B. L. R., 207: 16 W. R., 17

**s. 108.**

**See BENGAL ACT III OF 1870.**

[10 B. L. R., Ap., 21: 19 W. R., 128  
10 B. L. R., Ap., 22 note: 15 W. R., 75

**BENGAL SURVEY ACT (V OF 1875).**

**s. 40.**

**See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.**

[I. L. R., 21 Calc., 935

**BENGAL SURVEY ACT (V OF 1875)—concluded.**

**See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.**

[I. L. R., 21 Calc., 935

**s. 45, cl. (b), and s. 62—Survey proceedings not taken for public purposes—Right of suit.**—S. 45, cl. (b), of Bengal Act V of 1875 applies only to a survey or some similar proceeding taken by a revenue officer "for some public purpose," and against which any party who may be affected by the boundary laid down by such officer would have a right to object. Therefore, where such a proceeding, although initiated under Bengal Act V of 1875, has been taken for the purpose of settling the boundaries of private property as between the owners of it, the party aggrieved by the order of the Collector in such proceeding is not debarred by s. 62 of the Act from bringing a suit in the Civil Court to have the boundaries ascertained. **HURRI PRASAD v. JATINA PRASAD** [I. L. R., 6 Calc., 453: 7 C. L. R., 491

**s. 62—Boundary dispute—Possession, Evidence of—Suit based on title.**—A formal decision on the question of boundary in a boundary dispute under s. 62 of Bengal Act V of 1875, although conclusive as to possession, is no bar to a suit based upon title. **KALA CHARA TEA CO., LD. v. SUREUL SINGH** . I. L. R., 13 Calc., 280

**BENGAL TENANCY ACT (VIII OF 1885).**

**See CASES UNDER APPEAL—ACTS—BENGAL TENANCY ACT.**

**See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.**

[I. L. R., 20 Calc., 590

**Applicability of Act to lands outside the limits of the town of Calcutta, but within municipal boundaries—Calcutta Municipal Consolidation Act (Bengal Act II of 1889), s. 3—Town of Calcutta, Municipal boundaries of.**—The Bengal Tenancy Act applies to lands situated outside the limits of the town of Calcutta, but within its municipal boundaries, as defined by Bengal Act II of 1888. **BIRAJ MOHINI DASSI v. GOPESWAR MULLICK** . I. L. R., 27 Calc., 202

**s. 3, cls. (3) and (5) and ss. 4 and 5, cls. (2) and (3)—Liability to ejectment—Non-occupancy raiyats—"Rent"—Payment for "use and occupation."**—The defendants were cultivating raiyats who had held certain land under Government, but not for a period sufficient to give them a right of occupancy. The plaintiffs in a suit against the Government succeeded in proving their title to the land. In a suit to eject the defendants as trespassers, inasmuch as they could have derived no title from Government who themselves had no title, and no relationship of landlord and tenant existed between them and the plaintiffs who had not recognized their right to cultivate the land, *Held* that under s. 3, cls. (3) and (5), ss. 4 and 5, cls. (2) and (3), of the Bengal Tenancy Act, the defendants were "non-occupancy raiyats," and therefore not liable to

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

ejectment except for the reasons and on the conditions specified in that Act; and no such reasons or conditions existed in this case. Liability to pay for the "use and occupation" of land by a person between whom and the proprietor of such land there exists no relationship of landlord and tenant, is a "liability to pay rent" within the meaning of s. 3, cl. (5), of the Bengal Tenancy Act. Cl. (3), & 6 of that Act, is intended merely to define the position of a raiyat in respect to a proprietor or tenure-holder, and to distinguish him from what is afterwards described as an under-raiyat. *MOHIMA CHUNDER SHAH v. HAZARI PRAMANIK* I. L. R., 17 Calc., 45

s. 3, cl. (5).

See *Cess* . I. L. R., 17 Calc., 728  
[I. L. R., 22 Calc., 680]

See *SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—TAX.*  
[I. L. R., 22 Cal., 680]

s. 3, cl. (9), and s. 85—"Parcel,"  
"Holding." Meaning of.—The term "parcel" or

*Guha, I. L. R., 19 Calc., 610, Jardine, Skinner & Co. v. Sarat Soondari Deb, 3 C. L. R., 140, and Gour Buhak Roy v. Jee Lul Roy, I. L. R., 16 Calc., 127, distinguished. HURRY CHURN BOSE v. RUMJIT SINGH* . 1 C. W. N., 521

HARI CHARAN BOSE v. RUMJIT SINGH

[I. L. R., 25 Calc., 617 note]

s. 5.

See *GENERAL CLAUSES CONSOLIDATION ACT, 1863, s. 6.*

[I. L. R., 13 Calc., 88]

See *LANDLORD AND TENANT—LIABILITY FOR RENT* . I. L. R., 19 Calc., 700

1. — s. 5, cl. (1)—*Suit for rent against a person holding land within a municipality and the land not proved to have been let out for agricultural or horticultural purposes.*—The mere fact that a person has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rent is not sufficient to prove

2. — cl. (2)—*Raiyat, Definition of—Person taking land for horticultural purposes.*—*Scamble*—The definition of "raiya" in the Bengal Tenancy Act (Act VIII of 1885) is not exhaustive, and there is nothing in that definition which

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

would exclude a person who had taken land for horticultural purposes. *HURRY RAM v. NUBSING LAL* [I. L. R., 21 Calc., 129]

3. — *Non-occupancy raiyat—Ejectment—Trespasser.*—A person having, previously to the passing of the Bengal Tenancy Act, been

obtained possession of the land from such trespasser through the Court on the 27th January 1886. *Held* that such person was a non-occupancy raiyat within the meaning of s. 5, sub-s. (2), of the Bengal Tenancy Act, and was protected from ejectment by that Act. *Mohima Chunder Shah v. Hazari, Pramanik, I. L. R., 17 Calc., 45, approved. BHAD LAL PAKRASHI v. KALU PRAMANIK*

[I. L. R., 20 Calc., 708]

cl. (5).

See *RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION.*

[I. L. R., 24 Calc., 373  
I. R., 23 I. A., 158]

1. — s. 12—*Transfer of a permanent tenure—Permanent tenure, Registration of.*—The transfer of a permanent tenure under s. 12 of the Bengal Tenancy Act is complete as soon as the document is registered. *KRISTO BULLU GHOSH v. KRISTO LAL SINGH* . I. L. R., 18 Calc., 643

2. — *Transfer of tenure—Registration—Notice of transfer—Landlord and tenant—Liability for rent.*—After a recorded tenant has transferred his tenure to another person, and that transfer has been duly registered under the provisions of the Bengal Tenancy Act, he is no longer liable for the rent of the tenure, although the landlord may not have received actual notice of such transfer. *Kristo Bullu Ghosh v. Kristo Lal Singh, I. L. R., 18 Calc., 642, relied on. CHITRAMONT DUTT v. RASH BEHARI MONDEL*

[I. L. R., 19 Calc., 17]

3. — *Transfer of tenure—Contract regarding transfer of tenure—Conditional transfer—Condition not performed.*—A transfer of a tenure made in terms of the provisions of the Bengal Tenancy Act of 1885 is not binding on the landlord if there be a contract between the landlord and the tenant that the transfer shall not be valid and binding until security to the satisfaction of the landlord has been furnished by the transferee, and such security has not been furnished. The tenant is still liable for the rent. *DINAKRUPUR ROY v. DONERJEY* . I. L. R., 19 Calc., 774

4. — *Transfer of Property Act (17 of 1882), s. 59—Permanent tenure—Mortgage—Registration.*—The provisions of s. 59 of the Transfer of Property Act must, having regard to

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

be greater or less than Rs. 100. *SOSHI BHUSAN BOSE v. SHAHADEB SHAHA* . . . 3 C. W. N., 499

5. ——— and s. 13—*Sale of a tenure in execution of a decree not for arrears of rent—Effect of non-payment of landlord's fee or the fee for service of notice of the sale on the landlord before the confirmation of sale.*—Under s. 13 of the Bengal Tenancy Act, when a permanent tenure is sold in execution of a decree other than a decree for arrears of landlord's rent due in respect thereof, and the fee prescribed by s. 12 of the said Act is not paid before the confirmation of the sale, the sale is invalid. *BABAR ALI v. KRISHNAMANINI DASSI*

[I. L. R., 26 Calc., 603  
3 C. W. N., 531]

s. 13.

See SALE FOR ARREARS OF RENT—  
RIGHTS AND LIABILITIES OF PUR-  
CHASERS . . . I. L. R., 20 Calc., 247

——— and s. 195 (e)—*Sale in execution of decree for arrears of rent—Dar-patni tenures.*—S. 13 of the Bengal Tenancy Act applies to sales of dar-patni tenures in execution of decrees. *MAHOMED ABBAS MONDUL v. BROJO SUNDARI DEBIA*

[I. L. R., 18 Calc., 360]

1. ——— s. 15—*Bengal Rent Act (VIII of 1869), s. 26—Act X of 1869, s. 27—Suit by landlords against a tenure-holder in occupation of a share of the tenure without joining other co-sharers of the defendants for recovery of rents and cesses whether and when maintainable.*—It is the duty of the persons succeeding by inheritance to a permanent tenure to notify the succession, and it is not the duty of the superior landlord to find out who all the heirs of a deceased tenure-holder are. There is no law which compels a landlord in order that he might succeed in a suit for rent to sue all the heirs of a deceased tenure-holder when he has no notice who the heirs are. Where, as in this case, the defendant was admittedly one of the heirs and in possession as such, he is liable for the rent, and he cannot defeat the plaintiff's suit by showing that there were other heirs equally liable, unless he also shows that their names were notified to the landlord as successors of the original holders, or that they have been paying rent and getting receipts as successors. *KHETTER MOHAN PAL v. PRAN KRISTO KABIRAJ* . . . 3 C. W. N., 371

2. ——— and ss. 16 and 195—*Patni tenure—Bengal Regulation VIII of 1819, s. 5.*—Ss. 15 and 16 of the Bengal Tenancy Act of 1885 apply to patni tenures. *DURGA PRASAD BUNDOPADHYA v. BRINDABUN ROY*

[I. L. R., 19 Calc., 504]

3. ——— and s. 16—*Operation of those sections in a suit for rent of land, to which the plaintiff succeeded before the Bengal Tenancy Act came into force—Construction of statute.*—Ss. 15 and 16 of the Bengal Tenancy Act are not retrospective. *PROFULLAH CHUNDER BOSE v. SAMIN- UDDIN MONDUL* . . . I. L. R., 22 Calc., 337

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—continued.

4. ——— and ss. 16 and 26—*Whether an heir of an occupancy raiyat can claim recognition by the landlord on the death of his ancestor, who was the recorded tenant.*—An heir of an occupancy raiyat can claim recognition by the landlord on the death of his ancestor, who was the recorded tenant. *ANANDA KUMAR NASKAR v. HARI DASS HALDAR* . . . I. L. R., 27 Calc., 545  
[4 C. W. N., 608]

5. ——— and s. 16—*Arrears of rent, suit for—Suit by a patnidar on the death of the last owner against the dar-patnidar, without complying with the provisions of s. 15 of the Bengal Tenancy Act, whether maintainable.*—Holder of a tenure.—In a suit for arrears of rent for the years 1299 B.S. to Falgoun 1302 B.S. brought by patnidars on the death of the last owner on the 14th Aghran 1302 B.S., the defence of the dar-patnidar mainly was that, the plaintiffs not having complied with the provisions of s. 15 of the Bengal Tenancy Act, the suit was not maintainable. Held that, as the plaintiffs did not claim the rent, which fell due during the lifetime of the last owner as the holder of the tenure, but claimed it either as the representative of the holder of the tenure for the time being or as representative of their father, the rent became an increment to the estate of the father, and therefore the suit was maintainable. *Nogendra Nath Bose v. Safadul Bashini Bose*, I. L. R., 26 Calc., 526, referred to. *SHERIFF v. JOGEMAYA DASI*

[I. L. R., 27 Calc., 535]

s. 16—*Right of suit—Succession to permanent tenure—Omission to give notice of succession to Collector, Effect of—Non-payment of fees, Effect of, on right to decree.*—S. 16 of the Bengal Tenancy Act does not preclude a party from instituting a suit for rent, notwithstanding that the Collector has not received the notice and the fees referred to therein. But that section is a bar to the plaintiffs obtaining a decree before the notice and the fees are received by the Collector. *KALIHUR GHOSH v. UMAI PATWARI*

[I. L. R., 24 Calc., 241  
1 C. W. N., 98]

ss. 17 and 18.

See LANDLORD AND TENANT—TRANSFER  
BY TENANT . . . I. L. R., 21 Calc., 433  
[I. L. R., 24 Calc., 152]

s. 19.

See RIGHT OF OCCUPANCY—LOSS OR  
FORFEITURE OF RIGHT.

[I. L. R., 21 Calc., 129]

1. ——— s. 20, cl. (3)—*Right of non-occupancy raiyat—Death of raiyat having right of non-occupancy—Heirs—Re-entry by landlord.*—The right of a non-occupancy raiyat (who does not hold under any express engagement) in his holding is not heritable. *KARIM CHOWKIDAR v. SUNDAR BEWA*  
[I. L. R., 24 Calc., 207  
1 C. W. N., 88]

## BENGAL TENANCY ACT (VIII OF 1885)

—continued.

2. — ss. 20, 21.—Suits pending at time Act came into force—Suit for ejectment—Acquisition of right of occupancy—General Clauses Act (I of 1868), s. 6.—S. 21 of the Bengal Tenancy Act applies to suits pending at the time the Act came into force, viz., 1st November 1885.

[I. L. R., 21 Cal., 500]

3. — General Clauses Act (I of 1868), s. 6.—Retrospective enactment when applicable to pending suit—Pending suit—Landlord and tenant—Right of occupancy.—S. 21, sub-s. (2), of Act VIII of 1885 is expressly retrospective, and applies to suits pending at the date of the commencement of that Act. *Jogessur Das v. Aisan Koyburto*, I. L. R., 14 Cal., 553, followed. *TUPSEE SING v. RAMSARAN KOBBI*

[I. L. R., 18 Cal., 378]

s. 22.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[I. L. R., 18 Cal., 121]

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . I. L. R., 21 Cal., 889

[I. L. R., 24 Cal., 143, 521]

I. L. R., 27 Cal., 473

3 C. W. N., 62

4 C. W. N., 569

s. 23.

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOODS OR LAND.

[I. L. R., 23 Cal., 742, 744 note, 748 note,

748 note, 751 note

I. L. R., 23 Cal., 854]

s. 25.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION.

[I. L. R., 24 Cal., 272

I. L. R., 23 I. A., 158]

s. 25, cl. (a)

See LIMITATION ACT, ART. 32.

[I. L. R., 24 Cal., 180]

s. 26.

See LANDLORD AND TENANT—LIABILITY FOR RENT . I. L. R., 19 Cal., 790

s. 29.

See CONTRACT ACT, s. 74.

[I. L. R., 23 Cal., 658]

## BENGAL TENANCY ACT (VIII OF 1885)

—continued.

1. — Suit for enhancement of rent—Enhancement of rent by contract by more than two annas in the rupee—Void agreement—Contract Act (IX of 1872), ss. 23 and 24—A contract under s. 29 of the Bengal Tenancy Act to pay an enhanced rent by more than two annas in the rupee is void. *KRISHODHAR GHOSH v. BROJO GHOSH ROY*

[I. L. R., 24 Cal., 895]

1 C. W. N., 442]

2. — Landlord and Tenant—Suit for rent—Enhancement of rent—Enhancement of rent by a registered khabuli within fifteen years from a previous oral agreement to pay enhancement of rent, Effect of.—By an oral agreement in the year 1885 the tenant defendant agreed to pay an enhancement of rent, and he paid rent at that rate until subsequently he executed in the year 1893 a registered khabuli, by which he agreed to pay a further

Bengal Tenancy Act refers to enhancement after the promulgation of the Act, if in this case the enhancement which was made in the year 1885 was before the Act came into force, it would not bar an enhancement during the period of fifteen years from the date thereof as contemplated by cl. (3) of s. 29. But if the said enhancement was made after the Act came into force, it would also not bar a subsequent enhancement within fifteen years from the date thereof, as the previous contract was only an oral one and was not effectual and binding upon the defendant.

agreed to be paid is partly enhanced and partly increased rent. *Held*, further, that having regard to prov. (1) of s. 29, as also the provisions of s. 27, the plaintiff would at any rate (i.e., failing the khabuli) be entitled to recover rent at the rate paid by the defendant for more than three years. *MOTHRU MONTA LABINI v. MATI SARKAR* I. L. R., 25 Cal., 781

3. — Enhancement of rent by registered khabuli—Effect of the Bengal Tenancy Act

4. — Enhancement of rent by contract—Agreement not within the section.—An agreement embodied in a khabuli to pay a certain amount of rent agreed upon by the parties in settlement of differences between them as to what had been the amount and character of the rent, and to avoid further litigation, is not an agreement to enhance within the meaning of s. 21, cl. (b), of the Bengal Tenancy Act. *SHYU SAHAY PANDAY v. RAM RACHIA ROY*

[I. L. R., 18 Cal., 333]

## DIGEST OF CASES.

( 811 )

BENGAL TENANCY ACT (VIII OF 1885)  
—continued.

s. 30.

See ENHANCEMENT OF RENT—GROUNDS OF  
ENHANCEMENT—RATE OF RENT LOWER  
THAN IN ADJACENT PLACES.

[1 C. W. N., 310]

1. ———— "Holding." Meaning of.—  
The term "holding" as used in s. 30 of the Bengal  
Tenancy Act, means an entire holding. *HAINYA*  
*NATH DE v. ILAM*. I. L. R., 25 Calc., 917

[2 C. W. N., 44]

2. ———— "Holding." Definition of.—  
Enhancement of rent.—An undivided share of lands  
comprising a holding does not fall within the definition  
of a holding given in the Bengal Tenancy Act; and  
s. 30 of the Act does not apply to an enhancement of  
rent of such a share. *HAINHOLZ BRUNDO v. TARIKIST*  
*MOBIN MONDOL*. 2 C. W. N., 580

3. ———— "Rate." Meaning of.—Average rate.—  
The words "prevailing rate," in s. 30, cl. (a), of the  
Bengal Tenancy Act, mean not the average rate of  
rent, but the rate actually paid and current in the  
village for land of a similar description with similar  
advantages; they should be construed, therefore, in  
the same sense as was given to the same words in the  
earlier cases decided under Act X of 1859. *SHITAL*  
*MONDAL v. PROSSORNAMONI DENYA*

[I. L. R., 21 Calc., 986]

s. 38—Settlement of rent—Grounds  
for abatement of rent—Permanent and temporary  
deterioration.—A liberal interpretation should be put  
upon the word "permanently" in s. 38, sub-s.  
(1), cl. (a), and the word construed with reference to  
existing conditions. It cannot be said that a deterior-  
ation is not permanent, only because by the applica-  
tion of capital and skill it might be removed. In  
determining the liability to additional rent, the Settle-  
ment Officer is by s. 62, sub-s. (2), cl. (c), bound to  
consider the length of time during which the tenancy  
has lasted without dispute as to rent or area. Al-  
though only an occupancy raiyat can bring a suit under  
s. 38, the principles laid down in that section ought to  
be taken into consideration in all proceedings for  
settlement of rent, whatever be the status of the raiyat.

*GOCHI PATTRA v. REILY*. I. L. R., 20 Calc., 579

1. ———— s. 40—Commutation of rent—  
Jurisdiction of Civil Court.—An order passed in  
appeal by a Revenue Court under s. 40 of the Bengal  
Tenancy Act is final, and no suit lies in the Civil  
Courts by which its propriety can be questioned.

[3 C. W. N., 311]

2. ———— Order commuting bhoveli  
rent to nagdi rent.—Omission to state time when  
order is to take effect.—The provisions of cl. 5, s. 40  
of the Bengal Tenancy Act, are imperative, and  
should be strictly complied with. Where, therefore,  
an order under that clause omitted to state the time  
from which it was to take effect, it was held to be  
inoperative. *CHOWDHRY RAGHU NATH SARUN*  
*SINGH v. DHODHA ROY*. I. L. R., 18 Calc., 467

BENGAL TENANCY ACT (VIII OF 1885)  
—continued.

s. 44.

See LANDLORD AND TENANT—FORFEITURE  
—DENIAL OF TITLE. 1 C. W. N., 156

s. 46, sub-ss. (8) and (9)—Non-  
occupancy raiyat.—Enhancement of rent.—Fair  
and equitable rent.—Sub-s. (9) of s. 46 of the  
Bengal Tenancy Act is not exhaustive. It was not  
intended that if there was no land of a similar de-  
scription and with like advantage in the same village  
as the land in suit, it should be impossible to enhance  
the rent of a non-occupancy raiyat upon any other  
ground. *HOSAIN ALI KHAN v. HATI CHARAN SHAW*  
[I. L. R., 27 Calc., 478]

[2 C. W. N., 321]

s. 48—Operation of s. 49 on suit  
instituted before Act came into force.—S. 48, cl. (a),  
of the Bengal Tenancy Act is retrospective. *Ram*  
*Kumar Jugi v. Jafar Ali Patwari*, I. L. R.,  
25 Calc., 199 note, approved of. *GURU DAS SHETTY*  
*NAND KISHORE PAL*. I. L. R., 26 Calc., 199

*RAM KUMAR JUGI v. JAFAR ALI PATWARI*  
[I. L. R., 26 Calc., 199 note]

s. 49.

See LANDLORD AND TENANT—EJECTMENT—  
NOTICE TO QUIT. 1 C. W. N., 133  
[2 C. W. N., 125]  
I. L. R., 23 Calc., 200  
2 C. W. N., 238

See LANDLORD AND TENANT—FORFEITURE  
—DENIAL OF TITLE.  
[I. L. R., 20 Calc., 101]

s. 50.

See EVIDENCE—CIVIL CASES—RENT RE-  
CEIPTS. I. L. R., 24 Calc., 251

1. ———— Record of rights—Pre-  
sumption from twenty years' uniform payment of  
rent.—Raiyats holding at fixed rates.—In a pro-  
ceeding for record of rights under Ch. X of the  
Bengal Tenancy Act (VIII of 1885); it having been  
found that certain raiyats were holding their lands  
at rates which had not been changed during twenty  
years before the institution of the proceeding, the  
Settlement Officer recorded them as "rai-yats holding  
at fixed rates." In second appeal, held that, under  
s. 50 of the Bengal Tenancy Act, the Settlement  
Officer was right in giving effect to the presumption  
that the raiyats were holding at fixed rate of rent and  
in recording them as "rai-yats holding at fixed rates."

*Bansi Das v. Jagdip Narain Chowdhry*, I. L. R.,  
24 Calc., 152, dissented from. *DULMIN GOLAB*  
*KOER v. BALLA KURMI*. I. L. R., 25 Calc., 744  
[2 C. W. N., 580]

Dissenting from *BANSI DAS v. JAGDIP NARAIN*  
*CHOWDHRY*. I. L. R., 24 Calc., 152

2. ———— and ss. 115, 104 (sub-  
ss. 2 and 3), 113—Record-of-rights—Presumption  
as to fixity of rent—Settlement of fair and equit-  
able rent—Enhancement for excess land—Enhance-  
ment for rise in price of crops.—The provision con-  
tained in s. 115 of the Bengal Tenancy Act

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

status of a raiyat in a record-of-rights prepared under Ch X of the Act. In such a suit the tenant is entitled to the benefit of the presumption. Given the circumstance of an increase or decrease in the area of the land for which a tenant is paying rent, it is competent to the Revenue Officer under

under the provisions of the Tenancy Act, *e.g.*, on the ground of the rise in the prices of the food crops, and so forth. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* KAJINUDDI

[I. L. R., 28 Calc., 617]

3. *—* and s. 191—*Permanent Settlement—Presumption—Uniform rent.*—When a question arises as to whether a tenant is entitled to the presumption under s. 50, cl. (2), of the Bengal Tenancy Act, the fact that the estate within which the tenore in question is situated was not permanently settled in the year 1793 does not make any difference. S. 191 of the Bengal Tenancy Act has no application to the present case, inasmuch as the estate, though not permanently settled in 1793, was subsequently permanently settled in the year 1811. TAMASHA BIBI *v.* ASHUTOSH DUTTA

[4 C. W. N., 513]

s. 52, cl. (6), and s. 188—*Abatement of rent—Suit for rent by several joint landlords against one of the joint tenants, whether in such a suit the tenant can claim abatement of rent—“Tenant.”* *Meaning of.*—The expression “tenant” in s. 52 of the Bengal Tenancy Act does not include the case of a mere co-sharer tenant who has only a fractional share in the tenure; it means the tenant of the tenure and not one of many tenants. In a suit for rent, brought by some of several joint-landlords against one of several joint-tenants for recovery of the plaintiff's share of the rent payable on account of the defendant tenant's share of the tenure under a previous arrangement, such tenant

s. 53.

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[I. L. R., 31 Calc., 383]

1. *—* *Established usage of loca-*

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

2. *—* *Established usage, Meaning of.*—The words “established usage” in s. 53 of the Bengal Tenancy Act, 1885, do not refer to

s. 54.

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY 4 C. W. N., 334

ss. 56, cl. (4), 187, cl. (3), and s. 188—*Joint landlords—Authorized agent—Receipt given by agent—Presumption.*—In a case

s. 60.

See LAND REGISTRATION ACT, s. 78.

[I. L. R., 26 Calc., 713  
3 C. W. N., 381]

*Registered proprietor, suit for rent by—Whether the plea that rent is payable to third party allowable—Land Registration Act (VII of 1876), s. 78.*—Plaintiffs, as registered proprietors, brought a suit for recovery of rent. It was found that defendant, in good faith and under the reasonable belief that the land held by him was included in the estate of a third person, attorned to him some four years prior to the suit, and it

Tenancy Act did not estop the defendant from pleading that rent was due to a third person, notwithstanding plaintiffs were registered proprietors. DEBKA DAS HAZRA *v.* SAMASH AKON . 4 C. W. N., 606

s. 61.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT, ETC.

[I. L. R., 25 Calc., 1  
[I. L. R., 24 I. A., 164]

1. *—* *Deposit of rent in Court—Bond fide doubt of tenant as to who is entitled to rent—Costs where conduct of defendant did not make litigation necessary.*—The deposit of rent in Court under s. 61 of the Bengal Tenancy Act (where the tenant entertains bond fide doubt as to who was entitled to receive it) operates as an acquittance; and where such deposit is proved as a defence to a suit for rent, the suit should be dismissed. Where in such a suit the defendant is found to have been not to blame for the litigation, he is entitled to his costs. STALKARTT *v.* DEBKA DAS KHANDU CHOWDHURY . I. L. R., 31 Calc., 680

# BENGAL TENANCY ACT (VIII OF 1885)

—continued.

s. 30.

See ENHANCEMENT OF RENT—(GROUNDS OF ENHANCEMENT—RATE OF RENT LOWER THAN IN ADJACENT PLACES.

[1 C. W. N., 310]

1. The term "holding," as used in s. 30 of the Bengal Tenancy Act, means an entire holding. *BADNYA NATH DE v. ILDM*. I. L. R., 25 Calc., 917 [3 C. W. N., 44]

2. "Holding." Meaning of.—An undivided share of lands comprising a holding does not fall within the definition of a holding given in the Bengal Tenancy Act; and s. 30 of the Act does not apply to an enhancement of rent of such a share. *HANMOLE BROHMO v. TASTIM UDIN MONDUL*. 2 C. W. N., 680

3. Suit for enhancement of rent.—Prevalling rate, Meaning of.—Average rate. The words "prevailing rate," in s. 30, cl. (a), of the Bengal Tenancy Act, mean not the average rate of rent, but the rate actually paid and current in the village for land of a similar description with similar advantages; they should be construed, therefore, in the same sense as was given to the same words in the earlier cases decided under Act X of 1859. *SHITAL MONDAL v. PROSSONNAMOY DEHYA*. I. L. R., 21 Calc., 986

s. 39—Settlement of rent—Grounds for abatement of rent.—Permanent and temporary deterioration.—A liberal interpretation should be put upon the word "permanently" in s. 39, sub-s. (1), cl. (a), and the word construed with reference to existing conditions. It cannot be said that a deterioration is not permanent, only because by the application of capital and skill it might be removed. In determining the liability to additional rent, the Settlement Officer is by s. 62, sub-s. (2), cl. (c), bound to consider the length of time during which the tenancy has lasted without dispute as to rent or area. Although only an occupancy raiyat can bring a suit under s. 38, the principles laid down in that section ought to be taken into consideration in all proceedings for settlement of rent, whatever be the status of the raiyat. *GOCHI PATTRA v. RILLY*. I. L. R., 20 Calc., 579

s. 40—Commutation of rent—Jurisdiction of Civil Court.—An order passed in appeal by a Revenue Court under s. 40 of the Bengal Tenancy Act is final, and no suit lies in the Civil Courts by which its propriety can be questioned. *LALLA SALIGRAM SINGH v. RAMGH*. [3 C. W. N., 311]

2. Order commuting bhowli rent to nagdi rent.—Omission to state time when order is to take effect.—The provisions of cl. 5, s. 40 of the Bengal Tenancy Act, are imperative, and should be strictly complied with. Where, therefore, an order under that clause omitted to state the time from which it was to take effect, it was held to be inoperative. *CHOWDHRY RAGHU NATH SARUN SINGH v. DHODHA ROY*. I. L. R., 18 Calc., 467

## BENGAL TENANCY ACT (VIII OF 1885)

—continued.

s. 44.

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE. 1 C. W. N., 156

s. 46, sub-ss. (8) and (9)—Non-occupancy raiyat.—Enhancement of rent.—Fair and equitable rent.—Sub-s. (9) of s. 46 of the Bengal Tenancy Act is not exhaustive. It was not intended that if there was no land of a similar description and with like advantage in the same village as the land in suit, it should be impossible to enhance the rent of a non-occupancy raiyat upon any other ground. *HOSAIN ALI KHAN v. HATI CHARAN SHAW*. [I. L. R., 27 Calc., 478] 4 C. W. N., 321

s. 48—Operation of s. 48 on suit instituted before Act came into force.—S. 48, cl. (a), of the Bengal Tenancy Act is retrospective. *Ram Kumar Jugi v. Jafar Ali Patwari*, I. L. R., 25 Calc., 199 note, approved of. *GURU DAS SUTT v. NAND KISHORE PAL*. I. L. R., 26 Calc., 199 [I. L. R., 26 Calc., 199 note]

s. 49.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT. 1 C. W. N., 133 [2 C. W. N., 125] I. L. R., 23 Calc., 200 2 C. W. N., 238

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE. [I. L. R., 20 Calc., 101]

s. 50.

See EVIDENCE—CIVIL CASES—RENT RECEIPTS. I. L. R., 24 Calc., 251

1. Record of rights.—Presumption from twenty years' uniform payment of rent.—Raiyats holding at fixed rates.—In a proceeding for record of rights under Ch. X of the Bengal Tenancy Act (VIII of 1885), it having been found that certain raiyats were holding their lands at rates which had not been changed during twenty years before the institution of the proceeding, the Settlement Officer recorded them as "raiylats holding at fixed rates." In second appeal, held that, under s. 50 of the Bengal Tenancy Act, the Settlement Officer was right in giving effect to the presumption that the raiylats were holding at fixed rate of rent and in recording them as "raiylats holding at fixed rates." *Bansi Das v. Jagdip Narain Chowdhry*, I. L. R., 24 Calc., 152, dissented from. *DULHIN GOLAN KOER v. BALLA KURMI*. I. L. R., 25 Calc., 744 [3 C. W. N., 580]

Dissenting from *BANSI DAS v. JAGDIP NARAIN CHOWDHRY*. I. L. R., 24 Calc., 152

2. and ss. 115, 104 (sub-ss. 2 and 3), 113—Record of rights.—Presumption as to fixity of rent.—Settlement of fair and equitable rent.—Enhancement for excess land.—Enhancement for rise in price of crops.—The provision contained in s. 115 of the Bengal Tenancy Act

## BENGAL TENANCY ACT (VIII OF 1885)

—continued.

status of a raiyat in a record-of-rights prepared under Ch. X of the Act. In such a suit the tenant is entitled to the benefit of the presumption. Given the circumstance of an increase or decrease in the area of the land for which a tenant is paying

the ground of the rise in the prices of the food crops, and so forth. SECRETARY OF STATE FOR INDIA IN COUNCIL v. KAJINUDDI

[I. L. R., 28 Calc., 617]

the tenure in question is situated was not permanently settled in the year 1793 does not make any difference. S. 191 of the Bengal Tenancy Act has no application to the present case, inasmuch as the estate, though not permanently settled in 1793, was subsequently permanently settled in the year 1811. TAMASHA BISI v. ASHUTOSH DUTT

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s. 52, cl. (6), and s. 188—*Abatement of rent—Suit for rent by several joint landlords against one of the joint tenants, whether in such a suit the tenant can claim abatement of rent—“Tenant.” Meaning of—*The expression “tenant” in s. 52 of the Bengal Tenancy Act does not include the case of a mere co-sharer tenant who has only a fractional share in the tenure; it means the tenant of the tenure and not one of many tenants. In a suit for rent, brought by some of several joint-landlords against one of several joint-tenants for recovery of the plaintiff's share of the rent payable on account of the defendant tenant's share of the tenure under a previous arrangement, such tenant-defendant cannot claim abatement under the provisions of s. 52 of the Bengal Tenancy Act. BROODRENDRO NARAIN DUTT v. ROMON KRISHNA DUTT

[I. L. R., 37 Calc., 417  
4 C. W. N., 107]

s. 53.

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[I. L. R., 31 Calc., 383]

2. ———— *Established usage of locality.*—The established usage of the locality, and not the usage between the parties, is that contemplated by s. 53 of the Bengal Tenancy Act. *Hira Lal Dass v. Motlala Mohan Roy*, I. L. R., 15 Calc., 714, followed. WATSON AND COMPANY v. SANKRANTO DRUMICK . . . I. L. R., 31 Calc., 132

## BENGAL TENANCY ACT (VIII OF 1885)

—continued.

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ss. 56, cl. (4), 187, cl. (3), and s. 188—*Joint landlords—Authorized agent—Receipt given by agent—Presumption.*—In a case where there are several joint landlords it is necessary

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See LAND REGISTRATION ACT, s. 78.

[I. L. R., 28 Calc., 713  
3 C. W. N., 381]

*Registered proprietor, Suit for rent by—Whether the plea that rent is payable to third party allowable—Land Registration Act*

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[I. L. R., 24 I. A., 164]

1. ———— *Deposit of rent in Court—Bond fide doubt of tenant as to who is entitled to rent—Costs where conduct of defendant did not make litigation necessary.*—The deposit of rent in Court under s. 61 of the Bengal Tenancy Act (where the tenant entertains bond fide doubt as to who was entitled to receive it) operates as an acquittance; and where such deposit is proved as a defence to a suit for rent, the suit should be dismissed. Where in such a suit the defendant is found to have been not to blame for the litigation, he is entitled to his costs. STALKERTT v. GURU DAS KHANDU CHOWDHURY . . . I. L. R., 31 Calc., 680

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

2. ———— *Suit for rent—Deposit of rent by a tenant through the tenure-holder of the holding from whom he holds it.*—A deposit of rent, though not made by a tenant himself, but made on his behalf by a transferee of the holding from him, is a valid deposit within the meaning of s. 61 of the Bengal Tenancy Act. *HEMANT LAL MOOKHERJEE v. RAJANAT MANDAL*. I. L. R., 25 Calc., 290

3. ———— and s. 62.—*Deposit of rent—Receipt of rent—Receipt of deposit of rent.*—When under ss. 61 and 62 of the Tenancy Act a deposit of rent is made by a tenant, and the Court grants him a receipt, the zamindar has no right to come in and be heard in the matter, there being no machinery whatever provided by the Act for the Court to enter into a judicial enquiry in connection with the matter of the deposit. As far as the tenant is concerned, after such deposit is made and receipt granted, the Court is *functus officio*, and is not authorized to return the money to the tenant upon an application made by the zamindar. The words "the full amount of the money then due" in s. 61, and the words "the amount of rent payable by the tenant" in s. 62, mean nothing more than the words "what he shall consider the full amount of rent due from him at the date of the tender to the zamindar" as used in Bengal Act VIII of 1869, and have no relation whatever to the amount of rent justly due or justly payable by the tenant. *IN THE MATTER OF SHEKHAR ROY v. RAMESWAR SING*. I. L. R., 15 Calc., 180

**s. 65.**

*See EXECUTION OF DECREE—DECRETS UNDER BEST LAW.*

[I. L. R., 17 Calc., 301]

*See LANDLORD AND TENANT—LIABILITY FOR RENT*. I. L. R., 28 Calc., 103

*See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT*. I. L. R., 24 Calc., 355

[1 C. W. N., 388]

I. L. R., 28 Calc., 727

3 C. W. N., 588

I. L. R., 28 Calc., 937

3 C. W. N., 742, 747

*See SALE FOR ARREARS OF RENT—INCUMBRANCES*. I. L. R., 22 Calc., 364

*See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS*. I. L. R., 21 Calc., 160

1. ———— "Charge," Meaning of—*Transfer of Property Act (IV of 1882), s. 100.*—*Semle*—The "charge" referred to in s. 65 of the Bengal Tenancy Act is not such a charge as that defined by s. 100 of the Transfer of Property Act. *FORSTER CHUNDER DEX SIKKAR v. FOLEY*

[I. L. R., 15 Calc., 492]

2. ———— and s. 3, cl. (5), and s. 161—*Sale of tenure for arrears of road cess under decree—"Rent"—Road cess—Cesses—Incumbrance by defaulting tenant, Effect of sale in execution of*

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

*decree for road cess on.*—The word "rent" in s. 65 of the Bengal Tenancy Act, 1885, includes road cess payable by the landlord. A tenure-holder granted a usufructuary mortgage of certain lands within his tenure to A, and directed the tenants to pay their rents to him. Subsequently the superior landlord brought a suit for ad e against the tenure-holder, and in execution of his decree sold the tenure under s. 65 of the Bengal Tenancy Act. A then brought a suit against one of the tenants for arrears of rent, and contended that all that passed under the auction-sale was the right, title, and interest of the tenure-holder, and that his rights under the mortgage were unaffected by the sale, and that he was still entitled to the rent. *Held* that Ch. XIV of the Bengal Tenancy Act must be read with s. 65 of the Act, and that, having regard to the definition in cl. 5 of s. 3, "rent," as used in that section, includes road cess payable by the tenant, and that the sale was a sale of the tenure, the purchaser acquiring the property free from the incumbrance created by the tenure-holder in favour of A, it not being a registered and notified incumbrance within the meaning of s. 161 of the Act. *NOHIN CHAND NUSKAR v. JAYSEN-SATH PARAMANICK*. I. L. R., 21 Calc., 722

3. ———— and s. 66—*Sale of defaulting tenure at the instance of landlord who has lost his interest in the estate—Rent decree.*—S. 66 of the Bengal Tenancy Act does not apply to a case in which the person seeking to execute the decree is not a landlord at the time of the execution, and s. 65 is limited in the same manner as s. 66. So where a landlord, after obtaining a decree for arrears of rent, loses his interest in the estate, he cannot bring the defaulting tenure itself to sale in execution of his decree. *HEM CHUNDER BHUNJAL v. MON MOHINI DAS*. 3 C. W. N., 604

1. ———— s. 66—*Suit for arrears of rent brought before expiry of Bengali year—Right to eject tenant.*—Where a suit is brought before the expiry of the Bengali year in respect of the arrears of rent for that year, the landlord is not entitled to eject the tenant under s. 66 of the Bengal Tenancy Act. *GURU DASS SHUT v. NAND KISHORE PAL*

[I. L. R., 28 Calc., 199]

2. ———— *Landlord and tenant—Suit for arrears of rent—Execution of decree for ejectment for arrears of rent—Extension of time for payment.*—*Per PRINSEP and BANERJEE, JJ.*—The extension of time authorized by s. 66, cl. 3, of the Bengal Tenancy Act, can be granted by the Court after the decree, and not only when framing the decree under cl. (2) of that section. *Per RAMPHI, J.—contra.* *Per PRINSEP and BANERJEE, JJ.*—The decree for ejectment passed under s. 66, cl. 2, of the Bengal Tenancy Act, need not incorporate the terms as to the ejectment being avoided by payment within fifteen days from the date of the decree. These terms are rather in the nature of a direction to the Court of execution. *Per PRINSEP, J.*—The application for such extension of time may therefore be made by the judgment-debtor on a mere petition,

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

and not in the form of an application for review of judgment. *BODU NARAIN v. MAHOMED MOOSA*

[I. L. R., 26 Calc., 639  
3 C. W. N., 628]

— s. 67.

See **ENHANCEMENT OF RENT—RIGHT TO ENHANCE**. [I. L. R., 23 Calc., 214  
[I. L. R., 21 I. A., 131]

See **INTEREST—MISCELLANEOUS CASES—ARRARS OF RENT.**

[I. L. R., 24 Calc., 37  
I. L. R., 26 Calc., 130, 315  
3 C. W. N., 39, 194  
4 C. W. N., 324]

— s. 69.

See **PENAL CODE, s. 186.**

[I. L. R., 18 Calc., 518]

— ss. 69 and 70.

See **SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.**

[I. L. R., 17 Calc., 872]

1. ——— *Deposit of crops by order of Collector—Suit against depositories—Right of suit—Privilege of the course of the landlora's deposited t with two persons. The depositories executed and*

deposited. *Held* that the receipt executed and delivered to the Amlin established privity between the plaintiff and the defendant so as to enable the former to maintain the suit. *Held*, also, that the suit was maintainable in the Civil Court. Ss. 69 and 70 of the Bengal Tenancy Act refer to and contemplate proceedings between the landlord and the tenant. When a plaintiff seeks relief, not against his tenant, but against a third party, a depository or bailor, the suit is not barred by anything contained in those sections. *JAGA SINGH v. CHOOA SINGH*

[I. L. R., 22 Calc., 480]

2. ——— and s. 189—*Real dhaoli or waddi—Jurisdiction of Deputy Collector.*

provisions of the Bengal Tenancy Act, and not by

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

those of the Civil Procedure Code. *NCHREDA SINGH v. RUPU MANDAN SINGH* 4 C. W. N., 239

— s. 72.

See **LANDLORD AND TENANT—TRANSFER BY LANDLORD** I. L. R., 25 Calc., 445  
[2 C. W. N., 108]

— s. 73.

See **RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.**  
[I. L. R., 24 Calc., 355, 642]

— s. 74.

See **CES** I. L. R., 15 Calc., 828  
[I. L. R., 23 Calc., 680  
I. L. R., 26 Calc., 611  
3 C. W. N., 608]

— s. 84.

See **APPEAL—ACTS—BENGAL TENANCY ACT** I. L. R., 18 Calc., 271  
[I. L. R., 19 Calc., 485]

Acquisition of land by landlord—Reasonable and sufficient purpose—Certificate of Collector—Jurisdiction and functions of the Civil Court.—The proprietors of a taluk who had constructed an indigo factory and employed a European manager applied to the Civil Court, under s. 84 of the Tenancy Act, to acquire by compulsory sale a small piece of land made up of several raiyati holdings within the estate. The application was opposed by the proprietors of another indigo factory who had taken underleases from the raiyats the greater part of the lands of the village, including the holdings within which the plot in question was comprised. The Collector of the district had certified under s. 84 that the purpose for which the land was required was reasonable and sufficient. The Munsif tried the matter as a disputed question of fact, and held that the purpose alleged was not reasonable or sufficient, and declined to authorize the purchase. The District Judge on appeal reversed the Munsif's finding and authorized the compulsory acquisition of the land. *Held* that there is no appeal against an order passed by a Civil Court under s. 84 of the Bengal Tenancy Act, and that the order of the District Judge was without jurisdiction and must be set aside. *Held* by *PRINSEP* and *AMEER ALI, JJ.* (PETHERAM, C.J., dissenting)—That the Collector's certificate under s. 84 is not conclusive as to the reasonableness and sufficiency of the purpose for which the land is sought to be acquired; that the jurisdiction of the Civil Court is not confined to giving effect to the Collector's certificate, but the Court is to hold a judicial enquiry to determine the reasonableness and sufficiency of the purpose and all matters coming within the section, and is competent to consider the grounds upon which the certificate was granted; that the appointment of a European manager and the necessity for erecting buildings for his comfort and convenience are insufficient

## BENGAL TENANCY ACT (VIII OF 1885)

—continued.

grounds for authorizing the compulsory acquisition of land under s. 81. The purpose for which the land is sought to be acquired must have a direct relation to the good of the holding, and objects which might have a remote or speculative bearing upon the good of the holding are foreign to the scope of the Act. *Held* by PETHERAM, C.J.—The section gives to the Collector jurisdiction to decide whether the alleged purpose is reasonable and sufficient, leaving to the Civil Court to settle the amount to be paid for the land, and the decision of the question whether the land is *bona fide* required for the alleged purpose. The words "satisfied on the certificate" mean that the Civil Court is to be satisfied on the certificate alone, and has no jurisdiction to take other evidence on that question, but is to accept the decision of the Collector as final. *GOUGHN MOLLAH v. RAMESHUR NARAIN MAHA. RAMESHUR NARAIN MAHA v. GOUGHN MOLLAH*. I. L. R., 18 Calc., 271

s. 85.

*See* LANDLORD AND TENANT—TRANSFER BY TENANT. I. L. R., 26 Calc., 46

s. 86.

*See* LANDLORD AND TENANT—LIABILITY FOR RENT. I. L. R., 19 Calc., 790

s. 87.

*See* LANDLORD AND TENANT—ABANDONMENT—RELINQUISHMENT OR SURRENDER OF TENURE. 1 C. W. N., 198  
[3 C. W. N., 46  
4 C. W. N., 493

*Construction of s. 87.*—The provisions of s. 87 of the Transfer of Property Act are not exhaustive. *SAMUJAN ROY v. MAHATON*  
[4 C. W. N., 493

s. 88.

*See* LANDLORD AND TENANT—TRANSFER BY TENANT. [I. L. R., 21 Calc., 433

1. ———— *Suit for rent—Question as to amount of rent—Sub-division of tenancy—Rent receipts signed by one of several co-sharers.*—Several plaintiffs, co-sharers, sued two defendants to recover the sum of Rs 78 odd for arrears of rent in respect of a tenure, the annual amount of rent payable being alleged to be Rs 15. One of the defendants appeared and pleaded that the tenure had been some time previously divided by the principal plaintiff (who was the karta of the family and collected the rent), and that after the division he had paid Rs 7.8 per annum, being the rent in respect of his half of the tenure, to the karta; in support of such payments, he produced dakhilas or rent receipts signed by the karta. The suit was dismissed by the Munsif, but on appeal the Additional Judge gave the plaintiffs a decree for the amount of rent claimed less the amount proved to have been paid by the defendant, who contested the suit, as shown by the dakhilas. He held that

## BENGAL TENANCY ACT (VIII OF 1885)

—continued.

the division had not been proved, and that the dakhilas did not amount to the written consent required by s. 88 of the Bengal Tenancy Act. *Held*, on appeal to the High Court, that the dakhilas or rent receipts did not amount to a written consent as required by s. 88 of the Bengal Tenancy Act, and that the decree of the lower Court must be upheld. *AURHOY CHURN MAJI v. SKOSHIN BHUSAN BOSE*. I. L. R., 16 Calc., 155

2. ———— *Suit for rent—Sub-division of tenancy—Evidence of consent of landlord to—Rent receipt signed by the agent.*—A receipt for rent granted by a landlord or his agent containing a recital that a tenant's name is registered in the landlord's sheridita as a tenant of a portion of the original holding at a rent which is a portion of the original rent does amount to a consent in writing by the landlord to a sub-division of the holding and a distribution of the rent payable in respect thereof, within the meaning of s. 88 of the Bengal Tenancy Act. *PRARI MOHUN MUKHOPADHYA v. GOPAL PAIK*  
[I. L. R., 25 Calc., 531  
2 C. W. N., 375

*JAGADISHUR BHUTTACHARJI v. JOYKONI DEVI*  
[I. L. R., 25 Calc., 533 note  
2 C. W. N., 378 note

3. ———— *Transfer of a portion of occupancy holding—Custom—Ejectment—Possession.*—The transfer of a portion of an occupancy holding is contrary to the spirit, if not the letter, of s. 88 of the Bengal Tenancy Act, VIII of 1885, and the existence of a custom in a particular place by which such a holding is transferable is immaterial, and gives no right to the transferee as against the landlord. *KULDIP SINGH v. GILLANDERS, ARBUTHNOT & CO.* I. L. R., 26 Calc., 615  
[4 C. W. N., 738

s. 89.—*Service tenure—Suit for ejectment.*—Service tenures are excepted from the operation of s. 89 of the Bengal Tenancy Act. *MOKBUL HOSSAIN v. AMEER SHEIKH*

[I. L. R., 25 Calc., 131

ss. 90, 91.—*Measurement proceeding, Form of, order on.*—In a proceeding under s. 90 the order should be limited to one directing, in the words of s. 91, that the tenants do attend and point out the land, and a declaration made in such order that the petitioner is entitled to make the measurement with a pole of a certain measure is bad in law and without jurisdiction. *DYA GAZI v. RAM LAL SUKUL*  
[2 C. W. N., 351

s. 93.

*See* APPEAL—ACTS—BENGAL TENANCY ACT. I. L. R., 14 Calc., 312

1. ———— *Manager—Co-sharers—Practice in making applications under s. 93 of Act VIII of 1885 where the co-sharers hold various and complicated shares in the property.*—*Notice.*—Where a property consisted of 243 estates or tenures, 60 of which were entered under separate numbers in the Land Register of the

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

Collector, other portions of the property being talukhs, dependent tenures, and raiyati holdings, and a single application is made by 12 of the co-sharers in such property (many of whom held shares in several of the tenures and estates) calling upon the remaining

CHOWDHURY. I. L. R., 24 Cal., 600

2. — and ss. 95 and 99—*Common manager—Minor co-sharers—Court of Wards—District Judge, jurisdiction of.*—On the 8th June 1891 one of the co-sharers in an estate

over the estate, but subsequently refused to act, and the Board of Revenue directed that the estate should be released. On the 13th August 1892, the District Judge issued notices on the co-sharers under s. 93, calling on them to show cause why a common manager should not be appointed. All the co-sharers appeared and objected to the appointment of a common

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

s. 95.

*See FALSE EVIDENCE—GENERAL CASES.*

[I. L. R., 20 Cal., 721]

1. — *Manager of estate—Obligation of manager to have his name registered before he can collect rent of estate—Land Registration Act (Bengal Act VII of 1876), s. 78*—A person who has been appointed manager of an estate under the provision of s. 95 of the Bengal Tenancy Act must have his name registered under the provisions of s. 78 of the Land Registration Act before he can recover rent from the tenants of the estate of which he has been appointed manager. *MAQBUL AHMED CHOWDHURY v. GURISH CHANDER KUNDU*

[I. L. R., 22 Cal., 634]

2. — *Appointment of common manager—Consent of parties—Rights of holder of subsequent patta lease of lands formerly under ijara.*—A common manager of lands was appointed, under s. 95 of the Bengal Tenancy Act, with the consent of the co-owners. The owner of a 3-anna share of the lands had let out in ijara his share to the other co-owners. After the expiry of the ijara and during the continuance of the management by the common manager, the owner of the 3-anna share granted a patta thereof to A, who attempted to collect the rents payable to him as pattidar. *Held* that A was bound by the order appointing

3. — and ss. 98, cl. (3), and 100—*Rules made by the High Court under s. 100—Power of common manager to mortgage—Power of co-owner during existence of common management.*—A common manager, appointed under the provisions of the Bengal Tenancy Act, has power to mortgage property with the permission of the District Judge. While the common management exists, the powers of the co-owners must be regarded as in abeyance, and therefore a mortgage created by a co-owner during the existence of the common management cannot in any way interfere with, or derogate from, the rights created under any transaction made by the common manager with regard to the joint property. *AMAR CHANDRA KUNDU v. ROY GOLAK CHANDRA CHOWDHURY* 4 C. W. N., 789

1. — ss. 101-115 (Ch. X)—*Power of Settlement Officer to resume and assess lakhiraj land.*—In proceedings under Ch. X of the Bengal Tenancy Act (VIII of 1855), the Settlement Officer has no power to resume and assess with rent land which has been held as lakhiraj. *PADMANAB SINGH v. HAZO*. I. L. R., 20 Cal., 577

2. — *Record-of-rights—Settlement Officer's decision—Subsequent civil suit—Ex-judicial.*—A decision by a Settlement Officer under Ch. X of the Bengal Tenancy Act as to which of

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

two persons claiming to be tenant ought to be recorded as such does not operate as *res judicata* in a subsequent civil suit between the same parties concerning the title to the land. **PANDIT SARDAR v. MIJAN MIRDA** . . . I. L. R., 21 Calc., 378

3. ————— **Conditions or incident of tenancy—Dispute as to right of way between two neighbouring tenants—Jurisdiction of Settlement Officer.**—A Settlement Officer has no jurisdiction to decide civil disputes between tenant and tenant. A dispute as to a right of way between two neighbouring tenants is of a civil nature, and the existence of a right of way cannot be regarded as a condition or incident of a tenancy. **Pandit Sardar v. Mijan Mirda**, I. L. R., 21 Calc., 378, followed. **HARU MONU ROY CHURAXONI v. PRAN NATH MITTIR**

[I. L. R., 27 Calc., 364  
4 C. W. N., 127

1. ————— ss. 102 and 101—**Power of Settlement Officer—Proceedings in preparation of record-of-right—Decision as to validity of lakhiraj titles—Power of Revenue Officer to declare land claimed as lakhiraj liable to rent.**—Held by the Full Bench (PETHERAM, C.J., and PRINSEP, JIGOR, O'KINEALY, and GHOSE, J.J.).—In preparing a record-of-rights under s. 102 of the Bengal Tenancy Act, a Revenue Officer is not competent to determine the validity of rent-free titles set up by persons occupying lands with the area under inquiry, so as to resume such lands and to declare them liable to settlement of rent. **Gokkul Sahu v. Jodu Nundan Roy**, I. L. R., 17 Calc., 721, referred to. **SECRETARY OF STATE FOR INDIA v. NITYE SINGH**. **SECRETARY OF STATE FOR INDIA v. BAIKUNT NATH PHODHAN**. **SECRETARY OF STATE FOR INDIA v. RAM TARUCK DAS**

[I. L. R., 21 Calc., 38

2. ————— **Power of Settlement Officer—Decision of Special Judge—Res judicata—Question whether land is mal or lakhiraj.**—The plaintiff had been proprietor of an estate which was sold for arrears of Government revenue and repurchased from the then purchaser by the plaintiff in 1886. He applied under Ch. X of the Bengal Tenancy Act for the measurement of the estate and the preparation of a record-of-rights, and the Revenue Officer deputed for these purposes found that a portion of the estate held by the defendant was mal land, though it was held as lakhiraj under certain sanads, and as he also found that no rent had ever been paid for it, it was entered on the record-of-rights as mal land held under those sanads as lakhiraj. The Special Judge, on appeal by the plaintiff, held that the land, having been found to be mal, should have been entered as mal land unassessed with rent. In a suit to have the land assessed with rent, it was found that the sanads, under which the defendant claimed to hold, were granted not by any predecessor in title of the plaintiff, and were of a date anterior to the Permanent Settlement. Held (reversing the decision of the lower Appellate Court) that the Special Judge had no jurisdiction to determine whether the land was mal or lakhiraj, and that his judgment as to its being mal did not therefore operate

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

as *res judicata*. **Secretary of State for India v. Nitye Singh**, I. L. R., 21 Calc., 38, referred to. **Gokkul Sahu v. Jodu Nundan Roy**, I. L. R., 17 Calc., 721, distinguished. The case was remanded for a finding whether the land was mal or lakhiraj. **KAMU KHAN v. BROJO NATH DAS**

[I. L. R., 22 Calc., 244

1. ————— s. 103—**Record-of-rights—Dispute as to boundaries—Powers of an executive officer.**—An executive officer, acting under the provisions of s. 103 of the Bengal Tenancy Act, has no power to determine the boundaries between contiguous estates as to which a *bona fide* controversy exists between the owners of such estates. **Narendra Nath Roy Chowdhry v. Srinath Sandel**, I. L. R., 19 Calc., 641, relied on. **BIDHU MUKHI DADI v. BHUGWAN CHUNDER ROY CHOWDHRY** I. L. R., 19 Calc., 643

2. ————— and ss. 102, 108, 108—**Powers of Settlement Officers—Record-of-rights—Dispute as to boundaries.**—A Settlement Officer has no power, under the provisions of the Bengal Tenancy Act, to entertain any dispute between the persons interested in neighbouring estates as to the title of any land. **NARENDRO NATH ROY CHOWDHRY v. SRINATH SANDEL** . . . I. L. R., 19 Calc., 641

s. 104.

See APPEAL—ACTS—BENGAL TENANCY ACT . . . I. L. R., 17 Calc., 326

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R., 21 Calc., 776

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 23 Calc., 723

See VALUATION OF SUIT—APPEALS.

[I. L. R., 23 Calc., 723

1. ————— and ss. 38, 52, sub-s. 2, cl. (c), Ch. X, s. 101, sub-s. 2, cl. (a)—**Ancient holdings—Additional rent for excess lands—Onus of proving lands in excess of area originally let—Permanent deterioration—Liability to additional rent—Duty of Settlement Officer.**—S. 104, sub-s. (2) of the Bengal Tenancy Act is subject to the provisions of s. 52 of the Act. The mere fact that on a measurement made by a zamindar under the authority of Government, given under Ch. X of the Bengal Tenancy Act, it is found that the tenants generally are in possession of lands in excess of the areas entered in his zamindari papers and their rent receipts, does not necessarily prove that he is entitled to additional rent for the excess areas. Where settlements or holdings are of very old date and lands are let out by areas ascertained without any accurate survey, but as contained within certain recognized boundaries, for instance, by reference to other holdings, it is incumbent upon the zamindar seeking enhancement of rent very many years after the original settlement to show that the lands held by the raiyats are in excess of the lands originally let to them in consequence of some encroachment or some alluvial increment, or that the settlement was made on the basis of measurement

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

and the rates of rent as applied to the area then determined, while on a fresh measurement made by the same length of measure it has been found that he

is by s. 52, sub-s. (4), the time during which the tenancy has

**GOURI PATTRA v. REILY** I. L. R., 20 Cal., 402

2. *Order of Settlement Officer*  
*—Bengal Tenancy*

s. 105.

*See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.*

[I. L. R., 23 Cal., 257]

*See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.*

[I. L. R., 18 Cal., 596]

[I. L. R., 24 Cal., 402]

*See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.*

[I. L. R., 16 Cal., 598]

s. 106.

*See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.*

[I. L. R., 17 Cal., 721]

[I. L. R., 23 Cal., 257]

[I. L. R., 27 Cal., 167]

3 C. W. N., 491

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

*See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.*

[I. L. R., 21 Cal., 778, 935]

I. L. R., 23 Cal., 477

I. L. R., 24 Cal., 462

*See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.*

[I. L. R., 21 Cal., 935]

s. 107.

*See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.*

[I. L. R., 23 Cal., 257]

I. L. R., 27 Cal., 167

*See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.*

[I. L. R., 21 Cal., 778]

s. 108.

*See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.*

[I. L. R., 21 Cal., 778, 935]

I. L. R., 23 Cal., 477

I. L. R., 24 Cal., 462

*See*

*See VALUATION OF SUIT—APPEALS.*

[I. L. R., 18 Cal., 667]

I. L. R., 23 Cal., 723

*Special Judge, Jurisdiction of—Publication of record of rights—Bengal Tenancy Act, ss. 65, 105, 106.—There is nothing in s. 109 of the Bengal Tenancy Act which limits the jurisdiction of a Special Judge to deal only with matters of objection taken after publication of the record of rights.* **DURGA CHAMAN LASKAR v. HARI CHURN DASS** I. L. R., 31 Cal., 521

*s. 111—Suit for arrears of rent—Agreement to pay additional rent for excess land.—When a tenant agrees to pay additional rent for excess land found on measurement to be in his*

s. 113.

*See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—PERSON BY WHOM RIGHT MAY BE ACQUIRED.*

[I. L. R., 26 Cal., 546]

3 C. W. N., 336

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

**s. 120, sub-s. 2**—*Record of proprietor's land as private land—Grounds for determining land to be private—Evidence.*—In enacting sub-s. (2) of s. 120 of the Bengal Tenancy Act, the Legislature had before it the attempts which might be expected on the part of landlords to frustrate the intention of the Legislature, as asserted in the draft Bill laid before the Council for consideration, to extend the occupancy-rights of tenants before the measures then declared to be in contemplation became law; and therefore the particular date, the 2nd day of March 1883, the date on which the draft Bill was published in the *Gazette*, and leave was obtained to introduce the Bill into the Council, was declared to be the latest date on which there should be free action on the part of zamindars to assert their private rights, so as to prevent the accrual of special tenant rights. From the wording of that sub-section, it was intended that, in determining whether land is the private land of the proprietor, regard should be had to any declaration made before the 2nd March 1883 by the landlord, and communicated to the tenants, in respect to the reservation of the proprietor's right over the land as his private land: the words "any other evidence that may be produced" in that sub-section mean, therefore, any other evidence tending in the same direction that may be produced to show the assertion of any title on the part of the proprietor and communicated to the tenant before that date. *NILMONI CHUCKERBUTTI v. BYKANT NATH BERA*. I. L. R., 17 Calc., 466

**1. ss. 121 and 140**—*Suit for compensation for illegal distraint.*—A suit for compensation for illegal distraint under s. 121 of the Bengal Tenancy Act (VIII of 1885) was brought by one of two persons jointly entitled to the crops distrained. *Held* that s. 140 of the Bengal Tenancy Act did not exclude a suit of this kind. *JAGDEO SINGH v. PADARATH AHIR*. I. L. R., 25 Calc., 285

**2.** *Distraint by a registered proprietor—Suit for damages—Land Registration Act (Bengal Act VII of 1876), s. 78.*—A suit for compensation for illegal distraint under s. 140 of the Bengal Tenancy Act is maintainable only on the ground that the distraint was made in violation of the provisions of s. 121 of that Act. A tenant cannot deny the right of a registered proprietor to distrain and plead payment of rent to a third person whose name is not registered. *HANUMAN AHIR v. GOBINDA KOER*. I. C. W. N., 318

**s. 143.**

*See APPEAL—ACTS—BENGAL TENANCY ACT*. I. L. R., 14 Calc., 312

*Rules framed under s. 189 of the Bengal Tenancy Act—Whether proceedings under s. 103 of the Bengal Tenancy Act are suits between landlord and tenant—Code of Civil Procedure (Act XIV of 1882)—Review of judgment.*—Proceedings under s. 103 of the Bengal Tenancy Act are suits between landlord and tenant within the meaning of s. 143 by virtue of the rules framed under s. 189 of that Act; therefore the

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

provisions of the Code of Civil Procedure relating to review of judgment are applicable to such proceedings. *ACHHA MIAN CHOWDHRY v. DURGA CHURN LAW*. I. L. R., 25 Calc., 146  
[2 C. W. N., 137]

**s. 144.**

*See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT CASES—RENT.*

I. L. R., 28 Calc., 842  
4 C. W. N., 95

**s. 148.**

*See SALE FOR ARREARS OF RENT—INCUMBRANCES.*

I. L. R., 22 Calc., 364

**1.** *Issue in suit for arrears of rent.*—In a suit for arrears of rent where the plaintiff claims a certain rent as payable in respect of certain lands mentioned in the plaint, and the defendant denies the occupation of the lands at the rents alleged by the plaintiff, but admits that he holds other lands at different rents, the proper issue to be tried is whether the defendant holds the lands set forth in the plaint at the rent specified. Having regard to the provisions of s. 148, cl. (b), of the Bengal Tenancy Act, a simple issue as to whether the defendant holds the jamaas set forth in the plaint under the plaintiff is not sufficient. *BHAI CHAL NASTA v. SHAM NUYASI MAHOMED. BALU NASTA v. SHAM NUYASI MAHOMED*

[I. C. W. N., 152]

**2.** *Assignee of decree—Trustees applying for execution for benefit of assignor's heir.*—The word "assignee," as used in s. 148, cl. (h), of the Bengal Tenancy Act, does not include trustees who execute decrees under an assignment which is not for their own benefit, but for the benefit of the heir of the assignor. *CHHATRAPAT SINGH v. GORI CHAND BOTHRA*. I. L. R., 26 Calc., 750  
[4 C. W. N., 446]

**3.** *Decree for arrears of rent, Assignment of—Execution of decree by assignee.*—The fact that an assignment of a decree for arrears of rent was made before the Tenancy Act will not protect from the provisions of s. 148 (h) an assignee who proceeds to execution afterwards; but execution cannot be refused where, before that Act came into operation, the assignment had been recognized by a Court of execution under s. 232 of the Civil Procedure Code. *KOLASHI CHUNDER ROY v. JODU NATH ROY*  
[I. L. R., 14 Calc., 380]

**4.** *Bengal Tenancy Act (VIII of 1885), s. 148, cl. (h)—Rent decree, Assignment of, recoverable as a civil demand—Landlord's interest vesting in the assignee.*—Unless the assignee of a rent decree has the landlord's interest in the land, he cannot execute it, and the rent-decree so assigned to a person in whom the landlord's interest is vested ceases to be a rent decree and becomes only an ordinary civil demand recoverable under the Code of Civil Procedure. *DENO NATH DEY v. GOLAP MOHINI DAS*  
[I. C. W. N., 183]

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

5. *Rent-decree—Decree for*  
*for arrears of rent—*

6. *Execution, Application for, by assignee of decree for arrears of rent—Civil Procedure Code (Act XIV of 1882), s. 232.*—When, after the expiration of an *ijara* lease, an *ijaradar* assigns to the superior landlord a decree he had obtained for rent, the transferee cannot apply for the execution of the decree, as s. 148, cl. (A), of the Bengal Tenancy Act is a bar to such an application.  
 DWARKA NATH SEN v. PEARL MOHUN SEN

[I. L. R., 694

1. *s. 149—Suit by third party claiming rent paid into Court in rent suit, Nature of—Title suit—Institution stamp.*—A suit by a third person under cl. (3) of s. 149 of the Bengal Tenancy Act is not a title suit, and need not be stamped as such. *Per TOTTENHAM, J.*—Such suit is in the nature of a suit, for an injunction under the Specific Relief Act, or else a declaratory suit.  
 JAGADAMBA DEVI v. PHOTAR GHOSH

[I. L. R., 14 Calc., 537

GOOLJAN DIBEE . . . I. L. R., 14 Calc., 540

s. 150—*Admission of rent due to landlord.*—S. 160 of the Bengal Tenancy Act is highly penal in its character, and cannot be put in force against a defendant, unless he has intentionally admitted money to be due and has not paid it; and such admission must be in the action. Under the circumstances of this case, it was held that the defendant had made no such admission. *ALI AHAMMAD SIRDAR v. BEHIN BEHARI BOSE* . . . I. L. R., 20 Calc., 585

s. 153.

See CASES UNDER APPEAL—ACTS—BENGAL TENANCY ACT, s. 153.

See RIGHT OF APPEAL.

[I. L. R., 15 Calc., 107

**BENGAL TENANCY ACT (VIII OF 1885)***—continued.*

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R., 15 Calc., 107, 231

I. L. R., 16 Calc., 638

I. L. R., 25 Calc., 571, 571 note

I. C. W. N., 887, 711

2 C. W. N., 267

I. L. R., 27 Calc., 484

4 C. W. N., 269

*Revisional power of District Judge in rent suits—Judicial Officer.*—The words "as used in the pro-

s. 155.

See LIMITATION ACT, ART. 32.

[I. L. R., 24 Calc., 160

*Suit for ejectment—Notice, Sufficiency of—Notice, of requisition on*

under that section, to be a suit for ejectment from certain land, but the plaint contained other prayers, namely, for a declaration that the defendant had no right to build houses on the land, and for an injunction on him to remove houses he had built. The suit for ejectment failed from

RAM PRITAB ROY . . . I. L. R., 23 Calc., 11

s. 157.

See LANDLORD AND TENANT—CONSTITUTION OF RELATIONSHIP—ACKNOWLEDGMENT OF TENANCY.

[I. L. R., 25 Calc., 334

I. L. R., 28 Calc., 428

3 C. W. N., 269

s. 158.

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R., 20 Calc., 249

1. *Incidents of tenancy, Application to determine—Validity of lease.*—In a proceeding under s. 153 of the Bengal Tenancy Act (Act VIII of 1885), it is open to a petitioner, if he acknowledges the opposite party to be a tenant, to dispute the validity of the lease under which he alleges his holding, and the Court is bound to go into and decide that question if raised. *BURKHEDRO NARAYAN DUTT v. NEMTE CHAND MUNDAL* [I. L. R., 15 Calc., 537

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

2. ————— *Question as to boundaries—Standard measure of the district—Evidence taken by an Ameen under s. 158 of the Bengal Tenancy Act.*—Under a proceeding under s. 158 of the Bengal Tenancy Act, in which an enquiry was directed, amongst other things, as to the boundaries of certain plots held by certain raiyats, the Ameen took evidence as to the standard measure of the district, and the Court decided the case on their evidence. *Held* that in determining the boundaries the question as to what was the standard measure of the district arose, and that the evidence was rightly received and acted upon. *DEOKI SINGH v. SEGOBIN SAHOO*

[I. L. R., 17 Calc., 277]

3. ————— *Application to determine incidents of tenancy and to set aside a lease—Admission of tenancy—Landlord and tenant.*—An application made nominally for the determination of the incidents of a tenancy, but substantially for the purpose of setting aside the lease under which the tenant came into possession, does not come within the scope of s. 158 of the Bengal Tenancy Act. *Per PETHERAM, C.J., PRINSEP, PIGOT, and GHOSE, JJ.*

—An admission of a tenancy in order to give jurisdiction under s. 158 does not bring the case within the meaning of the section, the object of the section being to enable the Court to ascertain what are the incidents of the existing arrangement between a landlord and his tenant, and not to enable the Court, in effect, to make a new contract for parties between whom no contract was in existence at and before the date of the application. *Per NORRIS, J.*—The true construction of the application was a question for the determination of the Division Bench. *DEBENDRO KUMAR BUNDOPADHYA v. BHUPENDRO NARAIN DUTT*

I. L. R., 19 Calc., 182

4. ————— *Application to determine incidents of tenure—Applications against separate tenants—Form of petition—Procedure.*—S. 158 of the Bengal Tenancy Act does not authorize one application being made against a number of tenure-holders having separate and distinct tenures. The proper procedure is by separate applications against each. *GOLAP CHAND NOWLAKHA v. ASHUTOSH CHATTERJEE*

I. L. R., 21 Calc., 602

5. ————— *Application for enhancement of rent when no settlement proceedings are in operation.*—The Court, in dealing with an application under s. 158 of the Bengal Tenancy Act, cannot pass a decree for enhancement of the rent. Where therefore a landlord seeks to enhance the rent of his tenant when no settlement proceedings are going on, he must institute a suit for the purpose, and cannot do so by means of an application under s. 158. *RAJESHWAR PRASHAD SINGH v. BURTA KOER*

[I. L. R., 21 Calc., 807]

6. ————— *Tenure, Incidents of—Application against some tenant holding two or more tenancies—Form of petition.*—*Held* by PETHERAM, C.J., and BANERJEE, J. (RAMPHI, J., dissenting), that, under s. 158 of the Bengal Tenancy Act, the landlord is authorized to include in one application

**BENGAL TENANCY ACT (VIII OF 1885)**

—continued.

two or more tenancies held by the same tenant. *Golap Chand Nowlakha v. Ashutosh Chatterjee, I. L. R., 21 Calc., 602*, referred to. *Held* further by BANERJEE, J., that by virtue of s. 647 of the Civil Procedure Code, the provisions of that Code may be applied to all proceedings under the Bengal Tenancy Act, so far as they can be made applicable; and therefore the inconvenience resulting from the proceedings becoming complicated by the inclusion of more tenancies than one in an application under s. 158 may be obviated by following the course prescribed by s. 45, Civil Procedure Code. *Thakur Prasad v. Fakirullah, I. L. R., 17 All., 106; I. L. R., 22 I. A., 44*, referred to. *DJENDRANATH ROY CHOWDHRY v. SOYLENDRA NATH ROY CHOWDHRY*

I. L. R., 24 Calc., 197

[I. C. W. N., 236]

7. ————— *Transferability of holding, question as to—Rents paid by raiyats as holding adjacent lands—Inquiry under s. 158, subject-matter of.*—The question whether the holding of the defendants is transferable cannot be gone into under s. 158 of the Bengal Tenancy Act. Where, in a proceeding under s. 158 of the Bengal Tenancy Act, the Court sent the case to the Collector for the purpose of a local inquiry with a view to determine the matters referred to in that section, and it was directed, among other matters, that the Revenue Officer should find out what may be the rents payable by raiyats holding lands in the vicinity of a similar description,—*Held* that the Revenue Officer ought not to have directed his inquiry to the question mentioned above, but the inquiry should have been directed to find out what was the rent that was being paid by the particular defendants or had previously been paid by them. *PURNA RAI v. BUNSHIDHUR SINGH*

[3 C. W. N., 15]

s. 161.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[I. L. R., 22 Calc., 384]

I. L. R., 23 Calc., 254

I. L. R., 24 Calc., 537, 746

ss. 162, 163.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[3 C. W. N., 333]

s. 167.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

I. L. R., 22 Calc., 384

[I. L. R., 24 Calc., 746]

I. L. R., 25 Calc., 551

4 C. W. N., 268, 735

s. 169.

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

I. L. R., 21 Calc., 169

1. ————— s. 170—*Decree for rent under Bengal Act VIII of 1869—Attachment under decree obtained under Rent Law of 1869, subsequently to the passing of Act VIII of 1885—General Clauses Consolidation Act (I of 1868), s. 6.*—

# BENGAL TENANCY ACT (VIII OF 1885)—continued.

Before the Bengal Tenancy Act of 1885 came into operation, a decree for rent was obtained under Bengal Act VIII of 1809. After the Bengal Tenancy Act of 1885 had become law, the tenancy in respect of which the rent had become due was attached in execution of such decree. A claim was subsequently put in to the attached property by a third person, which claim was disallowed as being forbidden by s. 170 of the Bengal Tenancy Act of 1885. *Held* that the provisions of the Bengal

## 2. Attachment of tenure in execution of decree for arrears of rent by a fraction.

an attachment as is contemplated by s. 170 of the Bengal Tenancy Act. *BEZI MADHUR ROY v. JAJO ALI SIRCAR* . I. L. R., 17 Calc., 390

See *SADAGAR SIRCAR v. KRISHNA CHUNDER NATH* [I. L. R., 26 Calc., 937

3. s. 188—Decree for rent obtained by one of several co-sharers, Effect of—Execution—Claim—Attachment—Civil Procedure Code (Act XIV of 1852). s. 278.—Where a decree for the entire rent of a tenure is obtained by one of several co-sharers by making the others party-defendants, and is executed by him alone and the defaulting tenure is attached, no claim by a third person under s. 278, Civil Procedure Code, to the attached property is maintainable by virtue of s. 170 of the Bengal Tenancy Act. The decree has in this case the same effect as if the decree has been obtained by all the co-sharers, and s. 188 of the Bengal Tenancy Act has no application to a case like the present. *CHUNDA SEKHAR PATRA v. MANJHEE* [3 C. W. N., 386

4. Civil Procedure Code (Act XIV of 1852), s. 278—Claim, Maintainability of.—S. 170 of the Bengal Tenancy Act is confined to claims to the tenure, and not to claims adverse to the tenure and in which the nature of the question to be tried is whether the property claimed is part of the tenure or not. *JAGABENDHU CHATTERJEE v. DEBUT PAL* . 4 C. W. N., 734

5. Civil Procedure Code

*MAHMOUD AHMED v. RAHMAN DAS HAZRA*

[4 C. W. N., 733

s. 171.

See *SALE FOR ARREARS OF RENT—INCUMBRANCES* . I. L. R., 24 Calc., 637

# BENGAL TENANCY ACT (VIII OF 1885)—continued.

s. 173.

See *APPEAL—ORDERS.*

[I. L. R., 21 Calc., 823

See *LIMITATION ACT, ART. 178.*

[I. L. R., 24 Calc., 707

See *SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.*

[I. L. R., 24 Calc., 707

*Sale for arrears of rent—Purchase by benamidar for judgment-debtor—Sale void or voidable—Suit to set aside sale—Proper Court to decide whether sale should stand or not—Where a sale takes place under the Bengal Tenancy Act in execution of a decree for arrears of rent, and the purchaser is found to be a mere benamidar for the judgment-debtor, Held, in a suit to set aside the sale on that ground, that on the wording of s. 173 the sale was only voidable, and not absolutely void; that section leaves it in the discretion of the Court to set aside the sale or not as it thinks fit. Under that section, the proper Court to determine whether the sale should stand or not is the Court that held the sale. *GOPAL CHUNDER MITRA v. RAM LAL GOSHAIN* . I. L. R., 21 Calc., 554*

s. 174.

See *CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY*

[I. L. R., 22 Calc., 800

See *EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.*

[I. L. R., 22 Calc., 767

See *SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES*

[I. L. R., 23 Calc., 393, 398 note

1. Act creating new rights, Effect of—Application for execution—The provision of an Act which creates a new right cannot, in the absence of express legislation or direct implication, have a retrospective effect. *Held*, accordingly, that a judgment-debtor's right under s. 174 of the Bengal Tenancy Act to set aside a sale did not avail where the sale was held in pursuance of a decree, the execution whereof had been applied for before that Act came into operation. *LAL MOHUN MCKENZIE v. JOGENDRA CHUNDER ROY. BONOMALI CHUNDER GHOSAL v. RAMKARI DUTT* . I. L. R., 14 Calc., 636

2. Execution applied for after passing of Act VIII of 1885—Decree being previous to the Act—Bengal Act VIII of 1869—Construction of statute.—A sale in execution of a decree passed under Bengal Act VIII of 1869, execution having been applied for after Act VIII of 1885 had come into force, cannot be set aside under s. 174 of the latter Act. Principle of *Lal Mohun McKenzie v. Jogendra Chunder Roy*, I. L. R., 14 Calc., 636, applied. *ULTRA ALI v. RAM KOMAL SHARMA* . I. L. R., 15 Calc., 333

3. Judgment-debtor, Meaning of.—The word "judgment-debtor" as used in

# BENGAL TENANCY ACT (VIII OF 1885) —continued.

2. ————— *Question as to boundaries*  
—Standard measure of the district—Evidence taken by an Ameen under s. 158 of the Bengal Tenancy Act.—Under a proceeding under s. 158 of the Bengal Tenancy Act, in which an enquiry was directed, amongst other things, as to the boundaries of certain plots held by certain raiyats, the Ameen took evidence as to the standard measure of the district, and the Court decided the case on their evidence. *Held* that in determining the boundaries the question as to what was the standard measure of the district arose, and that the evidence was rightly received and acted upon. *DEOKI SINGH v. SEGOBIND SAHOO*  
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3. ————— *Application to determine incidents of tenancy and to set aside a lease*  
—Admission of tenancy—Landlord and tenant.—An application made nominally for the determination of the incidents of a tenancy, but substantially for the purpose of setting aside the lease under which the tenant came into possession, does not come within the scope of s. 158 of the Bengal Tenancy Act. *Per PETHERAM, C.J., PRINSEP, PIGOT, and GHOSE, JJ.*  
—An admission of a tenancy in order to give jurisdiction under s. 158 does not bring the case within the meaning of the section, the object of the section being to enable the Court to ascertain what are the incidents of the existing arrangement between a landlord and his tenant, and not to enable the Court, in effect, to make a new contract for parties between whom no contract was in existence at and before the date of the application. *Per NORRIS, J.*  
—The true construction of the application was a question for the determination of the Division Bench. *DEBENDRO KUMAR BUNDOPADHYA v. BHUPENDRO NARAIN DUTT*  
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4. ————— *Application to determine incidents of tenure—Applications against separate tenants—Form of petition—Procedure.*—S. 158 of the Bengal Tenancy Act does not authorize one application being made against a number of tenure-holders having separate and distinct tenures. The proper procedure is by separate applications against each. *GOLAP CHAND NOWLAKHA v. ASHUTOSH CHATTERJEE*  
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5. ————— *Application for enhancement of rent when no settlement proceedings are in operation.*—The Court, in dealing with an application under s. 158 of the Bengal Tenancy Act, cannot pass a decree for enhancement of the rent. Where therefore a landlord seeks to enhance the rent of his tenant when no settlement proceedings are going on, he must institute a suit for the purpose, and cannot do so by means of an application under s. 158. *RAJESHWAR PERSHAD SINGH v. BURTA KOER*  
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6. ————— *Tenure, Incidents of—Application against some tenant holding two or more tenancies—Form of petition.*—*Held* by PETHERAM, C.J., and BANERJEE, J. (RAMPINI, J., dissenting), that, under s. 158 of the Bengal Tenancy Act, the landlord is authorized to include in one application

# BENGAL TENANCY ACT (VIII OF 1885) —continued.

two or more tenancies held by the same tenant. *GOLAP CHAND NOWLAKHA v. ASHUTOSH CHATTERJEE*, I. L. R., 21 Cal., 602, referred to. *Held* further by BANERJEE, J., that by virtue of s. 647 of the Civil Procedure Code, the provisions of that Code may be applied to all proceedings under the Bengal Tenancy Act, so far as they can be made applicable; and therefore the inconvenience resulting from the proceedings becoming complicated by the inclusion of more tenancies than one in an application under s. 158 may be obviated by following the course prescribed by s. 45, Civil Procedure Code. *THAKUR PRASAD v. FAKIRULLAH*, I. L. R., 17 All., 106; I. R., 22 I. A., 44, referred to. *DJENDRANATH ROY CHOWDHURY v. SOYLENDRA NATH ROY CHOWDHURY*  
I. L. R., 24 Cal., 197  
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7. ————— *Transferability of holding, question as to—Rents paid by raiyats as holding adjacent lands—Inquiry under s. 158, subject-matter of.*—The question whether the holding of the defendants is transferable cannot be gone into under s. 158 of the Bengal Tenancy Act. Where, in a proceeding under s. 158 of the Bengal Tenancy Act, the Court sent the case to the Collector for the purpose of a local inquiry with a view to determine the matters referred to in that section, and it was directed, among other matters, that the Revenue Officer should find out what may be the rents payable by raiyats holding lands in the vicinity of a similar description,—*Held* that the Revenue Officer ought not to have directed his inquiry to the question mentioned above, but the inquiry should have been directed to find out what was the rent that was being paid by the particular defendants or had previously been paid by them. *PURNA RAI v. BUNSHIDHUR SINGH*  
[3 C. W. N., 15]

s. 161.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

[I. L. R., 22 Cal., 364

I. L. R., 23 Cal., 254

I. L. R., 24 Cal., 537, 748

ss. 162, 163.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[3 C. W. N., 333

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See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

I. L. R., 21 Cal., 169

1. ————— s. 170—Decree for rent under Bengal Act VIII of 1869—Attachment under decree obtained under Rent Law of 1869, subsequently to the passing of Act VIII of 1885—General Clauses Consolidation Act (I of 1868), s. 6.—

**BENGAL TENANCY ACT (VIII OF 1885)—continued.**

Before the Bengal Tenancy Act of 1885 came into operation, a decree for rent was obtained under Bengal Act VIII of 1869. After the Bengal Tenancy Act of 1885 had become law, the tenancy in respect of which the rent had become due was attached in execution of such decree. A claim was subsequently put in to the attached property by a third person, which claim was disallowed as being forbidden by s. 170 of the Bengal Tenancy Act of 1885. *Held* that the provisions of the Bengal Tenancy Act of 1885 were not applicable to the decree.

**KRISHNA** . . . I. L. R., 18 Calc., 237

2. — Attachment of tenure in execution of decree for arrears of rent by a fractional co-sharer—Arrears of rent of separate share.—An attachment of a tenure or holding in execution of a decree obtained by a fractional co-sharer for arrears of the rent of his separate share is not such an attachment as is contemplated by s. 170 of the Bengal Tenancy Act. **BENI MADHUR ROY v. JAGD ALI SIRCAR** . . . I. L. R., 17 Calc., 390

See **SADAGAR SIRCAR v. KRISHNA CHUNDER NATH** [I. L. R., 28 Calc., 937

3. — and s. 188—Decree for rent obtained in one of several co-shares. *Effect of*

attached property is maintainable by virtue of s. 170 of the Bengal Tenancy Act. The decree has in this case the same effect as if the decree has been

4. — Civil Procedure Code (Act XIV of 1882), s. 278—Claim, Maintainability of.—S. 170 of the Bengal Tenancy Act is confined to claims to the tenure, and not to claims adverse to the tenure and in which the nature of the question to be tried is whether the property claimed is part of the tenure or not. **JAGABENDRU CHATTOPADHYA v. DEENTU PAL** . . . 4 C. W. N., 734

5. — Civil Procedure Code (Act XIV of 1882), s. 278—Claim, Maintainability of.—Attachment of defouling tenure.—Where in execution of a decree for arrears of rent the defaulting tenure is attached, no claim under s. 278, Civil Procedure Code, is maintainable, whether the claim is to the tenure or adverse to the tenure. **MAKBUL AHMED v. RAHMAN DAS HAZRA** [4 C. W. N., 733

s. 171.

See **SALE FOR ARREARS OF RENT—INCUMBRANCES** . I. L. R., 24 Calc., 537

**BENGAL TENANCY ACT (VIII OF 1885)—continued.**

s. 173.

See **APPEAL—ORDERS.**

[I. L. R., 21 Calc., 823]

See **LIMITATION ACT, ART. 178.**

[I. L. R., 24 Calc., 707]

See **SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.**

[I. L. R., 24 Calc., 707]

*Sale for arrears of rent—Purchase by benamidar for judgment-debtor—Sale void or voidable—Suit to set aside sale—Proper Court to decide whether sale should stand or not—Where a sale takes place under the Bengal Tenancy Act in execution of a decree for arrears of rent, and the*

void, that section leaves it in the discretion of the Court to set aside the sale or not as it thinks fit. Under that section, the proper Court to determine whether the sale should stand or not is the Court that held the sale. **GOPAL CHUNDER MITRA v. RAM LAL GOSHAIN** . I. L. R., 21 Calc., 554

s. 174.

See **CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.**

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See **EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.**

[I. L. R., 23 Calc., 767]

See **SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.**

[I. L. R., 23 Calc., 393, 396 note]

1. — Act creating new rights, Effect of—Application for execution.—The provision of an Act which creates a new right cannot, in the absence of express legislation or direct implication, have a retrospective effect. *Held*, accordingly, that a judgment-debtor's right under s. 174 of the Bengal Tenancy Act to set aside a sale did not avail where the sale was held in pursuance of a decree, the execution whereof had

2. — Execution applied for after passing of Act VIII of 1885—Decree being previous to the Act—Bengal Act VIII of 1869—Construction of statute.—A sale in execution of a decree passed under Bengal Act VIII of 1869, execution having been applied for after Act VIII of 1885 had come into force, cannot be set aside under s. 174 of the latter Act. Principle of **Lal Mohan Mukerjee v. Jogendra Chunder Roy**, I. L. R., 13 Calc., 636, applied. **UZZIR ALI v. RAM KOMAL SHANAH** . . . I. L. R., 15 Calc., 333

3. — Judgment-debtor, Meaning of.—The word "judgment-debtor" as used in

# BENGAL TENANCY ACT (VIII OF 1885)—continued.

s. 174 of Act VIII of 1885 does not include a transferee or assignee from a judgment-debtor, but must be construed strictly as referring to a judgment-debtor alone. **RAJENDRO NARAIN ROY v. PHUDY MONDUL** . I. L. R., 15 Calc., 482

4. ———— *Tenure sold in execution of a decree for cesses—Rent, Definition of Bengal Tenancy Act, s. 3, cl. 5—Bengal Cess Act (Bengal Act IX of 1880), s. 47.*—S. 174 of the Bengal Tenancy Act is applicable to the case of a tenure or holding sold by the landlord in execution of a decree for arrears of cesses due thereon, although s. 174 is not specifically mentioned in s. 3, cl. 5, as one of the sections to which the extended definitions of rent is applicable. **KISHORI MOHUN ROY v. SARODAMANI DAS** . I. C. W. N., 30

5. ———— and s. 162—*Setting aside sale—"Decree," Meaning of.*—The word "decree," in s. 174 of the Bengal Tenancy Act, no doubt primarily refers to the decree of which execution is sought for; but if in the meantime, that is to say, before the sale is actually held, the decree of the first Court, of which execution was applied for, is modified in appeal in favour of the judgment-debtor, then necessarily "the decree" must be the decree of the Appellate Court. So where a decree for rent was passed by the first Court on the 11th January, and in execution of the decree the defaulting tenure was sold on the 5th June, but in the meantime the decree had been modified by the Appellate Court on the 18th May.—*Held* that the judgment-debtor could set aside the sale by depositing within 30 days from the date of sale the amount covered by the decree of the Appellate Court, together with a sum equal to five per centum of the purchase-money. **BHUKI SINGH v. BHANU MAHTON** . 3 C. W. N., 231

6. ———— *Proceeding in execution of decree—Application for execution—Civil Procedure Code, 1882, s. 647.*—A proceeding under s. 174 of the Bengal Tenancy Act is not a proceeding for the execution of a decree; it may be a proceeding relating to the execution of a decree, but it does not come within the Explanation to s. 647 of the Civil Procedure Code as being an application for the execution of a decree. **SUBH NARAIN LALL v. GOROKH PRASAD** [3 C. W. N., 344

7. ———— *Deposit, Nature of—Power to set aside sale.*—The deposit under s. 174 of the Tenancy Act must be of such a nature as to be at once payable to the parties, and a Court has no power to set aside a sale under that section unless the judgment-debtor has complied strictly with its provisions. **RAHIM BUX v. NUNDO LAL GOSSAMI** [I. L. R., 14 Calc., 321

8. ———— *Nature of deposit required.*—A deposit under s. 174 of the Bengal Tenancy Act must be such as the decree-holder may draw out at once; a deposit not made payable to the decree-holder until a certain event had happened is not a good deposit within the meaning of that section. **SHAKOTE v. JOTINDRA MOHUN TAGORE** [I. C. W. N., 132

# BENGAL TENANCY ACT (VIII OF 1885)—continued.

9. ———— *Sale for arrears of rent—Deposit, Extension of time for, when Court is closed.*—Where a tenure is sold for arrears of rent under the Bengal Tenancy Act of 1885, the judgment-debtor, under s. 174 of the Act, may apply to have the sale set aside on his depositing in Court for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. of the purchase money; and if the Court be closed on or before the last day of the period limited, the judgment-debtor may pay the said sum into Court on the first day the Court re-opens, notwithstanding the absence of express provision to that effect. **SHOOSHEE BHUSAN RUDRO v. GOBIND CHUNDER ROY** I. L. R., 18 Calc., 231

See **PEARY MOHUN AICH v. ANUNDA CHARAN BISWAS** . I. L. R., 18 Calc., 631

10. ———— *Amount of deposit payable incorrectly calculated by an officer of the Court—Sale for arrears of rent.*—The judgment-debtor within 30 days from the date of sale deposited in Court, under s. 174 of the Bengal Tenancy Act, the amount which had been calculated in the office of the Munsif as the amount payable under the section. Subsequently on its being discovered that the amount was short by a small sum, the calculation being incorrect, the Munsif held that the provisions of the section had not been complied with, and passed an order confirming the sale. *Held* that, when the amount payable by the judgment-debtor under s. 174 has been calculated and settled by an officer of the Court, and when that amount has been paid into Court, an order setting aside the sale must be made by the Court as a matter of right. The order of the Munsif confirming the sale was therefore without jurisdiction, and must be set aside. **UGRAH LALL v. RADHA PERSHAD SINGH** [I. L. R., 18 Calc., 255

See **MAKBOOL AHMED CHOWDHRY v. BAGLE SABHAN CHOWDHRY** . I. L. R., 25 Calc., 609

11. ———— *Application to set aside sale for arrears of rent—Deposit of decretal amount incorrectly calculated by ministerial officers of Court—Effect of deposit without a prayer in express terms to set aside the sale—Challans—Practice.*—The judgment-debtor, within thirty days from the date of sale of his holding for arrears of rent, deposited in Court, under s. 174 of the Bengal Tenancy Act, the decretal amount by a challan endorsed by the chief ministerial officer of the Court executing the decree. Subsequently it was discovered that the amount was short by 9 pies, which the judgment-debtor forthwith paid in, making up the deficiency, and presented a petition, praying that "the execution case may be declared as finally closed," but without applying in express terms to have the sale set aside. *Held* that, under s. 174 of the Bengal Tenancy Act, the Court was bound to set aside the sale, notwithstanding that the applicant did not in express terms ask for that relief. **Ugrah Lall v. Radha Pershad Singh**, I. L. R., 18 Calc., 255, referred to. *Per AMER ALI,*

# BENGAL TENANCY ACT (VIII OF 1885)—continued.

J.—The fact of his depositing the amount was a

12. ————— Jurisdiction of Civil Court—Civil Procedure Code (Act XIV of 1882), s. 11—Right of suit to set aside sale for arrears of rent—Deposit in Court.—No suit is maintainable to set aside a sale under the provisions of s. 174 of the Bengal Tenancy Act. The right under the section to have a sale set aside is not an abstract right which can be enforced by suit against any particular person, but is a right to call upon a Judge to set aside a sale, and on his refusal to proceed in revision. KABIJASO KORE v. RAGHU NATH SARAN SINGH . I. L. R., 18 Calc., 481

13. ————— Civil Procedure Code, 1882, s. 295—Deposit made by judgment-debtor—S. 295 of the Code of Civil Procedure does not apply to a deposit made by the judgment-debtor under s. 174 of the Bengal Tenancy Act. BIHARI LAL PAL v. GOPAL LAL SEAL . 1 C. W. N., 695

s. 178.

See SALE FOR ARREARS OF RENT—INCUMBRANCES I. L. R., 22 Calc., 364

s. 178.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

[I. L. R., 24 Calc., 37  
I. L. R., 26 Calc., 130  
I. L. R., 26 Calc., 315  
3 C. W. N., 37  
3 C. W. N., 194

See CASES UNDER LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION.

[I. L. R., 24 Calc., 273  
I. L. R., 23 I. A., 158

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . I. L. R., 23 Calc., 427  
[I. L. R., 26 Calc., 184

Right of occupancy—Agreement restricting right of occupancy—Suits pending when Act came into force.—S. 178 of the Bengal Tenancy Act (Act VIII of 1885) has no application to suits instituted before the date on which that Act came into force. So where a landlord sued to eject a tenant who had executed a *temamah* agreeing to hold the land in suit for a specified period at a specified rent, and providing that the landlord was to be at liberty to enter on the lands at the expiry of the period, and the suit was instituted

# BENGAL TENANCY ACT (VIII OF 1885)—continued.

sub-cl. (b), of the Bengal Tenancy Act, but was liable to be ejected. MOHESHWAR PERSHAD NARAIN SINGH v. SHREOBARAN MANTO. MOHESHWAR PERSHAD NARAIN SINGH v. DUREN RAUT [I. L. R., 14 Calc., 621

s. 179.

See CHSS . I. L. R., 15 Calc., 828  
[I. L. R., 23 Calc., 611  
3 C. W. N., 608

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

[I. L. R., 26 Calc., 130  
3 C. W. N., 37

s. 180.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION.

[I. L. R., 17 Calc., 393

s. 181.

See SERVICE TENURE.

[I. L. R., 25 Calc., 181

s. 183

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . I. L. R., 23 Calc., 179, 427

[I. L. R., 26 Calc., 184

s. 184 and sch. III, part I, art. 3—Occupancy *rayyat*—Suit—Limitation.—The suit mentioned in s. 184 and sch. III, part I, art. 3, of the Bengal Tenancy Act, 1885, means a suit by an occupancy *rayyat* as such, that is, an

s. 188.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s. 622.

[I. L. R., 15 Calc., 47

1. ————— Co-sharers, Suit by—Parties.—S. 168 of the Bengal Tenancy Act applies only to such matters as a landlord is, under the Act,

UMESH CHUNDER ROY v. NABIR MULLICK

[I. L. R., 14 Calc., 203 note

2. ————— Suit for rent—Co-sharers, Suit by—Joint undivided estate—Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 622.—

# BENGAL TENANCY ACT (VIII OF 1835)—continued.

*I. L. R., 14 Calc., 201, Gopal Chunder Das v. Umesh Narain Chowdhry, I. L. R., 17 Calc., 695, and Beni Madhub Roy v. Jadd Ali Sircar, I. L. R., 17 Calc., 390, referred to. HALADHAR SAHA v. RINDROY SUNDRI I. L. R., 19 Calc., 593*

to the interests of the other co-sharers, the effect is to create a separate tenancy under such fractional co-sharer, and s. 184 of the Bengal Tenancy Act is inapplicable to such a case. *Gopal Chunder Das v. Umesh Narain Chowdhry, I. L. R., 17 Calc., 695, distinguished. PANCHANAN BANERJEE v. RAJ KUMAR GUHA I. L. R., 19 Calc., 610*

10. ———— *Co-sharers—Suit by one co-sharer entitled to collect rent separately, for additional rent for land brought under cultivation, payable in terms of lease—Joint landlords—Suit*

11. highas, which were then unculturable, should, when they became fit for cultivation, be assessed with

tenancy, but upon an ascertainment of the rent payable in accordance with the terms of the original letting. *Guni Mohamed v. Moran, I. L. R., 4 Calc., 96, and Gopal Chunder Das v. Umesh Narain Chowdhry I. L. R., 17 Calc., 695, distinguished. RAM CHUNDER CHATTERJEE v. GIRIDHAR DEB I. L. R., 13 Calc., 755*

11. ———— *Suit by co-sharer for rent payable under terms of lease—Suit by one of several joint-landlords.—Plaintiff, the co-plaintiff, defendant No. 1, and other persons, who also were defendants, held a tenure, under which defendant No. 1 held an under-tenure. Plaintiff brought this suit for the*

# BENGAL TENANCY ACT (VIII OF 1835)—continued.

whole of the rent, claiming only his own share of it, making the co-sharers defendants who did not join as plaintiffs. The terms of the defendant's petition

would pay rent at the rate of 10 annas per bigha. The lands being found greater than the said quantity, the plaintiff prayed for a decree for rent at that rate for the whole area. The defendant pleaded *inter alia* that the plaintiff, as a fractional sharer in the landlord's interest, could not sue him at all. Held that the suit was maintainable at the instance of the plaintiff at all, and that it was not a suit to alter the rent under the provisions of s. 13 of the Bengal Tenancy Act. *Ram Chunder Chatterjee v. Giridhar Dutt, I. L. R., 19 Calc., 755, relied upon. Gopal Chunder Das v. Umesh Narain Chowdhry, I. L. R., 17 Calc., 695, distinguished. DINTARINI DAS v. BROUGHTON 3 C. W. N., 225*

of rent; an assessment in a *kabuliyat* by one tenant to pay an enhanced rent to some of the landlords, if, on measurement, the *jama* of his share is increased,

does not create a separate tenancy. *Gopal Chunder Das v. Umesh Narain Chowdhry, I. L. R., 17 Calc., 695, and Hari Charan Bose v. Ranjit Singh, I. L. R., 25 Calc., 917 note 1 C. W. N., 621, approved of. Panchanan Banerjee v. Raj Kumar Guha, I. L. R., 19 Calc., 160, and Tejendra Narain Singh v. Bakshi Singh I. L. R., 23 Calc., 653, distinguished. BAIDA NATH DE SARKAR v. ILIM*

[I. L. R., 25 Calc., 617  
3 C. W. N., 44

HARI CHARAN BOSE v. RANJIT SINGH

[I. L. R., 25 Calc., 917 note  
1 C. W. N., 621

See SADAGAR SIRCAR v. KRISHNA CHANDRA NATH  
[I. L. R., 26 Calc., 937

13. ———— *Partition of estates.—Joint-landlords.—A tenure was held under a zamindari which originally formed one entire estate. The estate was subsequently partitioned by the revenue authorities into four several estates. The rent of the tenure was thereupon apportioned proportionately to each of the four estates thus formed, although the land forming the tenure remained undivided. In a suit for enhancement of the rent of the tenure brought by the proprietor of some of*

**BENGAL TENANCY ACT (VIII OF 1885)—continued.**

the estates.—*Held* that the effect of the partition of the parent estate was to create separate and distinct tenures out of the original single tenure under the proprietors of each of the estates; that the proprietors of the several estates were not joint landlords of the tenure within the meaning of s. 188 of the Bengal Tenancy Act, and that therefore a suit for enhancement of rent would lie by a proprietor of one of the estates in respect of the rent allotted to his estate. *Sarat Soonduree Debia v. Someeroodeen Talookdar*, 23 W. R., 530, and *Sarat Soondary Dabee v. Anund Mohun Surma Ghuttack*, I. L. R., 5 Calc., 273, followed. *HEM CHANDRA CHOWDERY v. KALI PRASANNA BHADURI*

[I. L. R., 28 Calc., 832]

14. ——— *Joint landlords—Suit for apportionment of rent and for splitting a jama—Frame of suit—Parties—Arrears of rent.*—S. 188 of the Bengal Tenancy Act does not prohibit joint landlords from ceasing to be joint, or preclude them from suing for their shares of the rent separately, when they have ceased, or wish to cease, to be joint landlords; provided that the suits are so framed as to free the tenant from all further liability to any one of them. When, therefore, the plaintiffs, who are joint landlords, have, in suits separately instituted by them against the defendant tenant, asked for apportionment of rent and for recovery of rents due on such apportionment, and all the parties interested have been made parties to the suits, there is no reason why the plaintiffs should not have the rent apportioned; and the apportionment may take place in respect both of the arrears alleged to be due and the future rent. *RAJNABAIN MITTER v. EKADASI BAG* . . . . . I. L. R., 27 Calc., 479

[4 C. W. N., 449]

15. ——— and ss. 65 and 52—*Abatement of rent—Authority of a co-sharer to grant abatement.*—A fractional shareholder of a tenure has no right to grant abatement of rent in respect of a holding within the tenure independently of his co-sharers. *SYAMA CHARAN MANDAL v. SAHM MOLLAH* . . . . . I. C. W. N., 415

16. ——— *Suit for damages for cutting down trees.*—A suit for recovery of damages for value of trees cut down by a tenant is maintainable at the instance of one of several joint landlords. *HRISIKES SINGHA v. SADHU CHARAN LOHAR*

[2 C. W. N., 80]

— s. 189, Rules made under—

See LANDLORD AND TENANT—EJECTMENT  
—NOTICE TO SUIT.

[I. L. R., 27 Calc., 774  
2 C. W. N., 125]

See SUPERINTENDENCE OF HIGH COURT—  
CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 23 Calc., 723]

See VALUATION OF SUIT—APPEALS.

[I. L. R., 23 Calc., 723]

**BENGAL TENANCY ACT (VIII OF 1885)—continued.**

— s. 195.

See BENGAL REGULATION VIII OF 1819.

[I. L. R., 17 Calc., 182]

1. ——— sch. III, art. 2—*Limitation—Suit for arrears of rent at excess rate.*—In 1865 the plaintiff sued and obtained a decree for payment of additional rent for excess land held by the defendant, and, on the 29th March 1877, instituted another suit against the defendant for khas possession of newly-accreted lands, or, in the alternative, for an assessment of rent thereon according to the terms of the defendant's kabuliati. This suit was dismissed on the 29th June 1881; but, on appeal to the High Court, this decision was reversed on the 11th May 1883, and khas possession was given to the plaintiff. On appeal, the Privy Council, on the 24th July 1886, reversed the decree for khas possession, and declared the plaintiff entitled to a decree, fixing the extent of the excess lands and assessing rent therefor in terms of the kabuliati, such rent to be payable from and after the 28th March 1878, and remitting the case for a finding as to the extent of the excess lands. The Subordinate Judge, to whom the case was remitted, gave the plaintiff a decree on the 21st March 1887 for increased rent in respect of 2 kanis 7 gun-dahs 2 cowries of excess land. On the 14th July 1887, the plaintiff instituted a suit to recover excess rent for the years 1878 to 1886, and for rent at the old rate plus the excess rent for a portion of the year 1887. *Held* that the suit, so far as the rent for 1878 to 1883 was concerned, was barred by limitation. *HURRO KUMAR GHOSE v. KALI KRISHNA THAKUR* . . . . . I. L. R., 17 Calc., 251

2. ——— *Limitation for rent—suit—Rent payable under a lease—Registered lease.*—The Bengal Tenancy Act (VIII of 1885) prescribes one period of limitation for all suits for rent brought under its provisions. Art. 2 of the third schedule of that Act includes a suit to recover arrears of rent payable under a lease, and there is no distinction as to the form of the lease or as to whether it is registered or not. *Umesh Chunder Mundul v. Adormoni Dasi*, I. L. R., 15 Calc., 221, and *Vythilinga Pillai v. Thethchanamurti Pillai*, I. L. R., 3 Mad., 76, distinguished. *ISWARI PERSHAD NABAIN SAHI v. CROWDY* . . . . . I. L. R., 17 Calc., 486

3. ——— and s. 184—*Limitation—Suit for rent on registered contracts.*—Suits for rent, founded on registered contracts in respect of lands subject to the provisions of the Bengal Tenancy Act, are governed by the limitation provided in that Act. *MACKENZIE v. MAHOMED ALI KHAN*

[I. L. R., 19 Calc., 1]

4. ——— *Lease not for agricultural or horticultural purposes—Building lease.*—The special limitation provided by art. 2, sch. III of the Bengal Tenancy Act, is not applicable to a registered lease granted for building purposes and for establishing a coal depot, such lease not being one for agricultural or horticultural purposes within the meaning of that Act. *RANIGANG COAL ASSOCIATION v. JUDOO-NATH GHOSH* . . . . . I. L. R., 19 Calc., 489

# BENGAL TENANCY ACT (VIII OF 1885)—continued.

185 Sept 1885 (18th May 1885) and 1885

*Suit for possession of the property under the Bengal Tenancy Act, 1885 and sch. III, art. 2 (b), the*

more than three years from the last day of the Bengali year in which the arrear fell due, it was barred by limitation. *BURMA MOHI DASSEE v. BURMA MOHI CHOWDHURANI* [I. L. R., 23 Calc., 191

*suit was barred by limitation, being more than three years from the last day of the Bengali year in which the arrear fell due, it was barred by limitation. It was found that the land was not let out for agricultural or*

4 C. W. N., 76

7. *Suit for arrears of rent brought by assignee of landlord.*—Art. 2 of pt. I of

DOJRA 4 C. W. N., 605

1. *sch. III, art. 3—Limitation—Suit by occupancy raiyat to recover possession from trespasser.* Limitation for.—Art. 3, sch. III of the Bengal Tenancy Act (Act VIII of 1885), relates to suits brought by an occupancy raiyat against his landlord and not to a suit brought against a third party who is a trespasser. *RAJANANDER BIKER v. AMOO BIKAR* I. L. R., 16 Calc., 317

2. *Suit by occupancy raiyat to recover possession after dispossession by*

# BENGAL TENANCY ACT (VIII OF 1885)—continued.

possession of the property, namely two years from the date of dispossession.

1860. *SARASWATI DAS v. HORITARUN CHUCKERBUTTI* I. L. R., 16 Calc., 741

3. *Limitation—Ben-*

[I. L. R., 17 Calc., 628

4. *Limitation—Suit*

[I. L. R., 24 Calc., 40

5. *Limitation—Dis-*

the persons whose right, title, and interest he has purchased. *ABNOY CHUNDER MOOKERJEE v. TITU*

[3 C. W. N., 176

6. *Limitation—Dispossession by a landlord from occupancy holding.*—Where the plaintiff purchased an occupancy holding at an auction-sale in execution of a mortgage decree against an occupancy raiyat and sued the landlord to recover possession of the same, although plaintiff had never been in actual possession at all, and his predecessor had been ejected from possession by the landlord of the occupancy holding more than two years before suit and the latter claimed to maintain his possession by virtue of a decree which he obtained for possession as against the occupancy raiyat, the

# BENGAL TENANCY ACT (VIII OF 1885)—continued.

mortgagor—*Held* that the case was not governed by the special limitation of two years. *Abhoy Churn Mookerjee v. Titu*, 2 C. W. N., 175, referred to. *DINOBUNDHU SAHA v. LOLIT MOHUN MOITRA*

[2 C. W. N., 595

7. ——— *Limitation—Occupancy-holding, Suit to recover possession of.*—In a suit by a purchaser from former holder for recovery of possession of an occupancy-holding, where the defendants were in occupation, they having been inducted into the land by the agents of the landlord,—*Held* that the period of limitation is two years, inasmuch as it is under the authority of the landlord that the ouster took place. — *Bheka Singh v. Nakhled Singh*, 1 L. R., 24 Calc., 40, relied on. *Eradut v. Daloo Sheikh*, 1 C. W. N., 573, *Abhoy Churn Mookerjee v. Titu*, 2 C. W. N., 175, and *Dinobundhu Saha v. Lolit Mohun Moitra*, 2 C. W. N., 595, distinguished. *CHINTAMONI SAHU v. UPENDRA NATH SARNOKAR* . . . . . 4 C. W. N., 326

8. ——— *Occupancy raiyat, Ouster of—Limitation.*—Where the plaintiff, an occupancy raiyat, was ousted by the defendant, and after the ouster the defendant took a settlement from the landlord,—*Held* that two years' limitation would apply to a suit for the recovery of possession. *HARA KUMAR NATH v. NASARUDDIN* . 4 C. W. N., 685

9. ——— *Suit for recovery of possession by an occupancy raiyat—Limitations—Dispossession by landlords, sole, fractional, or entire body of.*—The period within which an occupancy raiyat can sue to recover possession of land from which he has been dispossessed by his landlord is two years as laid down in art. 3, sch. III of the Bengal Tenancy Act, whether such dispossession be by a fractional landlord, the sole landlord, or the entire body of landlords. *Joolmutter Bewa v. Kali Prasanna Roy*, 1 L. R., 28 Calc., 127 note, referred to. *PARAMESWAR NOMOSUDRA v. KALI MOHAN NOMOSUDRA* . . . . . 1 L. R., 28 Calc., 127 [4 C. W. N., 801

*JOOMUTTY BEWA v. KALI PRASANNA ROY*  
[1 L. R., 28 Calc., 127 note  
4 C. W. N., 803 note

1. ——— sch. III, art. 6—*Limitation—Ex-parte decree in suit for rent—Civil Procedure Code, s. 108—Execution of decree, Application for—Final decree—Execution proceedings struck off—Bengal Tenancy Act (VIII of 1885), ss. 143, 144, 148.*—Having regard to ss. 143, 144, and 148 of the Bengal Tenancy Act, there is a special procedure laid down for rent suits; and therefore decrees in rent suits are decrees under art. 6 of sch. III of that Act. The words "final decree" in art. 6, sch. III of the Bengal Tenancy Act, refer to the final decree in the suit, and cannot be held to include an order of an Appellate Court made in an application to set aside that decree under s. 108 of the Code of Civil Procedure. An *ex-parte* rent decree having been obtained on the 30th May 1888 for a sum under Rs500, the decree-holder on the 27th May 1889 applied for execution thereof and attached certain properties of the

# BENGAL TENANCY ACT (VIII OF 1885)—concluded.

judgment-debtor, the date fixed for the sale being the 31st August 1889. The judgment-debtor applied, under s. 108 of the Civil Procedure Code, for a re-hearing of the rent suit, and on the day fixed for the sale applied for stay of execution: the sale was stayed, and the Court of its own motion and for its own convenience directed the execution case to be struck off the file "for the present." On the 28th December 1889 the Court passed an order refusing a re-hearing of the suit, which order was upheld on appeal on the 16th May 1890. On the 21st January 1892 the decree-holder again applied for execution, at the same time praying that his application might be taken to be in continuation of his former application of the 27th May 1889. *Held* that the application was one in continuation of the former proceedings in execution so far, at least, as regarded the property mentioned in the former application, but as regards other properties, it must be held to be barred as not having been made within three years from the decree of the 30th May 1888. *BAIKANTA NATH MITTRA v. AUGHORE NATH ROSE*

[1 L. R., 21 Calc., 387

2. ——— *Limitation Act (XV of 1877), art. 179—Execution of decree—Period from which limitation runs—Date of decree—Date of payment.*—On the 26th May 1890, a rent decree was passed for the sum of Rs100, payable on the 15th August 1890. On the 9th August 1893, the decree-holders applied for execution of the decree. *Held* the period of limitation ran from the date of the decree, and not from the date fixed for payment, and that the application was barred by art. 6 of sch. III, Act VIII of 1885. *RAM SADAY MUKERJEE v. DWARKA NATH MUKERJEE*

[1 L. R., 22 Calc., 644

## BEQUEST.

— for charitable purposes.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST FOR CHARITABLE PURPOSES.

See CASES UNDER WILL—CONSTRUCTION.

— for masses.

See WILL—CONSTRUCTION.

[2 B. L. R., O. C., 148  
2 Hyde, 65  
1 L. R., 15 Mad., 424

— for religious purposes.

See HINDU LAW—WILL—POWER OF DISPOSITION . 1 L. R., 16 Mad., 353

See WILL—CONSTRUCTION.

[1 L. R., 25 Calc., 112

— to a class.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, AND BEQUESTS TO A CLASS.

**BEQUEST—concluded.**

to Idol.

See CASES UNDER HINDU LAW—ENDOWMENT.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST TO IDOL.

[2 B. L. R., A. C., 137 note

void for uncertainty.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS . I. L. R., 19 Bom., 138

[I. L. R., 21 Bom., 648

See WILL—CONSTRUCTION.

[I. L. R., 4 Calc., 443

I. L. R., 22 Bom., 774

**BETROTHAL**

See CONTRACT—BREACH OF CONTRACT.

[I. L. R., 11 Bom., 412

See HINDU LAW—MARRIAGE—BETROTHAL . I. L. R., 11 Bom., 412

[I. L. R., 21 Bom., 23

See SPECIFIC PERFORMANCE.

[I. L. R., 1 Calc., 74

**BETTING ON RAINFALL.**

See GAMBLING . I. L. R., 13 Bom., 891

[I. L. R., 17 Bom., 184

**BHAGDARI ACT (BOMBAY).**

See BOMBAY ACT V OF 1862.

**BHAGDARI TENURES.**

See CASES UNDER BOMBAY ACT V OF 1862.

See CUSTOM . 5 Bom., A. C., 123

[I. L. R., 5 Bom., 453

See SETTLEMENT—MODE OF SETTLEMENT.

[3 Bom., 244: 2nd Ed., 231

**BHOOTAN DUARS ACT (XVI OF 1869).**

*Schedule and rules under Act—Bhutan Duars Repealing Act (Bengal Act VII of 1895), s. 3—Civil Procedure Code (Act XIV of 1902), application of, to Bhutan Duars—Minors, Fraud against—Suit to obtain relief against fraudulent transfers effected, and entries made in the record-of-rights under Act XVI of 1-69, during one's minority.—The plaintiff's father died, possessed of a 4-anna share in a jote in Bhutan Duars. During their minority their elder brothers sold that jote to the first three defendants in fraud of the rights of the plaintiffs, and the purchasers took possession of the jote accordingly and had entries made in their own names in the record-of-rights. The plaintiffs brought this suit under Act XVI of 1869 against the defendants to recover their share in the jote. The lower Appellate Court, without going into the merits, dismissed the case as not cognizable*

**BHOOTAN DUARS ACT (XVI OF 1869)**

—concluded.

in view of the provisions of Act XVI of 1869 and the

tered in the Bhutan Duars. That the plaintiffs are not precluded by the entry in the record-of-rights from obtaining relief against the defendants. An entry in a record under Act XVI of 1869 in order to be conclusive evidence of any right, interest, or other matter must be one which has been honestly and fairly obtained. BROJO KANTO DAS v. TUPAUN DAS . . . 4 C. W. N., 287

**BHOULI RENT.**

See RENT IN KIND.

**BHOULI TENURE.**

See BENGAL RENT ACT, 1869, s. 52

[I. L. R., 3 Calc., 374

**BHUINHARI REGISTER.**

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.

[I. L. R., 19 Calc., 91

**BICYCLE.**

See MADRAS MUNICIPAL ACT, SCH. B.

[I. L. R., 19 Mad., 83

**BIDDERS AT COURT-SALE.**

See SALE IN EXECUTION OF DECREE—BIDDERS . I. L. R., 14 Mad., 235

**BIGAMY.**

See ABETMENT . I. L. R., 4 Calo., 10  
[I. L. R., 8 Bom., 123  
W. R., 1864, Cr., 13

1. — Authority of caste to declare marriage void—*Penal Code, s. 494*—Caste of law will not recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry. *Bona fide* belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge, under s. 494 of the Penal Code, of marrying again during the lifetime of the first husband, or to a charge of abetment of that offence under that section combined with s. 109. REG. v. SAMBHU RAOBU

[I. L. R., 1 Bom., 347

2. — Publication of banns of marriage—*Penal Code, s. 494*—The act of causing the

**BIGAMY—continued.**

publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man, having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife. *QUEEN v. PETERSON*

[I. L. R., 1 All., 318]

3. ——— **Divorce among Rajput Gujaratis in Khandesh—Penal Code, ss. 494 and 109—Marrying again during the lifetime of husband—Deed of divorce by husband—Validity of divorce.**—A member of the caste of Ajanya Rajput Guzars residing in Khandesh executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a husband was for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under s. 494 of the Penal Code (XLV of 1860); and that the priest who officiated at that marriage was an abettor under ss. 494 and 109. Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage. *EMPERESS v. UMI* . . . I. L. R., 6 Bom., 126

4. ——— **Nika marriage—Penal Code, ss. 494, 495.**—A nika marriage falls within the purview of ss. 494 and 495 of the Penal Code. *QUEEN v. JUDOO* . . . 6 W. R., Cr., 60

5. ——— **Dissolution of marriage at will—Re-marriage (natra) in lifetime of first husband—Invalid marriage—Custom.**—Held that a custom of the Talapada Holi caste that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (natra) with another man in his lifetime and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law; and such marriage was "void by reason of its taking place during the life of such husband," and therefore punishable as regards the woman under s. 494 of the Penal Code. *REG. v. KARSAN GOJA. REG. v. BAI RUPA* . . . 2 Bom., 124; 2nd Ed., 117

6. ——— **Hindu Christian convert relapsing into Hinduism.**—A Hindu Christian convert, relapsing into Hinduism and marrying a Hindu woman, cannot be convicted of bigamy on the ground that he has another wife living, whom he married while a professing Christian. *ANONYMUS* [3 Mad., Ap., 7]

7. ——— **Penal Code, ss. 103 and 494—Native Christian—Marriage by relapsed convert.**—A was baptized in infancy into the Roman Catholic Church, but subsequently relapsed, with the rest of her family, into Hinduism, and was married to a Hindu. Her Hindu husband afterwards discarded her, and alleged that he would not have married her if he had known that she had been baptized. A was subsequently re-admitted into

**BIGAMY—continued.**

the Roman Catholic Church and married by B, a priest, to a Roman Catholic during the lifetime of her Hindu husband. Held that A's marriage with the Hindu was subsisting and valid at the time of her Christian marriage; that she was guilty of the offence of bigamy; and that B was guilty of abetting that offence. *Lopez v. Lopez, I. L. R., 12 Calc., 706*, discussed. *IN RE MILLARD I. L. R., 10 Mad., 11*

8. ——— **Custom as to marriages—Penal Code, s. 494.**—A conviction under s. 494 of the Penal Code for marrying again during the lifetime of a husband or wife cannot be upheld where there is evidence to show that such marriages are not unusual among persons of the same caste as the accused, and it is not proved that such marriages are void. *IN THE MATTER OF CHAMIA 7 C. L. R., 354*

9. ——— **Conversion of a Hindu wife to Mahomedanism—Marriage with a Mahomedan—Penal Code, s. 494.**—The conversion of a Hindu wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband. She cannot, therefore, during his lifetime enter into any other valid marriage contract. Her going through the ceremony of nika with a Mahomedan is consequently an offence under s. 494 of the Indian Penal Code. *GOVERNMENT OF BOMBAY v. GANGA*

[I. L. R., 4 Bom., 330]

10. ——— **Marriage with Mahomedan—Mahomedan Law—Marriage—Penal Code, s. 494.**—The petitioner, originally a Hindu woman and the illegitimate offspring of Chattri parents, was duly married according to Hindu rites to D, who was also by caste a Chattri. Subsequent to the marriage, the petitioner became a convert to Mahomedanism and married a Mahomedan. She was charged with and convicted of an offence under s. 494 of the Penal Code. It was contended on her behalf that (1) the marriage between her and D was invalid under Hindu law by reason of her illegitimacy and the consequent difference of caste between the contracting parties; (2) the marriage between her and D became dissolved under the Hindu law on her conversion to Mahomedanism; and (3) the second marriage was not void under the Mahomedan law by reason of its taking place in the lifetime of D, and that the conviction was therefore erroneous. There was no evidence of any notice having been given to D previous to the second marriage calling on him to become a Mahomedan. Held that illegitimacy under Hindu law is no absolute disqualification for marriage, and that, when one or both contracting parties to a marriage are illegitimate, the marriage must be regarded as valid, if they are recognized by their caste people as belonging to the same caste. Held, also, that there is no authority in Hindu law for the proposition that an apostate is absolved from all civil obligations, and that, so far as the matrimonial bond is concerned, such a view would be contrary to the spirit of that law, which regards it as indissoluble, and that accordingly the marriage between the petitioner and D was not, under the Hindu law, dissolved by her conversion to Mahomedanism. *Rahmed Beebee v. Rokeya Beebee, 1 Norton's Leading Cases on Hindu Law, p. 12*, dissented from. Held, further,

**BIGAMY—continued.**

that, as the validity of the second marriage depended on the Mahomedan law, and as that law does not allow a plurality of husbands, it would be void or valid according as the first marriage was or was not subsisting at the time it took place; that no notice having been given to D as required by Mahomedan law pre-

viction was right. **IN THE MATTER OF THE PETITION OF BAI KUMARI**. I. L. R., 18 Cal., 284

11. ——— **Mahomedan law—Marriage—Child marriage—Option of minor of repudiating marriage on attaining puberty—Want of ratification after puberty—Penal Code, s. 494.**—B, a Mahomedan girl whose father was dead, was alleged to have been given in marriage by her mother to J some years before she attained puberty. Prior to her attaining puberty, J was sentenced to a term of imprisonment for theft. While he was in jail, B, after she had attained puberty, contracted a marriage with P. The marriage with J was never consummated. On J being released from jail, he proceeded to prosecute B and P for

of minors was recited, or the akd performed. *Held*, further, that, assuming B to have been given in marriage to J when a mere child by her mother, she had

*Held*, also, that a judicial order was not necessary to effect the cancellation of the marriage. **BADAL AUBAI v. QUEEN-EMPRESS** I. L. R., 18 Cal., 79

12. ——— *Sagai or nika marriage—Relinquishment of wife—Penal Code, s. 494.*—A conviction under s. 494 of the Penal Code cannot be supported where there is evidence to show that, by the custom of the caste, sagai or nika

**BIGAMY—concluded.**

marriage was admissible, and that the husband had relinquished his wife. *In re Chamma*, 7 C. L. R., 354, followed. **JUKNI v. QUEEN-EMPRESS**

[I. L. R., 18 Cal., 627

13. ——— **Complaint by the husband—"Person aggrieved"—Criminal Procedure Code (Act V of 1893), s. 193—Penal Code (Act XLV of 1860), s. 494.**—The husband is a "person aggrieved" within the meaning of s. 193 of the Criminal Procedure Code upon whose complaint the Court should take cognizance of an offence under s. 494 of the Penal Code. **Queen-Empress v. Rukshmoni**, I. L. R., 10 Bom., 340, and *In the matter of Ujjala Bewa*, 1 C. L. R., 523, referred to. **DEPUTY LEGAL REMEMBRANCE v. SARNA HAHNI**

[I. L. R., 28 Cal., 336

**QUEEN-EMPRESS v. BAI RAKSHMONI**

[I. L. R., 10 Bom., 340

**CHELLAM NAIDU v. RAMASAMI**

[I. L. R., 14 Mad., 379

**BILL IN LEGISLATIVE COUNCIL, DEBATE ON.**

*See* **COMPOUNDING OFFENCE.**

[I. L. R., 3 All., 283

*See* **STATUTES, CONSTRUCTION OF.**

[I. L. R., 8 Bom., 241

I. L. R., 18 Bom., 133

**BILL OF COSTS.**

*See* **ATTORNEY AND CLIENT.**

[3 B. L. R., O. C., 96

I. L. R., 3 Cal., 473

*See* **COSTS—TAXATION OF COSTS.**

[7 B. L. R., Ap., 50

2 Hydr., 69

*See* **LIMITATION ACT, 1877, ART. 84 (1871, ART. 85).**

[I. L. R., 1 Bom., 253, 505

I. L. R., 7 Mad., 1

I. L. R., 22 Cal., 943, 962 note

**BILL OF EXCHANGE.**

*See* **DECREES—FORM OF DECREE—BILL OF EXCHANGE.**

[I. L. R., 18 Cal., 804

*See* **CASES UNDER HINDU LAW—CONTRACT—BILL OF EXCHANGE.**

*See* **INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE.**

[3 C. L. R., 349

*See* **LIMITATION ACT, 1877, ART. C9.**

[14 W. R., O. C., 5

*See* **MAHOMEDAN LAW—BILL OF EXCHANGE.**

7 B. L. R., 434 note

*See* **PARTIES—PARTIES TO SUITS—NEGOTIABLE INSTRUMENTS.**

[I. L. R., 3 Cal., 541

I. L. R., 3 Bom., 162

## BILL OF EXCHANGE—continued.

See PROMISSORY NOTE.

[I. L. R., 19 Calc., 242

See STAMP ACT, 1879, SCH. I, ART. 11.

[I. L. R., 18 Calc., 432

1. — Evidence of dishonour and of presentment—*Noting on bill.*—The mere noting on the bill, even if it disclose the name of the notary in full, is not evidence of the presentment or of the dishonouring of the bill. *BOMBAY CITY BANK v. MOONJEE HUBBARDOS.* . Bourke, O. C., 274

2. — Notice of dishonour—*Reasonable notice.*—In an action brought in the district of Patna against the indorser and acceptors of bills of exchange, after a part-payment by the acceptors, no objection having been taken as to the misjoinder of defendants, and the Judge having omitted to find whether the indorser had received notice of dishonour or not, —*Held* the case must be remanded to ascertain, first, whether notice had been given within reasonable time, and, if not, whether thereby the indorser had been injured or exposed to material risk of injury; and, secondly, whether (English law not being applicable to the case), by the usage of merchants at Patna, a part-payment by the acceptors and receipt by the plaintiff discharged the indorser from liability. *GOPAL DAS v. ALI* . . . 3 B. L. R., A. C., 198

S. C. after remand. *ALI v. GOPAL DOSS*

[13 W. R., 420

3. — Reasonable notice.  
—Even when English law regarding bills of exchange does not apply, the holder of the bill is bound to give the maker notice of dishonour in reasonable time. If the maker, for want of notice, has sustained injury or risk of injury, he is no longer liable. *PIGUE v. GOLAR RAM* . . . 1 W. R., 75

*JEETUN LALL v. SHEO CHURN* 2 W. R., 214

4. — Reasonable notice.  
—Ordinarily notice of the dishonour of a bill of exchange drawn in India and payable in England should be posted by the first mail which leaves England after the dishonour of the bill. *UNCOVENANTED SERVICE BANK v. DUFFIN* . . . 3 N. W., 99

5. — Dishonour of cheque taken in payment of bill of exchange when due.—The defendant endorsed to the plaintiff a bill of exchange drawn by *NS & Co.* and accepted by *C N & Co.* The bill, at the time it was endorsed to the plaintiff by the defendant, bore the previous endorsement of *NS & Co.* to the defendant. The bill fell due on December 3rd, 1870, which was a Saturday, and on that day the plaintiff sent his jemadar to *C N & Co.*, the acceptors, to present the bill for payment. The bill was taken by *A*, one of the members of the firm of *C N & Co.*, who gave a cheque for the amount, and took a receipt from the plaintiff's jemadar, striking out the signature of *C N & Co.* as acceptors, but without the plaintiff's consent. The plaintiff's jemadar took the cheque immediately to the bank, but the bank was closed. Thereupon he returned to *C N & Co.*, and informed them that the bank was closed and demanded cash. The plaintiff alleged that it was then stated that the cheque

## BILL OF EXCHANGE—continued.

would be honoured on Monday. The plaintiff's jemadar then went and informed the gomashtha of the plaintiff of what had been done. The plaintiff's gomashtha sent him to the defendant's firm to give him notice of what had taken place. It was alleged that at this interview the defendant's liability was admitted in case the cheque was not honoured, and the plaintiff's jemadar was advised to wait until Monday, the defendant stating that he also had a cheque for ₹7,000 from *C N & Co.* This was denied by the defendant. On Monday, 5th December, the cheque was presented to the bank for payment, and was dishonoured. The plaintiff's gomashtha went to the defendant's kiti, and gave notice of the dishonour of the bill and cheque, and asked him to pay the amount of the bill. The defendant asked for the bill, and the plaintiff's gomashtha went to *C N & Co.*, and brought back the bill, with the name of *C N & Co.*, which had been struck out, replaced. The defendant, seeing the bill was overdue, refused to pay the amount. The cheque was thereupon returned to *C N & Co.*, and the bill retained by the plaintiff, who, on 6th December, caused written notice of dishonour to be given to the defendant. *Held* that the cheque must be taken to have been merely a conditional payment, and when it was dishonoured, the liability of the original bill revived. *Held*, also, that reasonable notice of dishonour was given, whether the bill be taken to have been dishonoured on the Saturday or on the Monday. *SOMARIMULLI v. BHAIRO DAS JOHURRY* . . . 7 B. L. R., 431

*GAPINATH v. ABAS HOSSEIN*

[7 B. L. R., 434 note

6. — Accommodation acceptor—Principal and surety—Discharge for surety—Equitable mortgage—Trust-deed for benefit of creditors—Contract Act (IX of 1872), ss. 132, 139—Evidence Act (I of 1872), s. 92.—In the years 1870 and 1873, *A* drew certain bills of exchange upon *B*, which were accepted by *B* for the accommodation of *A*, and endorsed by *A* to the Bank of Bengal. In May 1876, *A*, by letter, agreed to execute a mortgage of a certain portion of his property, consisting of a share in a Privy Council decree, to *B*, and in the meantime to hold such property at the disposal of *B*, his successors and assigns. In the month of June 1876, *A* became unable to meet his liabilities, and in the month of August following executed a conveyance of all his property to the Official Trustee upon trust for the benefit of *A*'s creditors. The bank assented to and executed this deed after it had been assented to and executed by some of the other creditors. The deed did not contain any composition with or release by the creditors, nor any covenant on their part not to sue *A*. In a suit by the bank against *B* as acceptor of the bills, —*Held* that *B* was not precluded by the provisions of s. 132 of the Contract Act and s. 92 of the Evidence Act from pleading that he was an accommodation acceptor only; but *held* that the letter of May 1876 constituted a good equitable mortgage, and that *B* was not thereafter entitled, as against the bank, to the equitable rights of an accommodation acceptor. *Held*, further, that the trust did not impair the "eventual remedy" of *B*, and that therefore he

**BILL OF EXCHANGE—continued.**

was not discharged from his suretyship under the provisions of s. 139 of the Contract Act. *PODAR v. BANK OF BENGAL*. I. L. R., 3 Cal., 174

7. ——— Failure of payment at sight—*Liability of parties to draft—Effect of acceptance.*—Immediately on failure of payment of a draft at sight, whatever may be the real state of the account between the parties, the drawer is liable to the payee in full.

Where there is no acceptance, no cause of action can arise to the payee against the drawer. Nor is the legal relation between the drawer and the payee altered by a partial acceptance, the contract being in its nature indivisible; much less can any mere promise to pay part at a future time in any way satisfy the payee's claim, or postpone his right to reimbursement of his loss from the drawer. *SRETH KHANDAS NARANDAS v. DAHIAHAI*. I. L. R., 3 Bom., 182

8. ——— Suit on bill by indorsee for value against acceptor—*Sale by indorsee of goods against which bill drawn—Acceptor entitled to credit for amount of proceeds of sale.*—If consigned goods to defendant, and for the price drawn on the defendant two bills of exchange, each

for Rs. 1,000 in the Small Cause Court at Bombay. In that suit the defendant pleaded that the goods, in respect of which the bills were drawn, were damaged, and that he had, therefore, refused to accept them

from him more than the amount of the bills, less the proceeds of the goods. *Held* that the defendant was entitled to credit for the net proceeds of the sale of the goods. The plaintiffs had by the sale already realized part of the amount due to them; and to allow them now to recover from the defendant the whole amount due on the bills would be to permit them to realize this part of their claim a second time; in that case they would be bound to pay the

**BILL OF EXCHANGE—continued.**

obtained by them. *Held*, therefore, that the defendant was exonerated to the amount of the proceeds of the goods, but was liable for the remainder of the sum claimed by the plaintiffs. *AGRA BANK v. ABDUL RAHMAN*. I. L. R., 6 Bom., 1

9. ——— Remission of, for sale for specific purpose—*Property in bill of exchange—Suit for value of, on misappropriation.*—Where bills of exchange are remitted for sale, and the proceeds directed to be applied to a specific purpose, the property in the bills remains in the remitter until the purpose for which they were remitted is

11. ——— Endorser, Liability of.—*Held* that an endorser of a bill is in the nature of a new drawer, and is liable to the holder in default of acceptance or payment by the drawer, and that an endorser cannot be absolved from liability because the drawer was exonerated or not impleaded. *JUNNA DAS v. MEHUR SINGH*. I. L. R., 1 Agre, 182

13. ——— Negotiable Instruments Act (XXVI of 1881), s. 17—*Drawer and drawee the same person—Forged endorsement of payee—Payment by drawer on forged endorsement—Liability of drawer—Ambiguous instrument—Election to treat it as a promissory note.*—On the 29th April 1859, the plaintiff's brother-in-law, E, purchased from the defendant's branch at Mauritius a bill of exchange drawn on their Bank at Bombay payable on demand to the plaintiff's order in Rs. 1000. The bill was in the following terms:—"The New Oriental Bank Corporation, Limited, Mauritius, 29th April 1859. On demand pay this first of exchange (second of same tenor and date being unpaid) to the order of Sulliman Hussain six hundred and forty rupees for value received. For the New Oriental Bank Corporation, Limited. To the New Oriental Bank Corporation, Limited, Bombay." E sent the bill by registered post to Bombay addressed to the plaintiff. During its transmission it was stolen. On the 15th May it was presented by some person to the defendant's Bank in Bombay bearing a forged endorsement in blank of the plaintiff, and it was paid by the Bank. The plaintiff, as soon as he heard of the loss of the bill, made inquiry at the Bank, and was told

**BILL OF EXCHANGE—concluded.**

that the bill had been paid. On being shown the endorsement, the plaintiff pronounced it to be a forgery, and demanded payment of the bill, which the Bank refused. He thereupon filed this suit against the Bank as drawers of the bill. *Held* (1) that the document was an "ambiguous instrument" within the meaning of s. 17 of the Negotiable Instruments Act (XXVI of 1881), and that the plaintiff had elected to treat it as a bill of exchange. (2) That, treating the document as a bill of exchange, the defendants, as drawers, were discharged by the payment to the *de facto* holder who presented it for payment. *SULLEMAN HOSSEIN v. NEW ORIENTAL BANK CORPORATION*. I. L. R., 15 Bom., 287

**BILL OF LADING.**

*See CHARTER PARTY.*

1. ——— Varying bill of lading—*Shipping order—Custom.*—In a suit instituted by a shipper to obtain bills of lading from the captain, in accordance with the terms of the order granted by the ship's charterers,—*Held* that the captain was entitled to vary the bills of lading in respect of any excess of measurement over the dimensions specified in the order, and that an alleged custom, precluding such variation, after the goods have been received on boardship, was contrary to law. It is the duty of the shipper to comply strictly with the terms of the shipping order. *GENTLE v. THOMSON*

[1 Ind. Jur., O. S., 69

2. ——— Ship in port only on Sunday—*Non-delivery of goods—Lord's Day Act, 29 Chas. II, c. 7.*—The owners of a steamer by their bill of lading stipulated that they would not land specie, but would deliver it on presentation of bills of lading, or carry it on at the consignee's risk, if delivery were not taken during the steamer's stay in port. The steamer arrived in port late on Saturday, and sailed at daybreak on Monday without delivering the specie shipped by the plaintiff, who sued for damages. *Held* that the Lord's Day Act, 29 Chas. II, ch. 7, did not apply to Moulmein; and that, even if it had done so, it could not prevent the shipowners from availing themselves of the stipulation they had made, and that no action for damages was maintainable against them. *GRASEMANN v. GARDNER*

[3 W. R., Rec. Ref., 3

3. ——— Liability of shipmaster.—When a shipmaster undertakes that goods shipped by him shall be delivered subject to the exceptions and conditions mentioned in a bill of lading, in good order and condition, he takes upon himself the consequences and contingencies other than the exceptions expressed in the bill of lading, or which are implied by law. *SRETLIFF v. SCOTT*. 22 W. R., 39

4. ——— Construction—*River Navigation in India—Difficulties or casualties of navigation.*—Plaintiff sued to recover the value of certain hides which were lost in defendant's flat. The bill of lading contained, among other exceptions, the words "difficulties or casualties of navigation and all and every danger and accident of the river and navigation whatsoever." In evidence it was proved that

**BILL OF LADING—continued.**

the flat was destroyed by some projection embedded in the river. *Held* that the casualty was comprised among the exceptions in the bill of lading, and further that, having regard to the dangerous navigation of Indian rivers, parties entering into contracts of a similar nature should protect themselves by insurance. *DHAUNSEE v. INDIA GENERAL STEAM NAVIGATION Co.* 1 Ind. Jur., O. S., 125; 1 Hyde, 233

5. ——— Insufficiency of package—*Negligence.*—The defendants by a condition annexed to their bill of lading stipulated that they should not be responsible for "leakage or breakage or other consequences arising from the insufficiency of the address or package." The plaintiff shipped for conveyance from Hong-Kong to Bombay certain goods on board a steamer of the defendants in packages which were proved to be insufficient. These goods, in accordance with a condition to that effect contained in the bill of lading, were transhipped at Galle. On their being landed in Bombay, it was found that all the packages were broken, and in a much more damaged condition than is usual in the case of such goods carried from Hong-Kong to Bombay in similar packages. The contents had to a large extent escaped from the packages, but were otherwise uninjured. *Held* that, under a bill of lading in the above form, the onus of proving that the packages were insufficient and that the injury which they had sustained was the consequence of such insufficiency lay upon the defendants, but that, when the result of the evidence on both sides was to leave it in doubt whether the injury was caused by negligence or was the consequence of the insufficiency of the packages, the plaintiff was not entitled to recover. *P. & O. STEAM NAVIGATION Co. v. SOMAJI VISHRAM*. 5 Bom., O. C., 113

6. ——— Insufficiency of package—*Negligence—Mercantile usage, Evidence of.*—The defendants carry between Hong-Kong and Bombay. By a condition annexed to their bill of lading they stipulated that they should not be responsible for damage to goods arising from insufficiency of package. The plaintiff shipped certain goods in the defendants' steamer, in packages which, though in fact insufficient, were packages of the kind ordinarily used for the conveyance of such goods from Hong-Kong to Bombay. On their being landed in Bombay, it was found that the packages were more or less broken, and the contents were in some instances injured, and had to a small extent escaped from the packages. In an action brought to recover damages in respect of such injury, it was held that evidence of mercantile usage or of custom would be admissible to show that the words "insufficiency of package" should not be taken in their ordinary sense, but as meaning insufficient according to a special custom of the China trade. *Held*, also, that the evidence of those packages being ordinary China packages, and of such packages having always been carried by the defendants without objection, was not sufficient, in the absence of proof of negligence, to fix the defendants with liability for damage done to them, there being no proof that it had been the practice either of the defendants or any other ship-owners protected by a

**BILL OF LADING—continued.**

similar clause in their bill of lading to make compensation for injury to goods contained in such packages. *P. & O. STEAM NAVIGATION CO. v. MANICK-JEE NABERVANJEE PADSHA* . 4 Bom., O. C., 189

7. ————— *Carriers by sea—*

the boatmen, was swamped and the contents damaged.

*BROTHERS & CO. v. TOAY AUNG* . 24 W. R., 74

8. ————— *Exemption from damage occasioned by neglect of Company's servants—Suit to recover goods destroyed—Contract Act, s. 151.*—The plaintiff shipped two plate-glass show-cases from Calcutta to Rangoon by a steamer

owing to the carelessness of the company's ser-

## [I. L. R., 10 Calc., 189

9. ————— *Liability of master—Negligence—Onus probandi—Entoppel.*—The

by detention of ship or cargo, caused by incorrect marking, or by incomplete or incorrect description of contents, shall be borne by the owners of the goods. In case any part of the within goods cannot be found during the ship's stay at the port of destination, they are, when found, to be sent back by first steamer at the ship's risk and expense, and subject to any proved claim for loss of market. The ship shall not be

**BILL OF LADING—continued.**

liable for incorrect delivery, unless each package shall have been distinctly marked by the shippers before

it then appeared that they had been landed at Calcutta.

and a decree was given for the plaintiff. *MADRUS CHUNDER DRY v. LAW* . 13 B. L. R., 394

10. ————— *Stowage—Negligence of the crew or other servants of the ship—Period of loading covered by the contract of carriage—Fitness or unfitness of the ship.*—The plaintiffs shipped certain bags of sugar on the 11th and 12th November 1887, on board the defendants' ship the *Byculla* for conveyance to Bombay. There being a dispute as to the number of bags shipped, no mate's receipts were given, and no bill of lading was signed until the 28th November. The *Byculla*

liffs sued the defendants in the Small Cause Court

or other servants of the Company, or from any derivation, excepted." The plaintiffs contended that a bill of lading did not relate to or cover the period of loading, and that, even if it did, the exception relied upon in this bill of lading related only to negligence subsequent to the commencement of the voyage. They also contended that the ship was not a ship "reasonably fit for the voyage" within the meaning of the rule laid down in *Steel v. The State Line Steamship Company, L. R., 3 Ap. Ca., 72*. In the Small Cause Court judgment was given in plaintiffs' favour. On appeal to the High Court on the case stated, this judgment was reversed. Held that this was not a case in which the rule laid down in *Steel v. The State Line Steamship Company, L. R., 3 Ap. Ca., 72*, applied, as there was no question here of any defect inherent in the ship. It was simply a case of negligent and improper stowage. Held, further, following *Hongkong and Shanghai Banking Co. v. Baker, 7 Bom., O. C., 156*,

BILL OF LADING—continued.

as master of the steam-vessel *John Bright*, for the safe carriage and delivery of a box addressed to *A*, which in fact contained diamonds of the value of R11,670, three rubies, and three emeralds, in all of the value of R15,940. On the face of the bill of lading was printed, "This bill of lading is issued subject to the following conditions." One condition was that a "written declaration of the contents and value of the goods is required by the owner, and must be delivered by the shipper to the owner's agents with the bills of lading. A wrong description of contents or false declaration of value shall release the owner from all responsibility in case of loss, etc., and the goods shall be charged double freight on the real value, which freight shall be paid previous to delivery." The declaration in this case was contained in the following letter from the shipper to the agent of the shipowner:—"Dear Sir,—Be good enough to give me an order for a small box containing diamonds to the value of about R14,000, to be shipped on board the steamer *John Bright* for Calcutta. Yours, etc." The box was lost by the negligence of *B* or his servants. In a suit by *A* to recover "the value of the goods, viz., R14,000,"—*Held* that all the shipowner was entitled to was that the shipper should make a declaration of what *bona fide* he believed to be the value. The declaration as to contents was not vitiated by the omission to enumerate all the different species of articles contained in the box. Upon the evidence, the declaration as to the value and nature of the contents was *bona fide*; therefore *A* was entitled to recover the value of the diamonds lost. DHUNJEEBHoy BYRAMJEE METHA v. BETHAM . . . . . 2 Ind. Jur., N. S., 305

14. \_\_\_\_\_ Leakage—

*Breakage*.—Damage caused by leakage from other goods.—Piece-goods were carried from London to Bombay under a bill of lading, the exceptions in which protected the master from “leakage, breakage, rust, decay, loss, or damage from machinery, boilers . . . misfeasance, error in judgment, negligence or default of . . . persons in the service of the ship . . . and the ship not being liable for any consequences of causes therein excepted, however originating.” The piece-goods, on their arrival in Bombay, were found to be damaged by oil and by chafing,—i.e., by rubbing against other goods in the hold,—but there was no evidence to show how such damage was occasioned. *Held* that the term “leakage” did not include leakage from other goods on to the piece-goods, nor did “breakage” include damage caused by chafing, and that, as no negligence was proved, the master was not protected by the exception “damage from negligence.” **GRAHAM v. HILL** 10 Bom., 60.

15. \_\_\_\_\_ *Leakage, Damage.*

done by—*Provision for place of claim, Effect of, on jurisdiction of Court.*—Plaintiff shipped some bales of cloth from Calcutta to Rangoon under a bill of lading by which the defendants were bound to deliver,—accidents, loss or damages from fire, machinery, boilers, steam, and all the accidents of the sea, rivers, land-carriage and steam navigation, etc., excepted. On the voyage one of the boilers burst, and steam and

On the voyage one of the officers said, and even: and

*tion in India*—Disfigure the case was opened and a  
*tion*.—Plaintiff sued for loss of goods. *Held* that the defend-  
 hides which were lost in MACKINNON, MACKENZIE &  
 of lading contained, among . . . 6 Mad., 353  
 words "difficulties or casualty" — Declaration of  
 and every danger and accident of sea was the consignee  
 gation whatsoever." In evidence it was shown that at Bombay,

**BILL OF LADING—continued.**

water escaping, some of the bales were damaged. *Held* that the damage was within the exceptions of the bill of lading, and therefore that the defendants

18. ————— *Exception in bill*

the water, the pressure occurring by reason of which was made, and the water rushed in. The plaintiffs sued the defendants for damages. The defendants pleaded (1) that the ship was in a seaworthy condition when the goods were put on board; (2) that they were protected by the bill of lading, which contained the following exception:—*viz.*, "Accident,

VITHENDAS GOBER v. BOMBAY AND PERSIA STEAM NAVIGATION CO. I. L. B., 19 Bom., 839

and custom-house goods and bales being and signers the option of landing the goods from the ship's tackle. The consignee, however, did not object to the goods being landed at the godowns, and they paid, also without objection, a sum for the wharfage of a part of the goods in their godowns. *Held* that the ship-owners, if the goods placed in the godowns were in their possession as carriers, were

**BILL OF LADING—continued.**

on their part. CHIT, HONG & Co. v. SENG MOH & Co. I. L. B., 4 Calc., 736; 3 C. L. B., 585

19. ————— *Charges for land-*

that for the speedy

self. COSSIM HOSSAIN SOOBY v. LEE PHEE CHUAN

[I. L. B., 5 Calc., 477; 5 C. L. B., 157]

for loss occasioned "by the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation of whatsoever kind or nature," and lawfully landed them on the Custom-house Bunder at Bombay, where they were accidentally burned before they were delivered to the consignee. *Held* that he was protected by the above exception in the bill of lading. HONG-KONG AND SHANGHAI BANKING CORPORATION v. BAKER 6 Bom., O. C., 71

*Held*, on appeal, that so long as the goods remained in his custody after being so landed, he was protected from liability under the above exemption in the bill of lading.

[7 Bom., O. C., 186]

20. ————— *Delivery*

— "The ship-owner shall have the option of discharging in dock, and of making delivery of the goods

**BILL OF LADING—continued.**

under the bills of lading either over the ship's side or from lighters, or a store-ship, or custom-house, or warehouse, at merchant's risk." Freight was prepaid in Liverpool. On their arrival at Bombay, the two steamers went into the Prince's Dock, belonging to the Port Trust, and discharged the boilers, by means of the Port Trust cranes, on to the dock wharves. The plaintiff subsequently sent to remove the boilers, but was not allowed by the dock authorities to do so until he had paid to them various sums, amounting in the aggregate to Rs930, on account, as stated in the bill furnished him by the Port Trust, of "landing charges" for the said boilers. The bills also contained certain additional charges for "wharfage." These the plaintiff was ready to pay, but the "landing charges" he paid only under protest, and in order to get possession of his goods, and now sought to recover the same from the defendants, who represented the ship-owners. It was the practice of the Port Trust to recover these charges in all cases from the consignees of goods discharged in their dock, and the charge was said to be levied on all goods landed on the wharves of the dock, whether by the dock's cranes or by the ship's own tackles. The charge was incurred the moment the goods touched the wharf. In their rates, sanctioned by Government, which by their Act the Port Trust were entitled to charge, this charge was called, not a "landing charge," but a "dock and crane" charge. Had the plaintiff been given delivery of these goods in the stream, and afterwards himself landed them at any wharf belonging to the Port Trust in the Port of Bombay, the Port Trust would have sought to have made the same charge for allowing the goods to be landed, whether that was done by their appliances or not. *Held* that the ship-owner, and not the consignee, was bound to pay these charges, they being in reality charges for work and labour done in and about the landing of the goods—an operation which, under the bills of lading, was within the duty of the ship-owner. *Per LATHAM, J.*—The ship having elected to discharge in the dock, it was her duty to land the goods on the wharf. Every charge which had to be incurred before that could be done was a charge antecedent to delivery, and one, therefore, which must be paid by the ship-owner. *SCOTT v. FINLAY* . . . . . **I. L. R., 7 Bom., 386**

21. ———— "*Weight, contents, and value unknown*"—*Act IX of 1856, s. 3—Assignee of bill of lading for value.*—A bill of lading purporting to be for 50 tons of coals and containing a printed clause, "weight, contents, and value unknown," and similar words written above the signature of the master, does not amount to an admission by the master that he has received 50 tons of coal on board. Upon the true construction of the Bills of Lading Act (IX of 1856), s. 3, a bill of lading in the above form is not, in the hands of a consignee for value, conclusive evidence against the master of the shipment of 50 tons. *NICOL & Co. v. CASTLE* . . . . . **9 Bom., 321**

22. ———— "*Freight, Payment of—Incorporation in bill of lading of terms of charter-party—Cargo—Freight payable on intake*

**BILL OF LADING—continued.**

*measurement—Measurement at port of delivery—Discrepancy in measurements—Evidence—Burden of proof—Suit by consignee for excess freight.*—*K V* at Moulmein consigned to the plaintiff at Bombay 135 logs of teak timber shipped on board the defendant's ship. The bill of lading, which was signed by the defendant, described the logs as marked *K V*, and measuring tons 115-12-10, and it provided for the payment of freight thereon at Bombay, at the rate of Rs17 per ton of 50 cubic feet on right delivery. The last clause of the bill of lading was in the handwriting of the defendant, and was as follows:—"Marks, number, quantity, and measurement unknown: all other conditions as per charter-party." The charter-party was expressed to be between the owners of the ship and Messrs. *B* of Rangoon as charterers of the whole ship, and provided for the payment of freight "at the rate of Rs18 per ton of 50 cubic feet for all timber, one rate throughout, except 100 tons broken stowage at half freight, by intake measurement." On arrival of the ship at Bombay, the plaintiff, as consignee of the timber and holder of the bill of lading, paid the defendant (the captain of the ship) Rs1,500 on account of freight, and took delivery of the 135 logs. On measuring them he found that, according to his method of measurement, the total measurement of the 135 logs came only to tons 58-27-11-6, and not tons 115-12-10 as mentioned in the bill of lading. He claimed, therefore, to be chargeable with freight only on the smaller quantity (*viz.*, Rs995-8), and to recover from the defendant the difference (*viz.*, Rs504-8) between that sum and Rs1,500 paid on account as for an overpayment of freight. It was proved that all the timber on board had been measured at Moulmein by an employé of the charterers acting apparently as agent of all the different shippers, and that the measurements in the bills of lading were supplied by this person to the defendant as the measurements of the different consignments. It was also proved that the 135 logs received and measured by the plaintiff in Bombay were the same logs that were shipped under the bill of lading, and that the plaintiff's measurement of them was correct according to the mode of measurement which he adopted. There was no evidence as to what was the mode of measurement followed at Moulmein, nor, except the statements in the bill of lading, as to what was the actual intake measurement of the timber there. *Held* that the effect of the last clause in the bill of lading was to incorporate into that document the clause of the charter-party which provided that freight should be payable on the intake measurement; that the burden of proving what the intake measurement actually was lay upon the plaintiff, who sought to recover back money which he alleged he had paid in excess of what was due; and that, in the absence of such evidence on behalf of the plaintiff, the statement of quantity contained in the bill of lading was *prima facie* evidence of the intake measurement of the timber. *CURSETJI RUSTOMJI SETNA v. WILLIAMS* . . . . . **I. L. R., 5 Bom., 313**

23. ———— "*Freight, Payment of—Lien of ship-owner.*—Where a bill of lading,

**BILL OF LADING—continued.**

dated at the port of shipment, contains the words "freight for the said goods being paid here," it operates as a receipt for the freight. The ship-owner is not bound to deliver the same to the shipper until payment of the sum to be charged for the carriage of the goods; but such sum is not freight, and the ship-owner has no lien for the amount upon the goods, nor the bill of lading which represents them.

SOOMAR JAFFER v. ABDOL KURREM

[1 Ind. Jur., N. S., 230

**BILL OF LADING—continued.**

of exchange for £500 had been given. THOMAS v. OGLE . . . Bourke, A. O. C., 100

26. ———— *Freight, Lien for, on cargo—Advances on account of freight—Dis-honour of bills.*—The captain of a ship has no lien on the cargo in respect of a portion of the freight stipulated to be advanced, and advanced by bills afterwards dishonoured, nor in respect of a portion of

advances to be made under discount, and upon the security of the captain's bill on the freighter. The master has no lien at law or in equity in respect of breaches of covenants in the charter-party, other than those relating to the payment of freight for goods actually carried. PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY v. SMALL

[Bourke, O. C., 309

circumstances, the master had no lien, and was bound to deliver the cargo to J O & Co. OGLE v. NASHUORX

[Bourke, O. C., 171

25. ———— *Freight, Lien for, on cargo—Advances on account of freight—Lien of owners.*—Goods were shipped deliverable to the order of the shippers or their assigns. The bill of lading stated that "freight for said goods was to be paid as per charter-party, with average accustomed, reserving lien in full on cargo for full amount as stipulated therein." The charter-party showed "that H & Co. undertook to supply a full cargo for the ship, and that R H, agent for the ship, agreed with H & Co. that the said ship should proceed to London dock, or any other suitable dock, for loading

that a suit for short delivery under the bill of lading could not be maintained without a claim being made in Calcutta. MAHOMED ISMAILJEE NADA v. BRITISH INDIA STEAM NAVIGATION COMPANY

[9 W. R., 308

23. ———— *Short delivery of goods—No evidence as to how goods were lost—*

**BILL OF LADING—continued.**

*Burden of proof*—"Or otherwise," meaning of.—The plaintiff was the consignee of a large consignment of goods shipped from Bombay in bags on board the defendants' steamship *Java* for carriage to Zanzibar. On arrival of the *Java* at Zanzibar, the goods were landed by the defendant company and placed in the customs godown, where the plaintiff in due course demanded delivery. Some of the bags were not forthcoming, but the evidence did not show how the loss had occurred. The bill of lading contained the following condition:—"The Company's liability shall cease as soon as the packages are free of the ship's tackle, after which they shall not be responsible for any loss or damage, however caused. If stored in receiving ship, godown or upon any wharf, all risks of fire, dacoity, vermin or otherwise shall be with the merchant, and the usual charges shall be paid before delivery of the goods. Fire insurance will be covered by the company's agents on application." In a suit brought by the plaintiff for short delivery of goods,—*Held* that the defendants were liable. They did not show how the loss occurred, and as it might have occurred from causes not covered by the exception (e.g., from misdelivery), they did not bring themselves within the protection afforded by the exemption. The general words "or otherwise" contained in the tenth clause of the bill of lading could not be read so as to cover all possible losses, for that would make them include wilful misconduct on the part of the defendant's servants, and general words are not read with such an extended meaning. Nor would they include misdelivery, for that was provided for in the eighth clause. **BRITISH INDIA STEAM NAVIGATION Co. v. RATANSI RAMJI**

[I. L. R., 22 Bom., 184]

**29.**—*Claim for short delivery—Place for preferring claim.*—A bill of lading contained a provision that any claim for short delivery or for damage done to goods should be made at the port of Calcutta, and not elsewhere. *Held* that this clause did not affect the plaintiff's right of suit in the Court at Rangoon, and that, if the defendants meant to object that no claim had been made in Calcutta before the commencement of the suit, they should have done so in proper time, viz., in their written statement. An objection on that ground taken for the first time at the hearing of the appeal was disallowed. **BRITISH INDIA STEAM NAVIGATION Co. v. IBRAHIM MOOSUM** . **8 W. R., 35**

**30.**—*Claim for short delivery to be made at a certain place within a certain time—Reasonable condition—Common carrier, Liability of—Carriers Act, III of 1865.*—A stipulation by persons carrying on extensive business as carriers that they should be apprised of claims made on them for default on the part of their servants, at a specified place and no other, and within a time which will render enquiry likely to be attended with some result, is not unreasonable. The defendants were owners of a fleet of steam-ships plying periodically along the coast of British India, by which they undertook to convey for freight parcels of goods for all persons indifferently from and to specified ports. They stipulated in their bills of lading that claims for short delivery should be made at the port

**BILL OF LADING—concluded.**

of Calcutta only, within one month after delivery, of any portion of the goods entered in the bill of lading. *Held*, in a suit against defendants for compensation for value of goods short delivered, that this was not an unreasonable stipulation, and that a claim made on the agents of the defendants, who were authorized only to retain the goods, receive freight, and give delivery, was not a sufficient compliance with the condition. *Held*, also, that defendants were common carriers, though not for the purposes of the Indian Carriers Act, and that their character of carriers continued so long as the goods remained in their hands and undelivered. **BRITISH INDIA STEAM NAVIGATION COMPANY v. HAJEE MAHOMED ESAACK & Co.** **I. L. R., 3 Mad., 107**

**31.**—*Delivery of goods to consignee—Cargo unclaimed on arrival of ship—Rights of ship-owner to land goods—Damages by rain—Madras Harbour Trust Act (Madras Act II of 1886).*—The defendant's steamship arrived at Madras on 4th December 1891, bringing bags of grain consigned to the plaintiffs under a bill of lading by which the defendants were to have the option of delivering the goods into a receiving ship or landing them at consignee's risk and expense, and their liability was to cease when the goods were free of the ship's tackle. The plaintiffs, on the date of the arrival of the goods, were not authorized to receive them. The plaintiffs set up a custom that cargo of this description ought to be landed on the beach; but as this could not be done in the absence of the consignees, the defendants landed it the same day on the pier and delivered it into the custody of the Madras Harbour Trust for storage, pending delivery to the consignees. On the 8th of December 1891, heavy rain fell, and on the same date plaintiffs learnt that the cargo had been delivered on the pier. When the plaintiffs came to take delivery on that day, a considerable portion had been damaged by rain, for which they now sued the defendants. *Held* (1) that where the consignees were unable to take delivery in the ordinary way on the beach, the master of a ship has the option of landing and warehousing the goods, and that delivery to the Harbour Trust for custody was not wrongful; (2) that in the absence of proof that the defendants were negligent, or that they failed to deliver the goods, the suit must be dismissed. **BRITISH INDIA STEAM NAVIGATION COMPANY v. IBRAHIM SUZAIMAN** . **I. L. R., 19 Mad., 169**

**BILL OF SALE.**

*See CASES UNDER EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.*

*See VENDOR AND PURCHASER—BILLS OF SALE.*

**BILLS OF EXCHANGE.**

*Power to issue—*

*See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS.*

[7 B. L. R., 58  
I. L. R., 5 Bom., 92  
I. L. R., 3 Bom., 439  
I. L. R., 4 Bom., 275]

**BILLS OF EXCHANGE—concluded.**

Presumption of payment.

See SHIPMENTS . 5 B. L. R., 619

**BILLS OF EXCHANGE ACT (V OF 1866).**See NEGOTIABLE INSTRUMENTS, SUMMARY  
PROCEDURE ON.**BLANK STAMPED PAPERS.**

Signature on—

See ESTOPPEL—ESTOPPEL BY DEEDS AND  
OTHER DOCUMENTS.

[L. L. R., 5 Cal., 39]

**BLANK TRANSFER.**

Registration of—

See COMPANY—TRANSFER OF SHARES AND  
RIGHTS OF SHAREHOLDERS.

[L. L. R., 8 Cal., 317]

**BLINDNESS.**See HINDU LAW—INHERITANCE—DIVESTING  
OF, EXCLUSION FROM, AND FORFEITURE  
OF, INHERITANCE—BLINDNESS.

[2 B. L. R., F. B., 103

2 Bom., 5

14 B. L. R., 273

I. L. R., 1 Bom., 177, 557

See MALABAR LAW—JOINT FAMILY.

[I. L. R., 13 Mad., 307

I. L. R., 15 Mad., 483]

**BOARD OF EXAMINERS.**

Pledership examination—Board

former standard reverted to. Held that the Court having delegated its powers in connection with the examination to the Board of Examiners, and the Board having exercised its powers legally, properly, and for the benefit of the public, there was no cause for interference. IN THE PETITION OF DWARKA PRASAD . . . I. L. R., 9 All., 611

**BOARD OF REVENUE.**

Appeal to—

See PORTA . . . I. L. R., 19 Mad., 324

Orders of—

See ACT IX OF 1817.

[L. L. R., 17 Cal., 500]

Powers of—

See SETTLEMENT—MISCELLANEOUS CASES  
[3 B. L. R., Ap., 82]**BOARD OF REVENUE—concluded.**

Rules of—

See PRE-EMPTION—CONSTRUCTION OF  
WAJID-UL-AZL.

[I. L. R., 17 All., 447]

See PRE-EMPTION—RIGHT OF PRE-EMPTION . . . I. L. R., 13 All., 40

[I. L. R., 17 All., 226]

Sanction of—

See PARTITION—MISCELLANEOUS CASES  
[5 B. L. R., 135]**BOARDING-HOUSE KEEPER.**

See HOTEL-KEEPER AND GUEST.

[3 Bom., O. C., 137]

**BOMBAY, LIMITS OF TOWN OF—**Land situate in District of  
Mahim—Jurisdiction—Transfer of Property ActTransfer of Property Act. TRIMBAK GANGADHAR  
KANADE v. BHAGWANDE MULCHAND

[I. L. R., 23 Bom., 348]

**BOMBAY ABRARI ACT (V OF 1876).**drawing toddy is not an offence punishable under  
cl (f) of a. 43 of the Act. QUEEN-EMPEROR  
v. PIRIO KALIO . . . I. L. R., 18 Bom., 428

ss. 3 and 56.

See AUTREFOIS ACQUIT.

[I. L. R., 10 Bom., 181]

ss. 14, 20, 64, 65, 68, and 67—Trees  
—*Toddy-producing tree*.—The words "any tree" in  
a. 14 and "every toddy producing tree" in a. 20 of  
the Bombay Abari Act, V of 1876, mean all trees in  
the Bombay Presidency to which the Act applies,  
from which toddy is drawn or produced, and not  
merely those in regard to which no special rights  
of drawing toddy previously existed. ARDESHIR  
JERANGIE v. SECRETARY OF STATE FOR INDIA

[I. L. R., 8 Bom., 398]

a. 21.

See BOMBAY REVENUE JURISDICTION ACT  
(X OF 1876) . . . I. L. R., 9 Bom., 463

Juice of toddy-producing tree  
—*Land revenue*.—Per BIRDWOOD, J.—The expres-  
sion "land revenue" as used in Act X of 1876 does  
not include either the duties leviable, under Regula-  
tion XXI of 1827, on the manufacture of spirits  
or the taxes on the tapping of toddy trees, the levy of

**BOMBAY ABKARI ACT (V OF 1878)***—continued.*

which in certain districts was legalized by s. 24 of the Bombay Abkari Act, No. V of 1878. A farmer of duties on the manufacture of spirits is not authorized to levy a duty on any juice in trees, either under Regulation XXI of 1827, or Act X of 1876, or Bombay Act V of 1878. Juice in toddy-producing trees is not spirit, which includes toddy in a fermented state only. **NARAYAN VENKU KALGUTKAR v. SAKHARAM NAGU KOREGAUMKAR**

**[I. L. R., 9 Bom., 462]**

ss. 29, 67—*Parties—Suit for money illegally levied by a farmer of abkari revenue—Collector not a necessary party to such a suit.*—The Collector is not a necessary party to a suit brought against a farmer of abkari revenue for a refund of money illegally levied at his instance by the Collector under s. 29 of the Bombay Abkari Act (V of 1878). S. 67 of the Act expressly exempts the Collector from responsibility. Though a person subjected to an undue demand may, under s. 29 of the Act, take steps by which the Collector's proceedings may be stayed, still his abstention from such a course will not deprive him of his ordinary right to recover money wrongfully taken from him for the benefit of a third person. **NARAYAN VENKU v. SAKHARAM NAGU**

**[I. L. R., 11 Bom., 519]**

1. — s. 43 and s. 47—*Illegal importation of liquor—Illegal possession of liquor—When separate offences.*—A man who illegally imports liquor may keep it in his possession for some time after he imports it. The importation and possession in such a case would be distinct offences under ss. 43 and 47, respectively, of the Bombay Abkari Act (V of 1878). But where the importation involves possession of liquor, the accused can only be convicted of the offence under s. 43 of the Act. **QUEEN-EMPRESS v. CHAND VALAD KITAB**

**[I. L. R., 14 Bom., 583]**

2. — and s. 53—*Possession of liquor not satisfactorily accounted for—Presumption arising from such possession.*—The accused had in his possession a quantity of toddy in excess of that permitted by law. He was unable to account satisfactorily for the possession of the excess quantity. He was, therefore, prosecuted under ss. 43 and 47 of the Bombay Abkari Act (V of 1878) and convicted under both sections. *Held* that the conviction under s. 43 was bad. In the absence of any evidence to show that the accused had manufactured the toddy, or been in possession of a still, or had transported toddy from one place to another, no presumption could be drawn, under s. 53, of any offence described in s. 43. The only presumption arising from possession not properly accounted for was that the possession was illegal, and the accused could only be convicted under s. 47 of the Act. **QUEEN-EMPRESS v. BYRAMJI KHARSEDJI**

**[I. L. R., 14 Bom., 93]**

3. — *Abkari—Possession of distilling materials.*—Mere possession, without a license, of utensils for distilling liquor is not an offence punishable under s. 43 of the Abkari Act (Bombay), V of 1878. It is only in cases

**BOMBAY ABKARI ACT (V OF 1878)***—continued.*

where such possession is not satisfactorily accounted for that, under s. 53, it is to be presumed, until the contrary is proved, that a person in possession of such utensils has committed an offence under s. 43. **QUEEN-EMPRESS v. PESTANJI BARJOKRI**

**[I. L. R., 9 Bom., 456]**

4. — *Mowa flowers, Possession of—Liability of seller of the flowers where purchaser makes illicit use by distilling liquor therefrom—Burden of proof.*—Mere possession of mowa flowers does not constitute an offence under s. 43 of the Abkari Act V of 1878, unless such possession is made out by the prosecution to have been for the purposes of distilling liquor therefrom. Nor is a seller of these flowers criminally responsible for any illicit use of them after they have passed from his control. **IN RE THE PETITION OF LIMDA KOYA**

**[I. L. R., 9 Bom., 556]**

s. 45.

See **CONTRACT ACT, s. 23—ILLEGAL CONTRACT—GENERALLY.**

**[I. L. R., 12 Bom., 422]**

1. — and s. 53—*Servants of a holder of a license, Liability of.*—Under s. 45 (c) of the Bombay Abkari Act (V of 1878), the servants of the holder of a license granted under the Act cannot be made liable for a breach of the conditions of the license. Though under s. 53 of the Act the holder of a license under the Act is responsible, as well as the person there described as "the actual offender," for any offence committed by any person in his employ or acting on his behalf under ss. 43, 44, 45, or 46 as if he had himself committed the offence, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence, yet s. 45 does not make "the actual offender," if he be the servant of a licensee, punishable, unless he is himself the holder of a license granted under the Act. **QUEEN-EMPRESS v. RAM-CHANDRA MATADIN**

**[I. L. R., 15 Bom., 45]**

2. — *Omission to keep the minimum quantity of liquor according to the terms of license, not an offence under the Act.*—Where the accused, who was a licensed liquor contractor, omitted to keep in his shop the minimum quantity of liquor required by the terms of his license, *Held* that the omission of the accused did not come within the meaning of s. 45, cl. (c), of the Bombay Abkari Act (V of 1878). **QUEEN-EMPRESS v. GOBIND**

**[I. L. R., 16 Bom., 669]**

s. 55—*Construction of Statutes—"Or" read "nor"—Order of confiscation.*—S. 55 of the Bombay Abkari Act (V of 1878) provides that "no order of confiscation shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing any person who claims a right thereto, and the evidence, if any, which he produces in support of his claim." Certain casks of vinegar belonging to the plaintiffs were seized by the Collector of Bombay on the 5th November 1891, and an order of confiscation was made on the 17th November 1891. The order

**BOMBAY ABKARI ACT (V OF 1878)**

seizure. **FRAMJI MANEKJI PUNJABI v. SECRETARY OF STATE FOR INDIA** . I. L. R., 17 Bom., 164

**BOMBAY ACT-1862-V.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—BUILDINGS AND HOUSE MATERIALS . I. L. R., 12 Bom., 363  
[I. L. R., 21 Bom., 588]

3. division of bhaga. **VERIBHAI v. BAGABHAI**  
[I. L. R., 1 Bom., 225]

2. ————— Dismemberment

3. ————— Purchase by

Act could not be alienated apart or separately from the bhag or some recognized subdivision thereof. **PRANJIVAN GAVAN v. JAISHANKAR BHAGVAN**  
[4 Bom., A. C., 48]

4. ————— Alienation of less than the whole of a bhag—Power of Collector to declare such alienation void—Said to have the declaration set aside.—In 1860, prior to the coming into force of the Bombay Bhagdari Act, V of 1862, W, a recognized holder of a bhag in the Broach

**BOMBAY ACT-1833-V—continued.**

district, divided it equally among his four sons, A, B, C, and D, who immediately entered into possea-

division by partition or otherwise. **Bhai Shankar v. Collector of Kaira**, I. L. R., 5 Bom., 77, distinguished. **GOLAM NABOTAM v. SECRETARY OF STATE FOR INDIA IN COUNCIL** . I. L. R., 8 Bom., 598

chased by B. The sale was subsequently confirmed,

that the land sold was an unrecognized portion of

OF BROACH v. RAJARAM LAIDAS  
[I. L. R., 7 Bom., 542]

2. ————— Sale of unascer-

persons who may from time to time be owners of the bhag. S. 2 of the Act does not bar the right of any person prejudicially affected by any illegal sale from suing to set aside the sale. Four brothers owned a bhag in common. In 1871 the right, title, and interest of three of the brothers in the bhag was sold in execution of decrees against them. The defendants were the auction-purchasers. They were put in joint possession of the whole bhag. In 1878 the plaintiff purchased the whole bhag from the four brothers, and

**BOMBAY ACT—1862—V—continued.**

field amsuit in 1833 to oust the defendants, and to obtain possession, alleging that the defendants' purchase of a portion of the bhag was illegal and invalid under s. 1 of the Bombay Bhagdari Act (V of 1862). The suit was dismissed on the ground that, though the defendants' purchase was illegal under the Act, the plaintiff had no right to oust the defendants until the Collector had taken action, under s. 2 of the Act, to set aside the defendants' purchase. *Held*, reversing the decision of the lower Court, that the suit was not barred by s. 2 of the Bombay Bhagdari Act (V of 1862). *Held*, also, that the defendants' purchase of unascertained shares in the undivided bhag was not opposed to s. 1 of the Act. **BAI KUVARBAI v. BHAGVAN ICHHARAM** . I. L. R., 13 Bom., 203

1. ——— ss. 1 and 3—*San mortgage—Bhagdari and narvadari tenures—Mortgage before passing of the Act—Execution of decree—Operation of Act.*—The plaintiff in 1874 sued on a *san mortgage*, dated 15th November 1861, *i.e.*, five months before the passing of Bombay Act V of 1862, —to recover a sum of money by sale of the mortgaged property, which formed part of a bhag in a bhagdari village, which bhag the defendant had purchased at a Court's sale subsequent to the date of the mortgage. *Held* (assuming s. 1 of the Act to apply) that it does not bar the right of action; that, therefore, a Civil Court would be bound to make a decree, even though it might anticipate that s. 1 of the Act would stand in the way of the execution of that decree. *Semble*—That, after a decree has been passed against a portion of a bhag, the Collector might recognize such portion as a division of the bhag, if assured that justice required that the decree should be executed. *Held*, further, that no retrospective operation can be given to s. 1 of the Act, so as prejudicially to affect existing rights. The words "attachment or sale by the process of any Civil Court," used therein, were intended to prevent attachment and sale under simple money-decrees, and not to prevent the sale of mortgaged property in satisfaction of a valid mortgage. **RANCHODDAS DOYALDAS v. RANCHODDAS NANABHAI** . I. L. R., 1 Bom., 581

2. ——— *Sale of unrecognized portion of bhag—Application by Collector to set it aside—Limitation Acts, IX of 1871 and XV of 1877, sch. II, art. 178.*—No law of limitation applies to proceedings taken by a Collector under Bombay Act V of 1862. The words in the first section of that Act, "no portion of a bhag, etc., shall be liable to seizure, sequestration, attachment, or sale by the process of any Civil Court," mean that no portion of a bhag shall be seized, sequestered, attached, or sold by the process of any Civil Court, and any such seizure, sequestration, attachment, or sale is thereby rendered absolutely illegal and void. S. 3 of the Act has no bearing on sales by order of a Civil Court, but is intended to apply to unlawful sales and alienations of portions of bhags made out of Court, or by private individuals. It is under s. 2 that the Collector is authorized and bound to move in order to get the process of a Civil Court set aside or quashed. **COLLECTOR OF BROACH v. DESAI RAGHUNATH** [I. L. R., 7 Bom., 546

**BOMBAY ACT—1862—V—concluded.**

— s. 2—*Sale of a portion of a bhag in execution of a decree—Process for sale—Collector's right to get the process quashed.*—The appellant was the mortgagee of a portion of a bhag under a mortgage dated 1880, and in a suit brought upon the mortgage obtained a decree for sale of the mortgaged property. An attachment was issued, and an order for sale was made. Thereupon the Collector applied, under s. 2 of Bombay Act V of 1862, to set aside the attachment and order for sale. *Held* that the mortgage of a portion of a bhag was unlawful under s. 3 of the Act, and a process having been issued for the sale of such portion, the Collector was entitled to have it quashed. **RANCHODDAS DOYALDAS v. RANCHODDAS NANABHAI**, I. L. R., 1 Bom., 581, distinguished. **NARBHEEBAI v. COLLECTOR OF BROACH** . I. L. R., 22 Bom., 737

— s. 3.

*See MORTGAGE—CONSTRUCTION OF MORTGAGES* . I. L. R., 18 Bom., 283

*See POSSESSION—ADVERSE POSSESSION.*  
[I. L. R., 23 Bom., 710]

1. ——— *Bhagdari and narvadari tenures, Sale of unrecognized portion of—Civil Procedure Code, 1859, s. 213—Undivided share, Sale of—Partition.*—The sale of a portion of a bhag or share in a bhagdari or narvadari village, other than a recognized subdivision of such bhag or share, or of a building site appurtenant to it, is illegal under s. 3 of Bombay Act V of 1862; and a judgment creditor cannot, in execution of his decree, evade the law by describing his debtor's separate portion in a bhag as his "right, title, and interest in the whole bhag;" for, under s. 213 of the Code of Civil Procedure, the creditor is bound to specify the debtor's share or interest to the best of his belief, or so far as he has been able to ascertain the same. *Quære*—If the sale of an undivided share in a bhag be lawful, but even if it be, the purchaser cannot insist upon the possession of any particular portion of the bhag, as representing the share of his debtor. All he can do is to sue for partition. But *quære* if such partition could be made, **ABDESI NARSARANJI v. MUSE NATHA AMIJI** . I. L. R., 1 Bom., 601

2. ——— *Bhagdari tenure—Undivided share of a bhag, Alienation of.*—The alienation of an undivided portion of a bhag, or share in the bhag, to a person who is not a bhagdar, is void under s. 3 of Bombay Act V of 1862. **BIRDWOOD, J.**, dissented. **PARSHOTAM BHAI SHANKAR v. HIRA PARAG** . I. L. R., 15 Bom., 172

**BOMBAY ACT—1862—VI (Talukhdari Act).**

*See LAND REVENUE* 12 Bom., Ap., 278

*See SERVICE TENURE.*

[I. L. R., 1 Bom., 586]

— *Operation of Act—Right of alienation in Ahmedabad Zillah.*—The Bombay Talukhdari Act (Bombay Act VI of 1862) did not affect talukhdari villages, the right, title, and interest of

**BOMBAY ACT-1862-VI (Talukhdari Act)—continued.**

**TOR OF AHMEDABAD v. SAMALDAS BECHARDAS**  
[9 Bom., 205]

the talukhdari estate at the end of the period of management; when the estate was to be restored to the talukhdar free of incumbrance, excepting the Government revenue. If debts amounted to more than

to make both guardian and ward personally liable in this respect, and also charged the liability upon other parts of the talukhdari estate. The infant attained majority and the estate was then placed under management within Act VI of 1862. During the period of management the Government claimed and

management. **WAGHELA RAJESANJI v. MASLUDIN**  
[I. L. R., 11 Bom., 551; I. L. R., 14 I. A., 69]

the Talukhdari Settlement Officer are not enforceable against landed estates. His personal liability for the same remains unaffected by the Act. This personal liability furnishes a sufficient consideration for a subsequent obligation, so as to bind the landed estates by a contract made after the period of the management by the Talukhdari Officer had expired. From and after the expiration of that period, the talukhdar becomes, under s. 20, the absolute proprietor

**BOMBAY ACT-1862-VI (Talukhdari Act)—concluded.**

bonds, passed partly in renewal of old bonds and partly in consideration of old debts contracted during the period of the management.—*Held* that the mortgage-bonds created valid and binding encumbrances upon the estate. **BOO JINATBOO v. SHA NAGAR VALAB KANJI** . I. L. R., 11 Bom., 78

**—1863—II.**

*See SERVICE TENURE.*

[I. L. R., 15 Bom., 13.

*See SETTLEMENT—EFFECT OF SETTLEMENT.*

[1 Bom., 171]

s. 6, cl. (2)—*Non-recognition*

assessability of lands when raised between Government and a claimant of exemption. It is not open to a party to rely upon a provision of which Government only is entitled to take advantage. **VASUDEV ANANT v. RAMKRISHNA AND SUNITRAM NARAYAN**

[I. L. R., 2 Bom., 529]

s. 8, cl. (3).

*See ENDOWMENT* . I. L. R., 5 Bom., 393

*See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.*

[I. L. R., 10 Bom., 34]

**—III.**

*See DISTRICT JUDGE, JURISDICTION OF.*

[5 Bom., A. C., 23]

*See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—BOMBAY.*

[11 Bom., 39]

**—VI.**

*See MASTER AND SERVANT.*

[I. L. R., 7 Bom., 119]

**—VII.**

*See BOMBAY SUMMARY SETTLEMENT ACT*

**—IX.**

*See APPEAL IN CRIMINAL CASES—ACTS—BOMBAY COTTON FRAUDS ACT.*

[3 Bom., Cr., 12]

*See CASES UNDER COTTON FRAUDS ACT.*

*See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT IX OF 1863.*

[3 Bom., Cr., 12]

**—1864—IV.**

*See MAHOMEDAN LAW—ENDOWMENT.*

[I. L. R., 18 Bom., 66]

**BOMBAY ACT—continued.****1884—V.***See* MAMLATDARS' COURTS ACT, 1864.**1865—I.***See* BOMBAY SURVEY AND SETTLEMENT ACT, 1865.**II.***See* BOMBAY MUNICIPAL ACT, II OF 1865.**III.***See* CONTRACT—WAGERING CONTRACT.

[12 Bom., 51

I. L. R., 9 Bom., 358

I. L. R., 22 Bom., 899

*See* EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[I. L. R., 12 Bom., 585

*See* PROMISSORY NOTE.

[8 Bom., A. C., 131

I. L. R., 22 Bom., 899

*Operation of Act—Con-**tract Act (IX of 1872).—Bombay Act III of 1865 is still in force, and has not been repealed by the Contract Act. Dayabhai v. Lakhmichand, I. L. R., 9 Bom., 358, followed. PEROSHA CURSETJI v. MANEKJI DOSSABHOY I. L. R., 22 Bom., 899***IV.***See* SUBSISTENCE MONEY.

[5 Bom., A. C., 84

**1866—II.***See* JURISDICTION OF CIVIL COURT.

[9 Bom., A. C., 72

**III.***See* CASES UNDER GAMBLING.*s. 1, cl. (2)—Act, Interpretation of—Three miles.—Held that the words "three miles" in Bombay Act III of 1866, s. 1, cl. 2, must be construed as three miles measured in a straight line along the horizontal plane, that being the most convenient meaning of the words, and the most capable of being ascertained. REG. v. BHUKOBA VINOBA . . . . . 4 Bom., Cr., 9***VII.***See* HINDU LAW—DEBTS.

[2 Bom., 64; 2nd Ed, 61

10 Bom., 361

I. L. R., 8 Bom., 220

**VIII.***See* MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT VIII OF 1866.

[I. L. R., 4 Bom., 167

**X, s. 1, cl. (7).***See* MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT V OF 1879.

[I. L. R., 8 Bom., 591

**BOMBAY ACT—continued.****1866—XII.***See* JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.

[I. L. R., 12 Bom., 561

**1867—III—(Military Cantonments).***See* CANTONMENT ACT (BOMBAY ACT III OF 1867).**IV.***See* BOMBAY MUNICIPAL ACT II OF 1865.

[9 Bom., 217

*See* RIGHT OF SUIT—MUNICIPAL OFFICES, SUITS AGAINST.

[5 Bom., O. C., 145

**VII.***See* BOMBAY DISTRICT POLICE ACT.**VIII.***See* BOMBAY VILLAGE POLICE ACT.**1868—IV.***See* BOMBAY SURVEY AND SETTLEMENT ACT AMENDMENT ACT.**1869—III.***See* BOMBAY LOCAL FUNDS ACT, 1869.**XIV.***See* BOMBAY CIVIL COURTS ACT.**1872—III.***See* BOMBAY MUNICIPAL ACT, 1872.**1873—I.***See* BOMBAY PORT TRUST ACT, 1873.**VI.***See* BOMBAY DISTRICT MUNICIPAL ACT.**1874—I.***See* BOMBAY TRAMWAYS ACT.**III.***See* CASES UNDER HEREDITARY OFFICES ACT (BOMBAY).**1875—III.***See* BOMBAY TOLLS ACT.**1876—I.***See* BOMBAY VILLAGE POLICE ACT AMENDMENT ACT.**II.***See* LAND REVENUE.

[I. L. R., 9 Bom., 483

**III.***See* MAMLATDARS' COURTS ACT.

**BOMBAY ACT—concluded.****1878—IV.***See BOMBAY MUNICIPAL ACT.***V.***See BOMBAY ADKARI ACT.***1879—V (Land Revenue).***See BOMBAY LAND REVENUE ACT***VI.***See BOMBAY PORT TRUST ACT.***VII.***See BOMBAY IRRIGATION ACT.***1880—I.***See KHOTI SETTLEMENT ACT.***1881—V.***See BOMBAY TOLLS ACT AMENDMENT ACT.***1884—II.***See BOMBAY DISTRICT MUNICIPAL ACT, 1884.***1888—III.***See BOMBAY GENERAL CLAUSES ACT.***V.***See HEREDITARY OFFICES ACT AMENDMENT ACT.***1887—IV.***See GAMBLING (BOMBAY ACT IV OF 1887).***1888—III.***See BOMBAY MUNICIPAL ACT, 1888.***VI.***See GUJARAT TALUKDARS ACT.***1890—I.***See GAMBLING. I. L. R., 18 Bom., 283  
[I. L. R., 17 Bom., 184]***II.***See BOMBAY SALT ACT.***IV.***See BOMBAY DISTRICT POLICE ACT.***BOMBAY CIVIL COURTS ACT (XIV OF 1896).***See CASES UNDER APPEAL—BOMBAY ACTS  
—BOMBAY CIVIL COURTS ACT.***[I. L. R., 13 Bom., 675]***See DISTRICT JUDGE, JURISDICTION OF.***[I. L. R., 5 Bom., 65]****8 Bom., A. C., 169****I. L. R., 14 Bom., 827****I. L. R., 15 Bom., 107***See EXECUTION OF DECREE—TRANSFER OF  
DECREE FOR EXECUTION, ETC.***[0 Bom., 113]****BOMBAY CIVIL COURTS ACT (XIV OF 1896)—continued.***See CASES UNDER SUBORDINATE JUDGE,  
JURISDICTION OF.**See VALUATION OF SUIT—SUITS.***[I. L. R., 12 Bom., 675]****ss. 9 and 10.***See HIGH COURT, JURISDICTION OF—  
BOMBAY—CIVIL.***[I. L. R., 20 Bom., 480]***for disposal. ASSISTANT COLLECTOR OF PRANT  
BASSEIN v. ARDESIR PHAMJI***[I. L. R., 16 Bom., 277]****s. 24.***See VALUATION OF SUIT—SUITS.***[I. L. R., 1 Bom., 528, 543]****s. 25.***See JURISDICTION—QUESTION OF JURIS-  
DICTION—WRONG EXERCISE OF JURIS-  
DICTION. I. L. R., 8 Bom., 31**See VALUATION OF SUIT—SUITS.***[I. L. R., 8 Bom., 31]****s. 26.***See VALUATION OF SUIT—APPEALS.***[I. L. R., 20 Bom., 285]****I. L. R., 23 Bom., 963**

**s. 27—Power “to hear” appeals**  
*—Power to hear question of limitation—Practice.—*  
*Where a District Judge admits an appeal filed be-  
yond time, and the appeal is referred for disposal  
to a Subordinate Judge with appellate powers,  
the Subordinate Judge has the power to consider  
whether the delay in presenting the appeal is suffi-  
ciently accounted for. The power “to hear” an  
appeal conferred by s. 27 of the Bombay Civil Courts  
Act (XIV of 1896) includes also the power to hear  
any question as to limitation relating thereto. MULNA  
AMAD v. KRISHNAJI GANESH GODBOLE*

**[I. L. R., 14 Bom., 594]****s. 32.***See CIVIL PROCEDURE CODE, s. 421.***[I. L. R., 20 Bom., 697]***See COLLECTOR.***[I. L. R., 1 Bom., 318, 628]**

**BOMBAY CIVIL COURTS ACT (XIV OF 1896)—concluded.**

See MAMLATDAR, JURISDICTION OF.

[I. L. R., 23 Bom., 761

*Bombay Revenue Jurisdiction Act (X of 1876), s. 15—Guardian under Minor's Act, XX of 1864—Officer of Government.*—The Nazir of a Civil Court, who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer of Government within the meaning of s. 32 of Act XIV of 1896 as amended by s. 15 of Act X of 1876. An officer of Government, in order to come within those enactments, must be a party to a suit in his official capacity. *MOHAN ISWAR v. HAKU RUPA*. . . I. L. R., 4 Bom., 638

**BOMBAY DISTRICT MUNICIPAL ACT (XXVI OF 1850).**

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 5 Bom., Cr., 33

See CONVICTION . . . 5 Bom., Cr., 103

See FINE . . . 7 Bom., Cr., 55

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—ACT XXVI OF 1850.

[3 Bom., Cr., 36

5 Bom., Cr., 10

8 Bom., Cr., 12, 39

See NUISANCE—MISCELLANEOUS CASES.

[1 Agra, Cr., 34

See PENAL CODE, s. 188.

[5 Bom., Cr., 33

See PUBLIC SERVANT 4 Bom., A. C., 93

[5 Bom., Cr., 33

See RIGHT OF SUIT—MUNICIPAL OFFICER, SUITS AGAINST . . . 7 Bom., A. C., 33

[I. L. R., 22 Bom., 384

See RULES MADE UNDER ACTS.

[8 Bom., Cr., 39

**BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873).**

See COLLECTOR . . . I. L. R., 1 Bom., 628

1. ——— s. 3—*Place, Definition of—Ota of a house.*—The word "place," as defined in s. 3 of Bombay Act VI of 1873, does not include a house, or ota of a house. *IN RE THE PETITION OF PABA KHORI*. . . I. L. R., 9 Bom., 272

2. ——— and s. 17—*Street—Court—Public right of way—Removal of erection.*—The plaintiff was the owner of two houses and mortgagee of a third house out of a set of six which surrounded an open court in the town of Dhaudhuka, and which, including the court, originally belonged to a single individual. The plaintiff built an "ota" or verandah, and put up a wooden bench in front of his house, which the municipality of the town ordered to be removed. In a suit by the plaintiff to have this order set aside, the District Court found that the occupant of each house had the right of way across the court,

**BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—continued.**

which was used as the means of access to the houses which surrounded it by persons having business with the house-holders. *Held* that such limited access by the public was not sufficient to show that the court ceased to be private property, and was converted into a "street" vesting in the municipality within the meaning of ss. 3 and 17 of Bombay District Municipal Act, VI of 1873; and that the municipality had not any right to interfere with the plaintiff's erection, whatever liability he might have incurred to an action by any of the other house-holders who occupied the court. *KALIDAS v. MUNICIPALITY OF DIANDHUKA*

[I. L. R., 6 Bom., 686

1. ——— s. 11, cl. (1)—*Notice of meeting, Omission to give—Validity of resolution passed.*—The provisions of s. 11, cl. (1), as to notice of meeting, are not directory, but obligatory; and notice to all the commissioners of the meeting, being a material part of the machinery provided by the Act for imposing a legal tax, was a condition precedent to the validity of that tax. Consequently, where a resolution was come to without conforming to those provisions, it was held to be not legal, and, whether sanctioned or not by the Government, it always retained its inherent defect. *JOSHI KALIDAS SEYAKRAM v. DAKOR TOWN MUNICIPALITY*. . . I. L. R., 7 Bom., 399

2. ——— *Bombay Municipal Act (Bombay Act II of 1894), s. 57—Liability to pay taxes—Halalkhore tax—Water tax—Notice by municipality—Burden of proof—Presumption—Evidence Act, I of 1842, s. 117, ill. (c).*—A defendant who, in answer to a claim for arrears of taxes by a Bombay district municipality, alleges that the taxes were illegal (1) because no notice had been given him under s. 57 of Bombay Act II of 1884; (2) because no notice had been issued by the municipality to the commissioners under s. 11 of Bombay Act VI of 1873, must prove the defence; and, in the absence of such proof, the Court will presume that the municipality has used the regular procedure, and that the common course of business has been followed in the particular cases. The liability to pay the halalkhore tax does not arise until after notice has been given under s. 57 of the Act (Bombay Act II of 1884). *MUNICIPALITY OF SHO LAPUR v. SHO LAPUR SPINNING AND WEAVING COMPANY*. . . I. L. R., 20 Bom., 732

——— s. 14.

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

[I. L. R., 22 Bom., 384

1. ——— s. 17—*Public street—Bombay Municipal Act (Bombay Act III of 1889), s. 3.*—In a suit brought by the plaintiff against the municipality of Ahmedabad, the question was whether a certain street was a public street within the contemplation of the Bombay District Municipal Act (Bombay Act VI of 1873). The District Judge, on the evidence and having regard especially to the fact that the street in question was protected by a gate closed at night by a polia, or watchman, who lived over the gate, and was under the control of, and paid by, the owners of the houses in the street,—*Held* that there

# BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—continued.

dant, the High Court refused to interfere with the decision of the lower Court. In the absence of a definition of a public street in the Bombay District Municipal Act, the High Court refused to apply the definition contained in the City of Bombay Municipal Act (Bombay Act III of 1868). **AHMED-ABAD MUNICIPALITY v. MANILAL UDENATH**

[I. L. R., 20 Bom., 148

2. ————— and s. 33—Street—

includes not merely the surface of the ground, but so much above and below it as is requisite or appropriate and make judgment ipal-  
ity to establish his right to build the proposed balcony. *Held* that, so far as the column of space

to go to and fro. He applied to the local municipality for permission to build in the manner he proposed. The municipality forbade the work, on the ground that it was likely to interfere with the access of light and air to the neighbouring houses. The plaintiff thereupon sued the municipality to establish his right to build the proposed structure. It was contended for the plaintiff that the municipi-

[I. L. R., 12 Bom., 490

1. ————— s. 21—Disposal by Government of objections to tax—Jurisdiction of Civil Court.—

# BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—continued.

of the Legislature was to take away that jurisdiction. **JOSHI KALIDAS SEVAKRAM v. DAKOR TOWN MUNICIPALITY** [I. L. R., 7 Bom., 399

2. ————— Octroi duties—Imposition of tax—Inhabitants' objections—Consideration by municipality and opinion.—The requirements of cl 2, s. 21 of Bombay District Municipal Act, VI of 1873, which enacts that "any inhabitant of the municipal district objecting to such tax, toll, or impost, may, within a fortnight from the date of the said notice, send his objection in writing to the municipality, and the municipality shall take such objection into consideration and report their opinion thereon to the Governor in Council," is not satisfied by the Chairman of the

that section for the legal imposition of a tax **MUNICIPALITY OF POONA v. MOHAKIAL**

[I. L. R., 9 Bom., 51

3. ————— s. 21, cls. (1) and (2)—*Bombay District Municipal Act Amendment Act (Bombay Act II of 1894), s. 27, cl. (7), and s. 32—Tax imposed by municipality.*—In 1891 the municipality of Surat appointed a committee to revise the taxation of the city, proposing to reduce some of the existing taxes and impose others with a view (*inter alia*) of obtaining a better water-supply for the city. A scheme of taxation drafted by the committee was subsequently adopted by the municipality, and it included a new house and property tax. The municipality then issued a notice with regard to this last-mentioned tax under the provisions of s. 21 of Bombay Act VI of 1873 setting forth the particulars of the proposed tax and requiring objections to be lodged within a fortnight from the date of the notice. A number of objections were received which were laid on the table for twenty-one days for perusal and consideration by the municipal commissioners. At the end of that time a special meeting of the Commissioners was held, at which it was resolved that the objections were invalid, and the scheme and the rules with regard to the levying of the tax were forwarded to Government and were sanctioned. The plaintiffs sued for an injunction restraining the municipality from levying the tax, contending that it was illegal, on the ground (1) that there was no municipality devious of imposing the tax for any of the purposes allowed by the Act, inasmuch as the commissioners who passed the resolution to impose the tax did not know for what purpose the tax was to be imposed; (2) that the resolution imposing the tax was not

# **BOMBAY DISTRICT MUNICIPAL ACT** (VI OF 1873)—*continued.*

because the notice calling the meeting of the commissioners which passed the resolution did not specify this tax as the object of the meeting; (3) that the notice given under s. 21 of Bombay Act VI of 1873 was bad, as it did not state the purpose of the proposed tax; (4) that the nature and the amount of the tax were not sufficiently stated in the notice; (5) that the valuation of property for the purpose of the tax was to be made; (6) that the objections of the rate-payers were not sufficiently considered; (7) that it did not appear whether the tax was to be paid in advance or not; and (8) that the assessment of the tax was made on a wrong basis. *Held* that the purpose of the tax was sufficiently known to the commissioners; (2) that the resolution imposing the tax was not invalid, although the notice convening the meeting did not specify the object of the meeting; (3) that the notice need not specify the purpose of the tax; (4) that as to the nature and the amount of the tax, the notice was sufficient, as it stated that the amount would depend on the valuation of the property; (5) that the notice need not define the mode of valuation; (6) that the objections were partly in advance; (7) that the assessment would not affect the validity of the tax, but would give a right of appeal to have the valuation set right. *Held*, therefore, that the tax was legally imposed.

**SURAT CITY MUNICIPALITY v. OCHHAVARAM JAMNADAS**  
I. L. R., 21 Bom., 680

s. 24.

**See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES** I. L. R., 24 Bom., 800

1. **s. 33—Sanad under the Bombay City Survey Act (Bombay Act IV of 1868)—The right of the municipality to call for the production of the sanad.**—Under s. 33 of the Bombay District Municipal Act (Bombay Act VI of 1873), the municipality has no right to insist on the production of a sanad issued under s. 10 of the City Survey Act (Bombay Act IV of 1868) before granting permission to build. **IN RE JAMNADAS DULABDAS**  
I. L. R., 15 Bom., 516

2. **Demolition of building—**  
*Suit for damages.*—Plaintiff having built a new wall on the site of an old wall, including the old foundations, the municipality pulled the wall down. Plaintiff thereupon sued the municipality for damages. The Judge rejected the claim for damages. *Held* that the building of a new wall on the site of the old wall, including the old foundations, was not an addition to the existing building within the meaning of s. 33 of the District Municipal Act (Bombay Act VI of 1873). The municipality was, therefore, liable in damages for any expenses which the plaintiff was put to by their pulling down the wall. **KRISHNAJI NARAYAN POKSHE v. MUNICIPALITY OF TARGAON**  
I. L. R., 18 Bom., 547

3. **Notice of proposed building erected without permission to build.**—On the 18th

# **BOMBAY DISTRICT MUNICIPAL ACT** (VI OF 1873)—*continued.*

August 1890, plaintiffs sent a notice to the town municipality of Umreth, intimating their intention to erect a building on their land, and giving a rough sketch plan of the land intended to be built upon. In this notice plaintiffs did not expressly state their intention to build the wall in dispute. On the 28th August 1890, the municipality wrote to the plaintiffs, requiring them to furnish a plan showing the design of the proposed building with its measurements. On the 30th September 1890, the plaintiffs, without furnishing the plan as required, built a wall on their land. Thereupon the municipality gave a notice to the plaintiffs requiring them to pull it down, as it has been built without their permission. The plaintiffs having failed to comply with this notice, the wall was demolished, and its materials were carried away by the municipal servants. Thereupon the plaintiffs sued the municipality to recover damages for the wrongful demolition of the wall. *Held* that the plaintiffs had contravened the provisions of cl. 1 of s. 33 of Bombay Act VI of 1873, inasmuch as they had built the wall without giving any notice, or (if they did) gave notice without affording the information required by the municipality. The municipality were, therefore, justified in ordering the wall to be demolished. **DAVE HARI-SHANKAR v. TOWN MUNICIPALITY OF UMRETH**  
I. L. R., 19 Bom., 27

4. **Building beyond area for which permission is granted—Omission to give notice of building—Power of municipality to order alteration or demolition of a building erected without notice or in excess of the permission.**—Under the Bombay District Municipal Act, where an owner, having obtained permission under s. 33 to build on one portion of his land, builds on another portion without having obtained fresh permission, if such part of his building as is outside the limits for which permission has been granted is built without notice, the municipality can in their discretion order it to be demolished. **BHAWANISHANKAR v. SURAT CITY MUNICIPALITY**  
I. L. R., 21 Bom., 187

5. **and s. 42—Discretion of municipality to take action under s. 33, cl. (3)—Court's power to interfere with such discretion.**—A suit for an injunction to restrain a municipality from removing a certain building or construction is not an action "for anything done, or purporting to have been done, in pursuance of the Act" within the meaning of s. 48 of Bombay Act II of 1884. Such a suit can, therefore, be brought without giving previous notice to the municipality. Apart from the provisions of s. 33 of Bombay Act VI of 1873, it is only if the site of a building is vested in a municipality under s. 17 of this body is empowered, whether by s. 42 or by any other section, to take steps for the removal of the building. The discretion of taking action or otherwise under the 3rd clause of s. 33 is vested in the municipality, which alone can determine whether or not the removal of a building erected contrary to the provisions of s. 33 is or is not a measure likely to promote the public convenience. If the municipality adopt the proper procedure, no Court can review its

# BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—continued.

subject to control by the Courts. **PATEL PANACHAND GIRDHAR v. AHMEDABAD MUNICIPALITY**  
[I. L. R., 22 Bom., 230]

**s. 38—Privy, power of municipality to order to be built by owner of a house—Such order not imperative, but permissive—Discretion of Court.**—The terms of s. 36 of Bombay Act VI of 1873 are not imperative in requiring a municipality to call on the owner of a house to build a privy, but are permissive, leaving it to the discretion of the municipality to determine when the power conferred on them shall be exercised. Accordingly, where the plaintiff complained that the defendants had erected

from the date of its decision. **JAFIR SAHER v. KADIR RAHIMAN**  
[I. L. R., 13 Bom., 634]

the obstructions were placed there lawfully or not. The only distinction which the Act draws is between obstructions erected or placed before the Act came

penation should be awarded for their removal. As to the latter, the municipality can remove them under s. 48 even without giving any notice. The public have a right of passing over the whole of a street if it is a public street. It is not the practice of the Court to interfere with corporate bodies, unless they are manifestly abusing their power. **AHMEDABAD MUNICIPALITY v. MANILAL UDENATH**

[I. L. R., 19 Bom., 312]

**s. 48—Re-erection of a structure formerly existing not within the section.**—S. 48 of the Bombay District Municipal Act, 1873, refers to the erection of a thing for the first time, and not to the re-erection of an old structure which had been taken down for a temporary purpose only. The accused was the owner of a shop in a public street at Thana. The shop had planks attached to it in front, overhanging

# BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—continued.

a public gutter. These planks had been in existence before the District Municipal Act came into operation at Thana. In April 1897, the planks were temporarily removed under the orders of the plague authorities. The plague having ceased, the accused replaced the planks in October 1897 without the permission of the municipality. For this he was prosecuted and fined under s. 48 of Bombay Act VI of 1873. *Held*, reversing the conviction and sentence, that the refixing of the planks was not an "erection" within the meaning of s. 48 of the Act. **KALA GOVIND v. MUNICIPALITY OF THANA**

[I. L. R., 23 Bom., 248]

*See* **ESHAN CHANDER MITTER v. BANKU BANHARI PAL**  
[I. L. R., 25 Cal., 160]  
**AND MUNICIPAL COUNCIL, TANJORE v. VISVANATHA RAU**  
[I. L. R., 21 Mad., 4]

**s. 54—"Offensive liquid"—allowing waste or dirty water to run on to public street.**—A

[I. L. R., 20 Bom., 83]

**PADA KHORI**  
[I. L. R., 9 Bom., 272]

**2.—Sale of fruit in a private shop—Power of the municipality to prevent such a sale—Market, Definition of.**—The municipality of

and sentenced each of the accused to pay a fine of Rs. 5. The District Magistrate, relying on the case of *In re Pada Khori*, [I. L. R., 9 Bom., 272], reversed the conviction and sentence. *Held* that what the municipality had authority to direct under s. 60 of (Bombay) Act VI of 1873 was that no place, other than the municipal market or other places licensed as markets, should be used by any body as a market; but they had no authority to issue a notification affecting other places which might be used for selling vegetables, etc., otherwise than as a market; that, inasmuch as the using of the shop by the accused was confined simply to the selling of fruit, and not of "vegetables" in the popular sense, it could not be affected by the prohibition contemplated by s. 60 of the Act; that, if the prohibition of the municipality

# BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—continued.

was meant to affect the private rights of persons to use their shops for selling their own commodities, that would amount to an excess of the authority conferred by the District Municipal Act (Bombay) VI of 1873; that the shop used by the accused for the sale of their own commodities was not a "market" within the meaning of s. 66 of Bombay Act VI of 1873. *Mayor of London v. Law*, 49 L. J. Q. B., 144, and *Mayor of Manchester v. Lyons*, L. R., 2 Ch. D., 257, followed. The case of *In re Paba Khoji*, I. L. R., 9 Bom., 272, explained. *QUEEN-EMRESS v. MAGAN HARJIVAN* . . . I. L. R., 11 Bom., 108

s. 73—*Power of the municipality to suppress caste-feasts on the outbreak of cholera—Meaning of the words "take such measures as may be deemed necessary"—Penal Code, s. 193—Construction of statutes.*—The City of Ahmedabad being threatened with an outbreak of cholera, the president of the local municipality, acting under s. 73 of Bombay Act VI of 1873, issued an order, in the form of a proclamation, prohibiting the holding of caste-feasts when over thirty persons were to assemble. After the promulgation of this order, the accused gave a feast in a private house to upwards of thirty people of his caste. He was thereupon convicted, under s. 193 of the Penal Code, for disobedience of an order duly promulgated by a public servant, and sentenced to pay a fine of Rs. 35. *Held* (reversing the conviction and sentence) that s. 73 of the Bombay District Municipal Act (VI of 1873) did not empower the municipality to place an interdict on people meeting together to eat and drink in their own houses. The words in the section, "take such measures as may be deemed necessary to prevent, meet, or suppress the outbreak," imply in themselves something actively to be done by the municipality, rather than any limitation to be imposed on the private rights of the citizens in their relations of daily life. Special measures for the health of the town—such as sulphur fumigation, daily flushing of sewers, insistence on good house sanitation, isolation of infected districts, and other similar steps to be taken by the authorities themselves—fall naturally within the meaning of the terms of the section. The Court ought not to strain an Act in favour of an interference with private rights which is not justified by the primary sense of the language. *QUEEN-EMRESS v. HARILAL*

[I. L. R., 14 Bom., 180

1. — s. 74 and ss. 36, 39—*Notice by municipality—Offence under Act.*—Non-compliance with notices issued by the municipality under s. 36 or cl. 1 of s. 39 of the Bombay District Municipal Act, VI of 1873, is not an offence punishable under the Act, as cl. 1 of s. 74 of that Act does not apply to either of those provisions. The latter clause applies only to the 2nd clause of s. 39. *IN RE TUKARAM VITHAL*

[I. L. R., 2 Bom., 527

2. — and s. 33—*"External alteration"*—Opening of a new doorway in a building without notice to municipality.—Opening a new external door is an "external alteration" of the building in which the door is opened, and such act

# BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—continued.

done without the notice to the municipality, contemplated by s. 33 of Bombay Act VI of 1873, is an offence punishable under s. 74 of the same Act. *Seemle*—Where such act does not cause any inconvenience to any person, a slight nominal fine is an adequate punishment. *QUEEN-EMRESS v. GURJIA* . . . I. L. R., 9 Bom., 568

— s. 84.

*See BOMBAY DISTRICT MUNICIPAL ACT, 1884, s. 49* . I. L. R., 18 Bom., 400

*See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.*

[I. L. R., 18 Bom., 442

1. — *Nature of proceedings taken under s. 84 for the recovery of municipal taxes—Magistrate's duty under the section.*—A proceeding before a Magistrate for the recovery of municipal cesses and taxes instituted under s. 84 of Bombay Act VI of 1873 is a criminal prosecution, and must be conducted in the manner prescribed for summary trials under Ch. XXII of the Code of Criminal Procedure (Act X of 1882). In such a proceeding a Magistrate is not bound to order payment of the full amount claimed by the municipality, but must satisfy himself as to the extent of the defaulter's legal liability before passing any order against him. *MUNICIPALITY OF AHMEDABAD v. JUMNA PUNJA* . . . I. L. R., 17 Bom., 731

2. — *Contract to collect a tax levied by a municipality—Suit for money due under such contract.*—A person who had obtained a contract to collect a certain tax imposed by a district municipality, having failed to pay over the money due under the contract at the stipulated time, was convicted by a Magistrate under s. 84 of the Bombay District Municipal Act (Bombay Act VI of 1873) and ordered to pay it to the municipality with interest, and also to pay a fine and Court-fee charges. *Held*, reversing the order, that the section did not apply. *IN RE JAGU SANTRAM* . I. L. R., 22 Bom., 709

3. — as amended by Bombay Act II of 1884—*Arrears of rent—Penalty in addition to arrears of rent.*—S. 84 of the Bombay District Municipal Act (Bombay Act VI of 1873) allows penalties to be imposed in addition to arrears of cesses or taxes, but it does not provide for the imposition of a penalty in addition to the arrears of rent. *IN RE RANGU* . I. L. R., 22 Bom., 708

4. — *Taxation—Duty on goods imported within municipal limits—"Imported"*—*Meaning of the word.*—A rule of the Thana Municipality provided for the levy of octroi duty on certain articles "when imported within the Thana Municipal District." *Held* that goods merely passing through the municipal district in the course of transit to Bombay were "imported" within the meaning of the rule, and were, therefore, liable to duty. *IN RE RAHIMU BHANJI*

[I. L. R., 22 Bom., 843

5. — *House valuation for purposes of taxation—Valuation made by municipality*

# **BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—continued.**

—*Magistrate's power to revise the valuation.*—

of R2-S-O. A, a tax-payer, applied to the magis-  
trate but his application was not under

GANGADHAR I. L. R., 23 Bom., 446

See MORAR C. BORSAD TOWN MUNICIPALITY  
[I. L. R., 24 Bom., 307]

s. 86.

See BOMBAY DISTRICT MUNICIPAL ACT,  
1873, s. 43 I. L. R. 18 Bom., 19

See LIMITATION ACT, 1877, s. 14.  
[I. L. R., 8 Bom., 529]

1. — *Suit against Municipality for damages.*—S. 96 of Bombay Act VI of 1873 is not applicable to suits in the nature of actions of ejectment, but only to suits for damages.  
JOHANNAL C. MUNICIPALITY OF AHMEDNAGAR  
[I. L. R., 3 Bom., 560]

Government, sanctioned the resolutions on the 2nd of June 1880. Notice of the meeting of the 15th of March 1880 was not served on three of the commissioners, they being absent at the time from Daker, and no notice specifying the business to be transacted therein was posted up at the kutcherry as required by s. 11, cl. (1), of the Act. K, a householder, sent a notice to the municipality on the 15th of

# **BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—concluded.**

January 1881, impeaching the legality of the tax. On the 3rd of June 1881, he paid the tax—namely, Rs. 12—for which he had been rated, and on the 6th of January 1883 he sued for a refund of the said sum from the municipality. *Held* that the suit was not brought too late to satisfy the requirements of s. 86 of the Act. When the notice of the 25th of January 1881 was sent by K, he had no cause of action against the municipality for anything done; no notice, therefore, such as is contemplated by s. 86, was ever sent by K, and consequently there could be no final order on such notice from which the three months prescribed by that section would run. *Quare*—Whether s. 86 of the Bombay Act VI of 1873 applies to an action for money had and received. JOSHI KALIDAS SEVAKRAM C. DAKOR TOWN MUNICIPALITY I. L. R., 7 Bom., 399

cable to every claim of a pecuniary character arising out of the acts of municipal bodies or officers, who in the bona fide discharge of their public duties may have committed illegalities not justified by their powers. RANCHOD VARAJBHAI C. MUNICIPALITY OF DAKOR I. L. R., 8 Bom., 143

# **BOMBAY DISTRICT MUNICIPAL ACT (II OF 1884).**

s. 23.

See SUPERINTENDENCE OF HIGH COURTS  
—CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 21 Bom., 279]

s. 27.

See BOMBAY DISTRICT MUNICIPAL ACT,  
1873, s. 21.

[I. L. R., 21 Bom., 630]

1. — s. 48—*Bombay District Municipal Act (Bombay Act VI of 1873), s. 86—Suit against municipality for ejectment.*—The words "in the case of any such action for damages" in s. 48 of the Bombay District Municipal Act Amendment Act (Bombay Act II of 1884) clearly show that it was contemplated that there might be suits of another description to which the provisions in the former paragraph would be applicable. The section does not contemplate only "suits to recover monetary compensation for a wrongful act" & suit in ejectment—*as being a suit brought to recover damages*—for an act done or intended to be done—was excluded under s. 86 of the Bombay District

## BOMBAY DISTRICT MUNICIPAL ACT (II OF 1884)—continued.

Municipal Act (Bombay Act VI of 1873), but being an "action for an act done," that act, being the dispossession by the municipality with a view to being restored to possession, falls under the provisions of the first paragraph of s. 48 of Bombay Act II of 1884. *NAGUSHA v. MUNICIPALITY OF SHOLAPUR* . . . I. L. R., 18 Bom., 19

2. ———— *Suit against municipality for injunction—Notice of action.*—A suit for an injunction to restrain a municipality from removing a certain building or construction is not an action "for anything done, or purporting to have been done, in pursuance of the Act" within the meaning of s. 48 of Bombay Act II of 1884. Such a suit can, therefore, be brought without giving previous notice to the municipality. *PATEL PANACHAND GIRDHAR v. AHMEDABAD MUNICIPALITY*

(I. L. R., 22 Bom., 230

3. ———— *Bombay Act VI of 1873, s. 86—Purchase from mortgagee by municipality—Suit by mortgagor to recover possession—Ejectment—Limitation—Notice.*—A mortgagee (defendant No. 1) refused to give up part of the mortgaged land when the mortgage was paid off in 1881. He remained in possession, and in 1888 he sold this land to the Municipality of Mahad (defendant No. 2). The mortgagor subsequently sued the municipality and its vendor to recover possession. The municipality contended that the suit was barred by limitation under s. 48 of the District Municipal Act, 1884. *Held* that the suit was not barred by s. 48, that section does not apply to actions of ejectment brought against a municipality. Such an action brought to try the title to land is not an action for anything done or purporting to be done in pursuance of the Act. *Nagusha v. Municipality of Sholapur, I. L. R., 18 Bom., 19*, distinguished. *KASHINATH KESHAV JOSHI v. GANGABAI* . . . I. L. R., 22 Bom., 283

4. ———— *Ejectment suit against municipality—Notice.*—The plaintiff was the inamdar of the village of Dakor. He filed an ejectment suit against the municipality of Dakor, alleging that the municipality had illegally and wrongfully encroached upon a portion of the Gomti Lake at Dakor by laying the foundations of a building which they intended to erect for the purpose of a dhamshala. The municipality pleaded (*inter alia*) that the suit was bad for want of notice of action under s. 48 of the Bombay District Municipal Act, 1884. *Held* (by a majority of the Full Bench) that the provisions of s. 48 of Bombay Act II of 1884 do not apply to actions for the possession of land brought against a municipality. *Per PARSONS, J.*—The provisions of s. 48 apply only to actions for the possession of land whereof the plaintiff has been dispossessed by the municipality acting or purporting to act under some section of the Municipal Act, which empowers them to take possession of, or oust any one from, that land. *Per RANADE, J.*—S. 48 does not generally apply to suits for the possession of land, except in those cases where the claim arises on account of some act or omission of the municipality when it acts in pursuance of its statutory powers, and

## BOMBAY DISTRICT MUNICIPAL ACT (II OF 1884)—concluded.

encroaches upon private rights. *Nagasha v. Municipality of Sholapur, I. L. R., 18 Bom., 19*, overruled. *MANOHAR GANESH TAMBEKAR v. DAKOR MUNICIPALITY* . . . I. L. R., 22 Bom., 289

5. ———— *Suit for damages, possession, and injunction—Notice of action.*—In a suit brought against a municipality to recover possession of a piece of land taken by it, for damages for pulling down a wall on the land, and for an injunction,—*Held* that, as regards damages, the suit came under s. 48 of the District Municipal Act, 1884, but, as regards possession and injunction, notice of action was not necessary under the section. *SHIDMALAPPA NARANDAPPA v. GOKAK MUNICIPALITY*

(I. L. R., 22 Bom., 605

6. ———— *Suit for specific performance of a contract or for damages for breach thereof.*—S. 48 of the Bombay District Municipal Act, 1884, does not apply to a suit for the specific performance of a contract or for damages for breach thereof. *MUNICIPALITY OF FAIZPUR v. MANAK DULAB SHET* . . . I. L. R., 22 Bom., 637

7. ———— *Suit for an injunction to restrain municipality.*—A suit was brought by the plaintiff against a municipality for an injunction to restrain them from laying water-pipes on his land. The lower Courts dismissed the suit for want of notice under s. 48 of the District Municipal Act, 1884. *Held*, reversing the decree, that the suit was not barred for anything done in pursuance of the Act, but to prevent the municipality from doing what the plaintiff alleged to be an illegal act, and that s. 48 did not apply. *HABIBUL RANCHODEAL v. HIMAT MANEKCHAND* . . . I. L. R., 22 Bom., 636

—s. 49—*Bombay District Municipal Act (Bombay Act VI of 1873), s. 84—Non-payment of taxes—Penal Code (XLV of 1860), s. 40—Penalty—"Fine"—Imprisonment in default of payment of penalty.*—There is no distinction between the word "penalty" as used in Bombay District Municipal Act (Bombay Act VI of 1873) and the word "fine" as used in s. 64 of the Penal Code (XLV of 1860). Imprisonment can, therefore, be awarded in default of any penalty inflicted under s. 84 of the Municipal Act. *IN RE LAKMIA*

(I. L. R., 18 Bom., 400

s. 57.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873.  
s. 11 . . . I. L. R., 20 Bom., 732

## BOMBAY DISTRICT POLICE ACT (VII OF 1867).

See JURISDICTION OF CRIMINAL COURTS—  
EUROPEAN BRITISH SUBJECTS.

[7 Bom., Cr., 6

s. 16.

See BOMBAY LAND REVENUE ACT, ss. 153'  
159 . . . I. L. R., 16 Bom., 455

See BOMBAY REVENUE JURISDICTION ACT  
s. 4 . . . I. L. R., 16 Bom., 455

# **BOMBAY DISTRICT POLICE ACT (VII OF 1867)—continued.**

—S. 23—*Police-officer below the rank of Inspector, Power of, to prosecute—Criminal Procedure Code, 1882, s. 495.*—The provisions of s. 23 of Bombay Act VII of 1867 have not been superseded by s. 495 of the Criminal Procedure Code (Act X of 1882), but are still in force. *QUEEN-EMRESS v. HONKERRAPA* I. L. R., 8 Bom., 534

—S. 27—*Prohibition of music in private house.*—S. 27 of Bombay Act VII of 1867 does not empower the police to prohibit the use of music in private houses. *REG. v. LUKHMA CHANGO*

[9 Bom., 163]

time of public worship, confer upon the police a power of regulating traffic and putting a stop to noises in the neighbourhood of places of worship during the time of worship, but do not limit their general powers of keeping order at and within all places of public resort, temples, jattras, or the like, when necessary. *REG. v. BASSUJI GUNGARAIN*

[7 Bom., Cr., 2]

—S. 31.

*See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.*

[5 Bom., Cr., 43]

[5 Bom., Cr., 100]

of a public road. On the occasion of a wedding he put bamboos across the street from the top windows of one house into the top windows of the other house, and laid a covering of cloth over the bamboos, thus making a canopy, or awning, over the street. It was at such a height that no obstruction or inconvenience whatever

# **BOMBAY DISTRICT POLICE ACT (VII OF 1867)—concluded.**

the road, it could not be said to have been constructed on the road. *IN RE NAHAICHAND*

[I. L. R., 23 Bom., 743]

—S. 42.

*See LIMITATION ACT, 1877, s. 14 (1850, s. 14)*  
[10 Bom., 204]

# **BOMBAY DISTRICT POLICE ACT (IV OF 1890).**

—S. 47—*Right of the police to have free access to a place of public amusement or*

the ground to which the public were admitted was fenced in by ropes, and soldiers were stationed at intervals to prevent any persons entering or leaving the enclosure otherwise than through the passages provided for the purpose. The Inspector of Police, who was present on duty in that capacity, contrary to the regulations prescribed by the stewards of the races, crossed over the fencing ropes into the enclosure instead of going in by the regular entrance. This was reported to the honorary secretary of the club, who had general charge of the arrangements. He sent for the inspector, and, after an interview with him,

merely escorting him outside. He thereupon, under s. 353 of the Penal Code, charged the secretary of the club with using criminal force to a public servant in the exercise of his duty. *Held* that the offence had been committed. Under s. 47 of the Bombay Police Act, 1890, the police had a right of free access to the race-course. *QUEEN-EMRESS v. ROSS*

[I. L. R., 23 Bom., 746]

1. —S. 48, cl. (a)—*Order as to conduct of procession.*—A District Superintendent of Police issued a notification to the following effect:—"No member of any sect can be permitted to proceed naked to the bath to bathe, nor while there to bathe naked, nor to pass the streets naked on any account. If any one does this, he will be dealt with according to law." *Held* that this notification was not illegal or *ultra vires*. It was not any order or command as to costume, but merely a warning to the people that an indecent exposure of the person was an offence under the law, and would be dealt with as such. *IN RE HUKUMPRIBHAYA GOSAVI* I. L. R., 23 Bom., 715

2. —S. 48, cl. (b)—*Noisance—Noise*  
—*"Near a street."*—*Meaning of the words—Power of the police to regulate the playing of music in private houses.*—S. 48, cl. (b), of Bombay Act IV of 1890 does not empower the District Superintendent or Assistant Superintendent of Police to stop music in private houses. The words in the clause "near a street" are intended to mean open spaces by the sides or at the ends of streets. *IN RE JAMESDAS BUTCHANDAS* I. L. R., 19 Bom., 737

**BOMBAY DISTRICT POLICE ACT (IV OF 1890)—concluded.**

ss. 51 and 52.

See ABETMENT.

[I. L. R., 20 Bom., 394]

s. 53, cl. (2), and s. 65—*Refusal to attend in order to make a panchánáma*.—The accused refused to attend to make a panchánáma regarding an obstruction to a public road caused by a grain-dealer by keeping his grain bags on the road. He was thereupon convicted under s. 53, cl. (2), and s. 65 of the Bombay District Police Act, 1890. Held that the conviction was illegal. Non-attendance to make the panchánáma in question was not an offence punishable under the Police Act. *IN RE BHOLASHANKAR* . . . I. L. R., 22 Bom., 970

**BOMBAY GENERAL CLAUSES ACT (III OF 1888).**

See REGISTRATION ACT, s. 17.

[I. L. R., 21 Bom., 387]

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—IMMOVEABLE PROPERTY.

[I. L. R., 21 Bom., 387]

**BOMBAY GOVERNMENT RESOLUTION.**

No. 512 of 1882.

See HEREDITARY OFFICES ACT, s. 4.

[I. L. R., 21 Bom., 733]

**BOMBAY IRRIGATION ACT (VII OF 1879).**

1. — s. 48—*Bombay Revenue Jurisdiction Act (X of 1876), s. 4 (b)—Water-rate—Land revenue—Percolation of canal water—Opinion of the canal officer—Jurisdiction of Civil Court*.—Where water-rate is levied under s. 48 of the Irrigation Act (Bombay Act VII of 1879), the question as to the jurisdiction of Civil Courts in a suit for the determination of the legality or otherwise of such levy depends upon whether the incidence of the rate is authorized by the provisions of the section. Under it, the condition precedent to levying the rate is not the fact ascertained by evidence whether the water in dispute has percolated from the canal, but the opinion of the canal officer that it has so percolated, he and not the Civil Court being made the Judge of such percolation for the purposes of the Act. Such water-rate falls within the denomination of land revenue. *BALVANT GANESH OZE v. SECRETARY OF STATE FOR INDIA* . . . I. L. R., 22 Bom., 377

2. — *Leakage water—Rights of riparian proprietors—Water-course*.—The Irrigation Department has no power under Bombay Act VII of 1879 to dam a stream or a water-course on the ground that it derives its supply of water by leakage from an irrigation canal. S. 48 of the Act only gives the department the special right of charging a water-rate on land which derives benefit

**BOMBAY IRRIGATION ACT (VII OF 1879)—concluded.**

from the leakage. Water which has leaked from a canal into the land of another person does not belong to the Irrigation Department, so as to give the latter the right to follow it up and claim it as their own. If the leakage flow was such that it itself had become in the eye of the law a canal or water-course, then the rights of the persons through whose lands it flowed would be governed by the law applicable to canals or water-courses. *BALVANTRAO v. SPHOTT*

[I. L. R., 23 Bom., 761]

**BOMBAY LAND REVENUE ACT (V OF 1879).**

See BOMBAY LOCAL FUNDS ACT, 1869.

[I. L. R., 17 Bom., 422]

ss. 3 and 203—*Forest Officer, Revenue Officer*.—A Forest Officer is not a Revenue Officer within the definition in s. 2 of the Land Revenue Code (Bombay Act V of 1879), and does not become one merely by being placed under a Revenue Officer for purposes of control. *NARAYAN BALLAL v. SECRETARY OF STATE FOR INDIA*

[I. L. R., 20 Bom., 803]

s. 15.

See MAMLATDARS' COURTS ACT, 1876, s. 3.

[I. L. R., 21 Bom., 585]

s. 37.

See s. 135 I. L. R., 15 Bom., 424

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURTS.

[I. L. R., 17 Bom., 293]

ss. 38 and 39.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[I. L. R., 21 Bom., 684]

s. 56.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[I. L. R., 16 Bom., 134]

I. L. R., 21 Bom., 396

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 21 Bom., 381]

1. — and ss. 57, 81, 214 (e), and (i)—*Failure to pay Government assessment—Forfeiture—Payment of the arrears by tenant actually in possession—Forfeiture not followed by sale of occupancy—Lease not destroyed by the forfeiture—Tenant's liability for rent subsequent to the forfeiture*.—A registered occupant of land having failed to pay the arrears of Government revenue, his occupancy was forfeited under s. 56 of the Land Revenue Code (Bombay Act V of 1879), but the forfeiture was not followed by sale of the occupancy, the Collector having allowed the registered occupant's tenant under a lease to be registered as occupant on his paying up all arrears of Government revenue due on the land. Afterwards a question having arisen as to the

**BOMBAY LAND REVENUE ACT (V OF 1879)—continued.**

to his landlord, **GANPARSHIBAI v. TIMMAYA SHIVAPPA HALLPAIK** I. L. R., 24 Bom., 34

2. ——— and ss. 122, 153, 155, and

also those of s. 155, applicable to sales for the recovery of charges assessed under s. 122 in connection with boundary marks. Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due, or by sale of the defaulter's

**NARU PAI** I. L. R., 15 Bom., 67

s. 57.

**See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION** I. L. R., 18 Bom., 134

**See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.**

(I. L. R., 21 Bom., 381)

*clusion—Bombay Act VII of 1863—Sanad under the Act.*—The plaintiffs, who were the inamdars of certain land, sued for a declaration of their ownership in and of their right to cultivate (a) two plots of land which (they alleged) formed part of their inam, and (b) the bed of a stream which flowed through their land. It was contended for the defendants as to these two plots of land that the plaintiffs had no right to cultivate them, as they had been made a part of a village site, and on that understanding they had not been numbered at the survey in 1863, and had been exempted from assessment for twenty years. As to the bed of the stream, it was contended that the stream was a public stream, and that the bed of the stream as it dried up belonged to Government, and not to the plaintiffs. It was held by the lower Appellate Court that s. 61 of the Bombay Land Revenue Code applied; that Government were competent to set apart a portion of the lands comprised in the sanad of the plaintiffs for a village site, and that, as these lands had not been numbered at

**BOMBAY LAND REVENUE ACT (V OF 1879)—continued.**

belonging to an inamdar and to confer it on the

deprive the plaintiffs of them, or make them the property of Government. (3) That the bed of the stream was the property of the plaintiffs, who owned the land upon its banks. **VINAYAKRAO KESHAYRAO v. SECRETARY OF STATE FOR INDIA**

(I. L. R., 23 Bom., 39)

ss. 65 and 66—*Fine leviable for appropriation of land to a non-agricultural purpose—Collector's omission to acknowledge receipt of application—Defence to the imposition of fine.*—**PER PARSONS AND CANDY, JJ.**—Under ss. 65 and 66 of the Bombay Land Revenue Code, where a person appropriates land to a non-agricultural pur-

Collector's acknowledgment of his application for permission to appropriate it. But the three months' time does not begin to run until such acknowledgment has been received, so that, where a person is charged with thus appropriating his land, it is no defence to plead that the Collector, though he received the application, neglected to furnish the

(I. L. R., 21 Bom., 240)

s. 71.

**See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.**

(I. L. R., 19 Bom., 43)

and ss. 79, 85, 86, and 87—*Deshmukh's ratan—Alienated land—Registered occupant—Superior holder—Payment of rent to co-landholder.*—In 1822, P, a deshmukhi ratanar, died, leaving five sons—four by one wife, of whom K was the eldest, and one son B by another wife. K and B each claimed to be the eldest son of P. On the

# BOMBAY LAND REVENUE ACT (V OF 1879)—continued.

16th June 1893, the Collector of Satara, in proceedings under s. 71 of the Land Revenue Code (Bombay Act V of 1879), ordered *K*'s name to be registered in the revenue books in place of *V*'s. Prior to this, however, the plaintiff and other tenants paid *B* rents for 1892—94. *K* then applied for and obtained from the Collector an order, under s. 86 of the Code, rendering him assistance in recovering these rents. The plaintiff, in August 1894, brought this suit to restrain *K* from recovering the rents and to avoid the order for assistance. The Subordinate Judge granted the injunction, but the District Judge reversed that decision and dismissed the suit on the ground that *K* was the registered occupant of the land, and that the order for assistance was valid, and that payment of rent to *B* did not discharge the tenants. On appeal to the High Court,—*Held*, reversing the decree of the District Judge and restoring that of the Subordinate Judge, that, the Land Revenue Code did not apply, and *K* was not a registered occupant under the Code. The lands passed on *V*'s death to his five undivided sons, unless a custom of primogeniture existed in the family, and payment by the plaintiff to *B*, a landlord, was a valid discharge. *SAMBHU v. KAMAL-RAO VITHALRAO* . I. L. R., 22 Bom., 794

s. 74.

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

[I. L. R., 13 Bom., 294  
I. L. R., 22 Bom., 348]

s. 81.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[I. L. R., 20 Bom., 747]

s. 83.

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 14 Bom., 392  
[I. L. R., 16 Bom., 646  
I. L. R., 18 Bom., 221, 443]

s. 84.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

[I. L. R., 15 Bom., 407  
I. L. R., 19 Bom., 150  
I. L. R., 21 Bom., 311]

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[I. L. R., 20 Bom., 354]

ss. 85, 86—*Inamdar, Assignee of—Suit to recover enhanced rent—Assistance of the Collector.*—Ss. 86 and 87 of the Land Revenue Code (Bombay Act V of 1879) do not make it compulsory on the inamdar, or his assignee, to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the inamdar, or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary patel, or village accountant, as required by s. 85 of the Code, and they had

# BOMBAY LAND REVENUE ACT (V OF 1879)—continued.

refused, he would have become at once entitled to his ordinary civil remedy. *GOVINDRAY KRISHNA RAIBAGKAR v. BALU BIN MONAPA* [I. L. R., 16 Bom., 586]

s. 86.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT

[I. L. R., 17 Bom., 677]

s. 87.

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) . I. L. R., 9 Bom., 462

*Mamlatdar's order.*—A mamlatdar's order under s. 87 of Bombay Act V of 1879 does not preclude the parties from having recourse to the Civil Courts, if dissatisfied with it. *GANESH HATHI v. MEHTA VYANKATRAM HARJIVAN* [I. L. R., 8 Bom., 183]

s. 108.

See KHOTI SETTLEMENT ACT, s. 16.

[I. L. R., 20 Bom., 729]

See KHOTI SETTLEMENT ACT, s. 17.

[I. L. R., 20 Bom., 475  
I. L. R., 21 Bom., 467, 480]

s. 113.

See COLLECTOR . I. L. R., 12 Bom., 371

ss. 119 and 121—*Fixing boundaries—Boundaries, Effect of decision of revenue authorities as to—Meaning of the term "determinative."*—In 1877 a dispute arose between plaintiffs and defendant as to the boundaries of certain land, being survey Nos. 88 and 87, of which the plaintiffs and the defendant were respectively occupants under Government. In 1879 the boundaries were fixed by a revenue officer under the orders of the Collector, and the piece of land in dispute was found to belong to the plaintiffs as occupants of survey No. 88. Subsequently, the defendant having encroached upon it and dispossessed the plaintiffs, the present suit was filed. The Court of first instance awarded the plaintiffs' claim, holding that the decision by the revenue officer was conclusive as to the boundary. The defendant appealed, and the lower Appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court,—*Held*, restoring the decree of the Court of first instance, that, under the provisions of s. 121 of Act V of 1879, the decision of the Collector as to the boundaries was conclusive, and that the plaintiffs were entitled to possession. *BAI UJAM v. VALJI RASULBHAI* [I. L. R., 10 Bom., 456]

s. 125.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT V OF 1879.

[I. L. R., 13 Bom., 291]

s. 135 and s. 37—*Limitation Act (XV of 1877), sch. II, art. 14—Grant of land by Collector—Suit to recover possession as against*

# BOMBAY LAND REVENUE ACT (V OF 1879)—continued.

THE COLLECTOR'S ORDER. — *See* *THE BOMBAY LAND REVENUE ACT (V OF 1879)*, s. 135 of the Land Revenue Code, was time-barred. *NAGU v. SALU*. L. L. R., 15 Bom., 424

## s. 150.

*See* *SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.*  
(L. L. R., 21 Bom., 381)

## s. 153.

*See* *RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.*  
(L. L. R., 17 Bom., 677  
L. L. R., 20 Bom., 747)

*See* *SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.*  
(L. L. R., 21 Bom., 381)

1. — and s. 57—*Landlord and tenant—Mugeni lease—Forfeiture not followed by sale.*—A declaration of forfeiture, under s. 153 of the Land Revenue Code, of the interests of a lessee holding under a permanent lease, not followed by a sale, but by an order transferring possession of the holding to the lessor under s. 57, has not the effect of defeating prior incumbrances created by the lessee in favour of third persons. *NARAYAN SHESHGIRI PAI v. PARSHOTAM SHESHGIRI*  
(L. L. R., 22 Bom., 309)

2. — and ss. 159 and 162—*Attachment for arrears of land revenue—Forfeiture—Applicability of the Land Revenue Code to talukdars villages—Bombay District Police Act (Bombay Act VII of 1867), s. 16—Cost of punitive police post.*—The Bombay Land Revenue Code (Bombay Act V of 1879) applies to talukdari villages in the Ahmedabad district. Such villages fall within the description of "alienated holdings" as defined by the Code. When a talukdari village is attached under s. 159 of the Code for arrears of

July 1879, the plaintiff was a defaulter in respect of the assessment payable to Government for that year. In November 1879, a punitive police post was established in the village under s. 16 of Bombay Act VII of 1867 on account of the turbulent conduct of the inhabitants. Between April and January 1880 the Collector sold certain property of the talukdari for arrears of revenue, and realized by the sale a sum of Rs. 603, a sum more than sufficient to cover the arrears due for 1878-79 as well as the assessment payable for 1879, but the Collector, after deducting

# BOMBAY LAND REVENUE ACT (V OF 1879)—continued.

the arrears due for 1878-79, applied the rest of the sale-proceeds towards the payment of the cost of the punitive post. The assessment for 1879-80 was attached to the Bombay Land Revenue Code, 1881 by an order declaring the village to be forfeited under

which the punitive post was established. *SAMALDAS BECHAR DESAI v. SECRETARY OF STATE FOR INDIA*  
(L. L. R., 16 Bom., 455)

## s. 162.

*See* *KHOI TENURE.*

(L. L. R., 8 Bom., 525)

s. 182—*Civil Procedure Code (Act XIV of 1882), s. 244—Mortgage with possession—Default by mortgagee in payment of assessment—Sale for arrears of revenue—Certified purchasers—Purchase for mortgagee—Purchasers or mortgagees trustees for mortgagor—Suit by mortgagor for redemption.*—In 1872 the plaintiffs' father mortgaged three plots of land (Nos. 303, 304, and 305) to the first defendant with possession. In 1880 and 1881, the first defendant having made default in paying the assessment, plots Nos. 303 and 305 were sold by the revenue authority

the said three plots of land from the mortgage of 1872. Defendant No. 1 pleaded that he had inherited plot No. 304 from his brother, who had become the owner of plot No. 304 by his purchase at the execution sale in 1881. He disclaimed all interest in plots Nos. 303 and 305. Defendants Nos. 2 and 3 answered that they had become absolute owners by the purchase at the revenue sales. As to these latter, it was alleged that defendants Nos. 2 and 3 were in possession of the said two plots for the first defendant. Defendants Nos. 2 and 3 contended that by

# **BOMBAY LAND REVENUE ACT (V OF 1879)—continued.**

s. 182 of the Land Revenue Code the plaintiffs were precluded from raising this point. *Held* that, though s. 182 forbade the Court to entertain a suit against defendants Nos. 2 and 3 on the ground that they had bought the land for defendant No. 1, it did not debar it from entertaining a suit against them on the ground that subsequently to the sale they were holding on behalf of defendant No. 1 or against defendant No. 1 on the ground that he was himself really in possession through defendants Nos. 2 and 3 as his agents or tenants. The same principle of equity which would make defendant No. 1 a trustee for the mortgagors if he had bought in his own name would make defendants Nos. 2 and 3 trustees for them if subsequently to the sale they held the land on behalf of defendant No. 1, and would also make defendant No. 1 himself a trustee if subsequently to the sale the property came into his possession as beneficially entitled thereto owing to an agreement between him and the certified purchasers. *GENU v. SAKHARAM*

[I. L. R., 22 Bom., 271]

— s. 198.

*See* JURISDICTION OF CIVIL COURT—  
REGISTRATION OF TENURES.

[I. L. R., 19 Bom., 48]

— s. 211.

*See* KHOTI SETTLEMENT ACT, s. 17.

[I. L. R., 21 Bom., 244]

— s. 214.

*See* MAGISTRATE, JURISDICTION OF—  
SPECIAL ACTS—BOMBAY ACT V OF 1879.

[I. L. R., 8 Bom., 591]

*See* RULES MADE UNDER ACTS.

[I. L. R., 13 Bom., 291]

1. — s. 216—*Suit by an inamdar against a khot to recover balance of land revenue—Survey made by the British Government—Change in rate of assessment—Jurisdiction of Civil Court—Village partially alienated.*—In a suit by an inamdar of a village against a khot to recover rent in kind (according to the market rate at the time of payment), the defendant (khot) contended that he was only liable to pay cash assessment as fixed by the survey made by the British Government, which was at a lower rate than he had previously paid, and that the Civil Court had no jurisdiction to entertain the suit under the Land Revenue Code, 1879, s. 216, sub-cl. (b). *Held* that the payment which the khot had been making to the inamdar before the time of the British survey was in the nature of assessment or rating by Government; but *held*, also, that the plaintiffs were entitled to the old assessment as claimed by them. It was plain that in cases falling within sub-cl. (a) and (e) of s. 216 of the Land Revenue Code, the inamdar's interest in the assessment would not be affected by the application of Chs. VIII to X of that Act. He would still get the old assessment in the alienated lands in the village in the former case and the same amount of assessment in the latter, and the same must have been the intention in cases contemplated by sub-cl. (b).

# **BOMBAY LAND REVENUE ACT (V OF 1879)—concluded.**

The "holder of the village" in the concluding paragraph of s. 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village." *GANGADHAR HARI KARKARE v. MORBHAT PUROHIT* . I. L. R., 18 Bom., 525

2. — *Holder of an alienated village—Application for introduction of survey by a co-sharer of an inam village.*—Under s. 216 of the Land Revenue Code, it is competent to one out of several co-sharers of an alienated village to apply on behalf of, and with the consent of, all the other co-sharers for the introduction of survey into the village; and it is not open to the cultivators of lands in the village to question the action of Government in introducing the survey on such application. The section does not require that the application should be made or signed by all the sharers. *GOPKADAI v. LUKSHMAN* . I. L. R., 24 Bom., 589.

# **BOMBAY LEGISLATIVE COUNCIL.**

*See* GOVERNOR OF BOMBAY IN COUNCIL.

[I. L. R., 8 Bom., 264  
8 Bom., A. C., 195]

# **BOMBAY LOCAL FUNDS ACT (III OF 1869).**

1. — s. 8—*Local cess—Landlord and tenant—Fraudulent collection of cess.*—The plaintiffs sued to recover back from the defendant the amount levied by him as local cess on certain wasta lands belonging to the plaintiffs, the defendant claiming to be the superior holder of the village in which the lands were situated. The amount was levied by the defendant through the assistance of the mamlatdar under Bombay Act III of 1869, s. 8. The defendant contended that, in consequence of a demand from Government, he had paid local cess on the whole of his talukh, including the village in which the plaintiffs' lands were situated, and was therefore entitled, under ss. 69 and 70 of the Contract Act (IX of 1872), to recover from them the amount which he had paid to Government as a portion of the cess which rateably fell upon their lands. It was found that the defendant was not the proprietor of the lands held by the plaintiffs, and that the relation of landlord and tenant did not exist between them; also that defendant paid local cess for the plaintiffs' lands fraudulently and with the intention of thereby making evidence of title to their lands, knowing that he had no lawful or just claim to them. *Held* that the defendant was not the superior holder of the lands within s. 8 of Bombay Act III of 1869, and was, therefore, not entitled to the assistance of the revenue officers of Government to recover the cess provided by that section for superior holders as against tenants and occupants, although he might have paid the local cess due on the land in the plaintiffs' possession; and that, consequently, the aid of the mamlatdar was illegally and improperly given to the defendant for the recovery of the amount from the plaintiffs. *Held*, also that the defendant was not a person

**BOMBAY LOCAL FUNDS ACT (III OF 1869)—concluded.**

**DESAI HIMATSINGJI v. BHUVABHAI KAYABHAI**  
[I. L. R., 4 Bom., 643]

3. ———— *Local-fund cess—Tenant's Act sub-section.—Under who is in*  
local-fund cess from his lessee. *Ranga v. Suba Hedge, I. L. R., 4 Bom., 473*, followed. *RAM TUKOJI v. GOPAL DHONDI, I. L. R., 17 Bom., 54*

3. ———— *Local-fund cess—Inamdar—Superior holder—Liability of inamdar to pay the cess—An inamdar is a "superior holder" within the definitions of Regulation XVII of 1827 and Bombay Acts I of 1865 and V of 1879. He is, therefore, the person primarily liable to pay the local-fund cess under s. 8 of Bombay Act III of 1869. There is no provision of law entitling an inamdar to charge for his expenses in collecting the cess. SECRETARY OF STATE FOR INDIA v. BALVANT RAMCHANDRA NATU*  
[I. L. R., 17 Bom., 423]

**BOMBAY MINORS' (ACT XX OF 1864).**

*See MINOR—BOMBAY MINORS' ACT, XX OF 1864.*

**BOMBAY MUNICIPAL ACT (II OF 1865).**

*See SERVICE TENTRE.*  
[I. L. R., 9 Bom., 198]

upon which their railway is constructed free of rent

are liable  
OFFICERS OF  
v. GREAT  
[9 Bom., 217]

ss. 4 and 11.

*See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.* 5 Bom., O. C., 145

**BOMBAY MUNICIPAL ACT (II OF 1865)—concluded.**

ss. 131 and 180.

*See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS.*

[8 Bom., O. C., 85]

s. 240—*Ejectment, Suits for—Suit for mesne profits of land for which plaintiff sues in ejectment—Bombay Act II of 1865, s. 240, does not apply to suits in the nature of an action of ejectment. Quare—Whether a claim to recover the mesne profits of land for which the plaintiff sues in ejectment comes within the provisions of Bombay Act II of 1865,*

**BOMBAY MUNICIPAL ACTS (III OF 1872 AND IV OF 1878).**

contended that the amount of compensation to be paid to the trustees was to be measured by the loss of rent which they would have received for certain rooms which they had proposed to build on the land in question. *Held* that the words of s. 163 of the Municipal Acts III of 1872 and IV of 1878 were intended to ensure compensation to the owner for every sort of damage, and not to restrict it to compensation for such damage as he might by his own arrangement reduce it to. Compensation becomes

[I. L. R., 14 Bom., 203]

1850, the Municipal Commissioner of Bombay gave notice to the plaintiff requiring him within thirty days to remove the said caves as being "a projection, encroachment, or obstruction" within the meaning of s. 195 of Acts III of 1872 and IV of 1878. The plaintiff thereupon filed this suit, praying for an

**BOMBAY MUNICIPAL ACTS (III OF 1872 AND IV OF 1878)—concluded.**

injunction against the Municipal Commissioner. The eaves in question projected to the extent of one foot eight inches. The width of the road in front of the buildings was about forty feet, and the length of the eaves varied from seven feet to nine feet two inches above the roadway. At the time this suit was filed there was an open drain or gutter, one foot three inches wide, running along by the side of the plaintiff's buildings and between them and the road. That gutter, however, subsequently to the filing of this suit, but before the hearing, was covered over, and so much additional width was thereby added to the road. *Held* that the eaves constituted an obstruction within the meaning of the above section, and that the Municipal Commissioner was entitled to remove them. Under the above section, the question to be decided is not whether there is a real practical inconvenience to the public traffic in the street. Those are not the words used in the section, and if that was the intention of the Legislature, it would have been expressed. Where an Act gives power to a municipality or corporation for the public benefit, a more liberal construction should be given to it than where powers are to be exercised merely for private gain or other advantage. *OLMIYANT v. RAHIMTULA NUB MAHOMED*. . . **I. L. R., 12 Bom., 474**

**s. 220 (amended by IV of 1878)**

**Houses—City of Bombay—Ridge ventilation—Notice.**—The Municipal Commissioner for the City of Bombay issued a notice requiring the owner of a range of buildings to put it in a proper state by providing ridge ventilation within seven days, which the owner did not comply with. *Held* that s. 220 of Bombay Municipal Act III of 1872, as amended by Bombay Act IV of 1878, does not empower the Municipal Commissioner to direct structural alterations, that the notice requiring ridge ventilation to be provided was illegal, and the owner, by refusing to comply with it, committed no offence. *EXPRESS v. SADANAND KRISHNAJI*. . . **I. L. R., 8 Bom., 151**

**Sch. B—Spirits—Toddy juice.**

Toddy juice, whether in a fermented or unfermented state, is not "spirits" within the meaning of Bombay Act III of 1872, and is therefore not liable, on importation into Bombay, to a town duty of annas 4 per gallon imposed on spirits by Sch. B of that Act. *HARMAJI KARSEJI v. PEDDER*

**[12 Bom., 199]****BOMBAY MUNICIPAL ACT (III OF 1888).****s. 3.**

*See* BOMBAY DISTRICT MUNICIPAL ACT, s. 17. . . **I. L. R., 20 Bom., 146**

**ss. 143, 144—University buildings—**

*Building occupied for charitable purposes—Charitable purposes—Stat. 43 Eliz., c. 4—Municipal taxation, Exemption from.*—The following buildings occupied by the University of Bombay, viz., the Sir Cowasji Jehangir Hall, the Library and the Rajabai Tower, are not Government property,

**BOMBAY MUNICIPAL ACT (III OF 1888)—continued.**

and are not included in the property for which Government pays a lump sum under s. 144 of the Bombay Municipal Act (III of 1888). The above buildings are exempt from taxation, being "buildings exclusively occupied for charitable purposes," within the meaning of cl. (a) of s. 143 of the Bombay Municipal Act (III of 1888). The words "charitable purposes" have acquired a technical meaning in the Presidency of Bombay, and in that sense they include all purposes within the meaning of Stat. 43 Eliz., c. 4. *UNIVERSITY OF BOMBAY v. MUNICIPAL COMMISSIONERS OF BOMBAY*

**[I. L. R., 16 Bom., 217]**

**s. 158—Tax—Drawback—General conditions prescribed by the Standing Committee limiting right to drawback.**—Under s. 158 of the City of Bombay Municipal Act (Bombay Act III of 1888), the following general conditions were prescribed by the Standing Committee with reference to claims for drawback of the general property tax leviable in Bombay:—“(1) Except with the special sanction of the Commissioner, no claim for drawback shall be entertained unless submitted to the Commissioner not less than thirty days before the commencement of the half-year to which such claim relates. (2) Drawback of the one-fifth part of the general tax shall be sanctioned by the Commissioner in cases falling within either of the following classes and in no others:—(a) Chawls or buildings let out for hire in single rooms either as lodging or godowns for the storage of goods. (b) Properties which, in the opinion of the Commissioner, are usually or frequently vacant either wholly or partially. (3) No sanction for drawback shall extend or apply to any floor on which trade or manufacture is carried on, or any goods are sold.” The Commissioner having refused to sanction a drawback of the tax leviable on certain properties of the plaintiff on the ground that they did not fall within the terms of the above conditions, the plaintiff filed this suit. It was contended on his behalf that the second and third of the above conditions were bad, and that the Standing Committee could not by so-called general conditions limit or curtail the right given to tax-payers by s. 158. *Held* that the conditions prescribed by the Standing Committee were not *ultra vires*, and that the Commissioner was justified in refusing the drawback. *GOVARDHANDAS GOCULIDAS TEJPAL v. MUNICIPAL COMMISSIONERS OF BOMBAY*

**[I. L. R., 17 Bom., 394]**

**ss. 222, 265—Water-works—Municipality of Bombay—Right to enter on land of Railway Company to lay pipes, etc.—Railway Act IX of 1890, s. 12—Accommodation works.**—Under the Bombay Municipal Act (Bombay Act III of 1888), the Corporation of Bombay has the right, for the purpose of supplying the city with water, to enter upon land belonging to other owners, to make connections between the mains, and to lay the pipes forming the connections through or under such lands without the owners' permission, though not without giving them reasonable notice in writing. *Held*, also, that s. 12 of the Railways Act (IX of

## BOMBAY MUNICIPAL ACT (III OF 1888)—continued.

1890) does not exclude the above right of the Corporation of Bombay to enter on land belonging to the Great Indian Peninsula Railway Company for the said purposes. GREAT INDIAN PENINSULA RAILWAY v. MUNICIPAL CORPORATION OF BOMBAY

[L. L. R., 23 Bom., 358]

[L. L. R., 20 Bom., 617]

HABIBHOY . . . L. L. R., 23 Bom., 528

2. ———— Notice to construct urinals in a particular place in the owner's

compartments in the open space inside the entrance gateway to the Cloth Market from Champawady, and a water-closet in the corner of the entrance from 1st Ganeshwady near the fire-engine station. Held, reversing the conviction and sentence, that the notice was *ultra vires*, inasmuch as it required the accused to construct urinals in a particular place in his premises. IN RE KHIMJI JAIRAM

[L. L. R., 24 Bom., 75]

ss. 298, 299, and 301.

See APPEAL—BOMBAY ACTS—BOMBAY MUNICIPAL ACT, 1888.

[L. L. R., 16 Bom., 184]

## BOMBAY MUNICIPAL ACT (III OF 1888)—continued.

292, followed. MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v. ABDUL HUK

[L. L. R., 16 Bom., 184]

2. ———— and ss. 504 and 527 —Land taken by the municipality for street improvement—Compensation for land taken—Dispute as to amount of compensation—Notice of suit—Limitation.—In 1891 the municipal authorities of Bombay gave notice to the plaintiff under s. 292 of Bombay Act III of 1888 that they required 23.30 square yards of the plaintiff's land for street improvement. On the 14th December 1891, the plaintiff gave possession of the land to the municipality, and on 27th January 1893 claimed Rs60 per square yard as compensation. By letter dated 23rd February 1892, the Municipal Commissioner (without prejudice) offered Rs10 per square yard as compensation, and stated that, on the plaintiff producing the title-deeds and papers to establish his title, the necessary documents in connection with the payment would be prepared. Nothing further took place in the matter until the 14th February 1894, on which

refused to pay the compensation, contending that the plaintiff's claim was time-barred. The plaintiff thereupon brought this suit claiming Rs11.165 (being at the rate of Rs10 per square yard) as compensation for the land taken by the defendant or in the alternative for that sum as damages for the

suit was not barred by limitation. *Per FARRAN, J.*—A suit against the municipality of Bombay for compensation for land acquired by the municipality under s. 292 of Bombay Act III of 1888 is not an action of tort or quasi-tort, but a simple action for the price of land which the terms of s. 301 of the Act impose upon the Commissioner to pay. The obligation to pay that price is of the same nature, (1) whether the owner assents to the valuation of the land placed upon it by the Commissioner; (2) whether the value is determined by the Chief Judge of the Small Cause Court; or (3) whether it is left undetermined. S. 527 does not apply to any of these three cases. In all of them the obligation to pay is imposed by s. 301, and does not arise from the manner in which the amount of the price to be paid is arrived at. S. 504 prescribes the only mode in which, in case of dispute, the value

cent could not be allowed. *Municipal Commissioner v. Patel Hays, Mohamed, I. L. R., 16 Bom.,*

**BOMBAY MUNICIPAL ACT (III OF 1888)—continued.**

of the land can be determined. If the owner of land disputes the Commissioner's valuation, he must apply to the Chief Judge of the Small Cause Court within a year. If he does not do so, the result is that he loses the power of effectually disputing the Commissioner's valuation, but does not lose his right to the amount of the valuation. The owner of land has a remedy independent of the provision of s. 504. That section only deals with cases where there is a dispute as to the value of the land, and leaves untouched those cases where there is no such dispute, but where the Commissioner for some reason declines to pay. In such cases the owner is left to his ordinary remedy, no special mode of procedure being prescribed. Cases in which there has been a dispute, but in which the owner abandons his claim to dispute the valuation of the Commissioner, fall within the latter category. **MANEKAL MOTILAL v. MUNICIPAL COMMISSIONER OF BOMBAY**

[I. L. R., 19 Bom., 407]

— s. 353—*Notice to a house-owner to reduce the height of his building given more than three months after its completion—"Completion," Meaning of.*—One R was served with a notice, under s. 353 of the City of Bombay Municipal Act (Bombay Act III of 1888), requiring him to reduce the height of a building which he had erected. The building was completed in June 1893, and the notice was issued on 13th January 1894. R was prosecuted for not complying with this notice. He contended that the notice was time-barred, as it had not been given within three months after the completion of the building. In answer to this plea, it was urged, on behalf of the municipality, that the building could not be said to have been completed, unless and until such accommodations as privies and cesspools had been executed in accordance with the requirements of the Health Department, and that, therefore, the notice was within time. *Held* that the notice was time-barred. The word "completion" in s. 353 of Bombay Act III of 1888 must be taken in its ordinary sense, and the Court cannot read into the section "in accordance with sanitary regulations" or "sanitary officers' opinions." **IN RE RAGHUNATH MAKUND** . I. L. R., 19 Bom., 372

— s. 381—*Low ground—Low lying ground—Notice by Municipal Commissioner requiring owner of low-lying ground to fill it with sweet earth up to a certain level.*—Under s. 381 of the Bombay Municipal Act III of 1888, the Municipal Commissioner for the City of Bombay issued a notice to the appellant as owner of certain low-lying ground. The notice stated that in the opinion of the Commissioner the ground accumulated water in the monsoon and caused nuisance to the tenants of two chawls situated on the premises. The owner was, therefore, required by the notice "to fill in the low-lying ground with sweet earth to the level of the road and slope it towards the new drain on the road side." As the owner refused to comply with the notice, he was convicted and sentenced to pay a fine of Rs15 by the Presidency

**BOMBAY MUNICIPAL ACT (III OF 1888)—continued.**

Magistrate under s. 471 of the Municipal Act (Bombay Act III of 1888). *Held*, reversing the conviction and sentence, that the notice was illegal. The words used in s. 381 are "low ground," which is not the same as low-lying ground. And though the section gives power to the Commissioner to require the owner of low ground to cleanse and fill up the same, it does not permit him to issue an order that an indefinite extent of low-lying ground shall be filled up, much less that it shall be filled up to some particular level, or filled up with sweet earth, or that it shall be sloped in a particular direction. **MUNICIPAL COMMISSIONER OF BOMBAY v. HARI DWARAKJI** . I. L. R., 24 Bom., 125

— s. 461 (d)—*Bye-law restricting the height of buildings on a site previously built upon—Validity of such bye-law.*—The Municipality of Bombay has power, under s. 461, cl. (d), of Bombay Act III of 1888, to make a bye-law restricting the height of a new building erected on a site which had been previously built upon. **MUNICIPALITY OF BOMBAY v. SUNDEBJI** . I. L. R., 22 Bom., 980

— s. 472—*Continuing offences—Punishment for such offences after a fresh conviction—Separate prosecution for continuing the offence.*—A Presidency Magistrate, having convicted certain accused persons and fined them under s. 471 of the City of Bombay Municipal Act (Bombay Act III of 1888), proceeded in the same order, purporting to act under the provisions of s. 472, to fine them so much per day in case they continued the offence. *Held* that the latter order was illegal under s. 472 of the Act. The section requires a separate prosecution for a distinct offence, a prosecution in which a charge must be laid for a specific contravention for a specific number of days, and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to his discretion to determine. **IN RE LIMBAJI TUSIRAM** . I. L. R., 22 Bom., 766

— s. 527—*Suit for damages against Municipal Commissioner—Notice of suit—What is sufficient notice.*—The plaintiffs were owners of a house consisting of a ground floor and upper story and measuring 77 feet in length. On the south side of the house was a gully, 3 feet 6 inches wide, separating it from another upper-storied house. The plaintiffs in this suit complained that in January 1891 the defendant by his servants dug a trench, 8 feet deep, along the whole length of the gully for the purpose of laying a drain pipe, and that the work was done so negligently that the plaintiffs' house was injured and became in such a dangerous condition that it had to be pulled down. The plaintiffs claimed Rs3,996 as damages. The defendant denied the negligence, and alleged that the work was not done by his servants or agents, but by a contractor. For the defendant it was contended that the notice of action given by the plaintiffs under s. 527 of the Bombay Municipal Act (III of 1888) was insufficient. The notice stated "that one S L, a contractor under you, and as such being your agent and servant, excavated a trench, etc." It was argued that this was not a good notice, as it only alleged a

**BOMBAY MUNICIPAL ACT (III OF 1888)—concluded.**

cause of action arising out of the acts of the defendant's servants and agents, and not out of the acts of a contractor. *Held* that the notice was sufficient. The section only required the notice to state with reasonable particularity the cause of action, and this was done. The individual by whom the damage was done was specified, and the acts which caused the damage were clearly set forth. *DROTHA KRISHNAJI v. MUNICIPAL COMMISSIONERS OF BOMBAY* . . . I. L. R., 17 Bom., 307

**BOMBAY PORT TRUST ACT (I OF 1879).**

*See* INJUNCTION—SPECIAL—CASES—PUBLIC OFFICERS WITH STATUTORY POWERS  
(I. L. R., 1 Bom., 222)

*See* LIBEL . . . I. L. R., 1 Bom., 477

**BOMBAY PORT TRUST ACT (VI OF 1879).**

—ss. 43 and 62.

*See* SALE OF GOODS.  
(I. L. R., 17 Bom., 23)

**BOMBAY REGULATION—1803—I, s. 12.**

*See* LIMITATION—BOXER'S REGULATION I OF 1800.  
(5 W. R., P. C., 31; 1 Moore's L. A., 154  
1 Moore's L. A., 414)

—1808—I, s. 4.

*See* ENHANCEMENT OF RENT—RIGHT TO ENHANCE . . . 11 Bom., 162

—1818—IV, s. 52.

*See* SUPERIOR JUDGE, JURISDICTION OF.  
(I. L. R., 21 Bom., 773)

—1823—VI.

*See* DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.  
(I. Agra, 69)

—1827—II.

*See* HINDU LAW—INHERITANCE—LAW GOVERNING PARTICULAR CASE.  
(I. L. R., 11 Bom., 223)

*See* JURISDICTION OF CIVIL COURT—CASES . . . I. L. R., 11 Bom., 234  
(I. L. R., 13 Bom., 629)  
I. L. R., 13 Bom., 577  
I. L. R., 20 Bom., 457

*See* PENSIONS ACT, s. 4.  
(I. L. R., 17 Bom., 226)

—s. 1.  
*See* JURISDICTION OF CIVIL COURT—CASES . . . I. L. R., 13 Bom., 569

*See* LIMITATION ACT, s. 12.  
(I. L. R., 13 Bom., 569)

**BOMBAY REGULATION—1827—II—concluded.**

—s. 5.

*See* SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1832, s. 622.  
(I. L. R., 10 Bom., 610)

—s. 5, cl. (2).

*See* HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL . . . 9 Bom., 249

—s. 18, cl. (2).

*See* APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.  
(2 Bom., 112; 2nd Ed., 103)

—s. 21.

*See* JURISDICTION OF CIVIL COURT—CASTE.  
(I. L. R., 5 Bom., 83  
I. L. R., 8 Bom., 725  
I. L. R., 7 Bom., 323)

*See* RIGHT OF SUE—CASTE QUESTIONS.  
(I. L. R., 2 Bom., 470)

—s. 43.

*See* PUBLIC SERVANT 4 Bom., A. C., 93  
*See* SUPERIOR JUDGE, JURISDICTION OF.  
(I. L. R., 21 Bom., 754, 773)

—s. 47.

*See* PRIZER—APPOINTMENT AND APPEAL—ANCE . . . I. L. R., 8 Bom., 105

—s. 52.

*See* PRIZER—REIMBURSEMENT.  
(9 Bom., 23  
I. L. R., 21 Bom., 42)

—s. 54.

*See* PRIZER—APPOINTMENT AND APPEAL—ANCE . . . I. L. R., 22 Bom., 654  
(I. L. R., 23 Bom., 657)

—IV, s. 23.

*See* CUSTOM . . . 1 Bom., 23

*See* HINDU LAW.  
(2 Bom., 23; 2nd Ed., 23  
2 Bom., 23; 2nd Ed., 23)

*See* PAPER . . . 6 Bom., A. C., 129

—s. 27, cl. (1)—From the time of passage of the Charter in 1827, Regulation 17 of 1827 (Bombay), appears to indicate that the Charter is to be applied to all cases of Hindu law, where there is no evidence of such fact as the provisions of the Charter have been made to the extent provided by the Charter. *MOORE KALLIKATTAH KALLIKATTAH KALLIKATTAH*  
(5 W. R., P. C., 34; 2 Moore's L. A., 414)

—7.

*See* GAZETTE—REGISTRATION OF DOCUMENTS  
(2 Bom., 112; 2nd Ed., 103)



# **BOMBAY REGULATION-1827-XVII**

—concluded.

See LAND REVENUE.

[10 W. R., P. C., 13  
11 Moore's L. A., 295  
12 Bom., Ap., 1, 225  
I. L. R., 1 Bom., 70  
I. L. R., 9 Bom., 483

See MAMLATDAR, JURISDICTION OF.

[I. L. R., 14 Bom., 372

s. 18.

See CHARGE—FORM OF CHARGE—SPECIAL  
CASES—CRIMINAL BREACH OF TRUST.

[8 Bom., Cr., 115

See SESSIONS JUDGE, JURISDICTION OF.

[8 Bom., Cr., 115

s. 31, cl. (3).

See JURISDICTION OF REVENUE COURT—  
BOMBAY REGULATIONS AND ACTS.

[2 Bom., 103; 2nd Ed., 185

## **XVIII.**

See APPELLATE COURT—ERRORS AFFECT-  
ING OR NOT MERITS OF CASE.

[11 Bom., 129

See CASES UNDER STAMP (BOMBAY REGU-  
LATION XVIII OF 1827).

s. 10.

See STAMP ACT, 1879, s. 34.

[I. L. R., 13 Bom., 493

## **XIX, s. 2**

See JURISDICTION OF REVENUE COURT—  
BOMBAY REGULATIONS AND ACTS.

[5 Bom., O. C., 1

## **XXI.**

See BOMBAY REVENUE JURISDICTION ACT  
(X OF 1876) . I. L. R., 9 Bom., 463

See MAGISTRATE, JURISDICTION OF—SPE-  
CIAL ACTS—BOMBAY REGULATION XXI

OF 1827 . . . 3 Bom., Cr., 39, 50

[7 Bom., Cr., 59

8 Bom., Cr., 118

9 Bom., 118, 343

See MAHOMEDAN LAW—KAZI.

[I. L. R., 1 Bom., 633

I. L. R., 3 Bom., 72

See OPIUM . . . 1 Bom., 50

[7 Bom., Cr., 39

See SESSIONS JUDGE, JURISDICTION OF.

[9 Bom., 108

## **XXIX.**

See AGENT OF FOREIGN SOVEREIGN.

[1 Bom., 96

s. 4, 6.

See PENSIONS ACT, s. 4.

[I. L. R., 11 Bom., 223

I. L. R., 17 Bom., 224

# **BOMBAY REGULATION-1827-XXIX**

—concluded.

Appeal under—

See SERVICE TENURE.

[I. L. R., 17 Bom., 431

1829—III.

See COTTON FRAUDS REGULATION.

[1 Bom., 17

1830—XIII.

See AGENT OF FOREIGN SOVEREIGN.

[1 Bom., 96

1831—XVIII.

See DISTRICT JUDGE, JURISDICTION OF.

[5 Bom., A. C., 23

# **BOMBAY REVENUE JURISDICTION ACT (X OF 1876).**

See JURISDICTION OF CIVIL COURT—OFFI-  
CES, RIGHT TO.

[I. L. R., 5 Bom., 578

I. L. R., 12 Bom., 614

See JURISDICTION OF CIVIL COURT—REVE-  
NUE . . . I. L. R., 9 Bom., 463

[I. L. R., 23 Bom., 377

See CASES UNDER JURISDICTION OF CIVIL

COURT—RENT AND REVENUE SUITS—

BOMBAY.

SS. 3, 4, 5—Abkari—Land revenue—

Toddy spirit—Bombay Abkari Act, V of 1878,

ss. 24, 29, 54, and 67—Land Revenue Code, Bombay

Act V of 1879, s. 57—Reg. XXI of 1827, s. 60.—

The plaintiff sued to recover from the defendant, a

farmer of abkari duties on the manufacture of spirits,

under s. 60 of Bombay Regulation XXI of 1827, a

sum of money alleged to have been illegally levied

by him as tax or rent through the mamlatdar in

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was legalized by s. 24 of the Bombay Abkari Act,  
V of 1878. A farmer of duties on the manufacture  
of spirits is not authorized to levy a duty on any  
juice in trees, either under Regulation XXI of 1827,  
or Act X of 1876, or Bombay Act V of 1878. Juice  
in toddy-producing trees is not spirit, which includes  
toddy in a fermented state only. NARAYAN VENKU  
KALGUTKAR v. SAKHARAM NAGU KORNADJUMKAR  
[I. L. R., 9 Bom., 463

s. 4.

See BOMBAY IRRIGATION ACT, s. 49.

[I. L. R., 23 Bom., 377

# BOMBAY REVENUE JURISDICTION ACT (X OF 1876)—continued.

See HEREDITARY OFFICES ACT, s. 17.

[I. L. R., 19 Bom., 581]

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO I. L. R., 12 Bom., 614

See JURISDICTION OF CIVIL COURT—REVENUE COURTS, ORDERS OF.

[I. L. R., 5 Bom., 78]

See PENSIONS ACT, s. 4.

[I. L. R., 11 Bom., 222]

See RIGHT OF SUIT—OFFICE OR EMOLUMENT . . . I. L. R., 12 Bom., 614

See SALE FOR ARREARS OF REVENUE—RIGHT OF SALE . I. L. R., 5 Bom., 78

1. ——— s. 4—"Competent Officer"—Governor in Council—Powers conferred by Act XI of 1852.—Per BIRDWOOD, J.—The words "competent officer," as used in prov. (k) of s. 4 of the Bombay Revenue Jurisdiction Act, includes the Governor in Council, who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852. JANARDANRAY v. SECRETARY OF STATE FOR INDIA . . . I. L. R., 13 Bom., 442

2. ——— Limitation—Limitation Act, 1877, art. 120—Attachment for arrears of land revenue—Suit for declaration that order of forfeiture was illegal—Bombay District Police Act (Bombay Act VII of 1867), s. 4—Punitive police post.—The plaintiff was the talukhdar of the village of K. At the end of the revenue year 1878-79, i.e., on 31st July 1879, the plaintiff was a defaulter in respect of the assessment payable to Government for that year. In November 1879 a punitive police post was established in the village, under s. 16 of Bombay Act VII of 1867, on account of the turbulent conduct of the inhabitants. Between January and April 1880 the Collector sold certain property of the talukhdar for arrears of revenue, and realized by the sale a sum of Rs1,608-12-8. This sum was more than sufficient to cover the arrears due for 1878-79 as well as the assessment payable for 1879-80, but the Collector, after deducting the arrears due for 1878-79, applied the rest of the sale-proceeds towards the payment of the cost of the punitive post. The assessment for 1879-80 having remained unpaid, the village was attached on the 1st of July 1880, under s. 159 of the Bombay Land Revenue Code (Act V of 1879). The attachment was followed on the 6th January 1881 by an order declaring the village to be forfeited under s. 153 of the Code. In 1886 the plaintiff filed the present suit against Government to recover possession of the village, and for a declaration that the order of forfeiture was illegal and *ultra vires*. The defendant pleaded (*inter alia*) that the suit was barred under s. 4, cl. (c), of the Bombay Revenue Jurisdiction Act (X of 1876), that it was also barred by limitation. *Held*, also, that the plaintiff's claim for a declaration that the order of forfeiture was illegal was not barred by s. 4, cl. (c), of Act X of 1876, as the order of forfeiture could not be considered "a proceeding for the

# BOMBAY REVENUE JURISDICTION ACT (X OF 1876)—continued.

realization of land revenue." The proceeding authorized by law for the realization of land revenue, i.e., the attachment of the village, having been taken, no other proceeding could legally be taken, as against the plaintiff, till the expiration of twelve years from the date of the attachment. *Held*, further, that the claim for a declaration that the order of forfeiture was illegal was not time-barred, as it was governed by art. 120 of the Limitation Act (XV of 1877). SAMALDAS BEOHAR DESAI v. SECRETARY OF STATE FOR INDIA . . . I. L. R., 16 Bom., 455

3. ——— Service inam land—Suit for a declaration of title to trees thereon and for damages—Jurisdiction of Civil Court—Hereditary Offices Act (Bombay Act III of 1874)—Hereditary officer—Officiator.—The plaintiff complained that he was prevented from cutting the trees growing on land situate in the village of Tungarli, belonging to certain persons who had sold the trees to him. He claimed damages and an injunction restraining the Collector from interfering with him. The defendant pleaded that the trees did not belong to the plaintiff's vendors, being on service inam land. The lower Court dismissed the plaintiff's claim, holding that the land, on which the trees were growing, was service inam land, and that the plaintiff's vendors had no title to them. On appeal, the High Court, on the evidence, upheld the lower Court's decision that the land was inam service land, but held that it did not necessarily follow that the trees upon it were the property of Government, and not of the vatandars. The latter might be the owners of the trees subject to a condition. The case was, therefore, remanded to the District Court for a finding on an issue as to whether the holders of service inam lands had a title to the trees on the lands, and, if so, whether they had the right to cut down trees without the permission of the Collector. On this finding the District Judge found in the affirmative. The case then came again before the High Court, when a preliminary objection was taken that under s. 4 of Act X of 1876 the Court had no jurisdiction. *Held* that, it having been decided that land in question was service inam land, the Court, under s. 4, cl. (a), of Bombay Act X of 1876, ceased to have jurisdiction over the plaintiff's claim against Government in respect of the trees growing thereon, as such claims related to property appertaining to the office of a village officer. DESOZZA DEVINO v. SECRETARY OF STATE FOR INDIA . . . I. L. R., 18 Bom., 319

1. ——— s. 11—Revenue Officer—Forest Officer—Forest Act (VII of 1878)—Right of Appeal.—S. 11 of Act X of 1876 only applies to an act or omission of a Revenue Officer, and only in cases where the law allows an appeal. A Forest Officer is not a Revenue Officer. Act X of 1876 must be construed strictly. No right of appeal can be given except by express words. NARAYAN BALLAL v. SECRETARY OF STATE FOR INDIA

[I. L. R., 20 Bom., 803]

2. ——— Practice—Procedure.—Under s. 11 of the Bombay Revenue Jurisdiction Act (X of 1876), in a suit to which that Act applies, the Court, before taking evidence on the merits, should

**BOMBAY REVENUE JURISDICTION ACT (X OF 1878)—concluded.**

require the plaintiff to prove first of all that he has,

[I. L. R., 22 Bom., 173]

3. ———— *Suit against Government*

was presented.—*Held* that the plaintiff was not bound to wait for a reply before filing his suit against Government. *ABAJI PARASHRAM v. SECRETARY OF STATE FOR INDIA* I. L. R., 22 Bom., 579

OF STATE FOR INDIA I. L. R., 22 Bom., 583

s. 15.

*See* MANLATDAR, JURISDICTION OF.  
[I. L. R., 23 Bom., 781]

*See* SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS.  
[I. L. R., 7 Bom., 100]

*See* SUBORDINATE JUDGE, JURISDICTION OF . . .  
[I. L. R., 13 Bom., 358]  
[I. L. R., 15 Bom., 441]  
[I. L. R., 21 Bom., 764, 773]

**BOMBAY REVENUE JURISDICTION ACT (XV OF 1880).**

*See* GUARDIAN—APPOINTMENT OF GUARDIAN . . .  
[I. L. R., 5 Bom., 306]

*See* SUBORDINATE JUDGE, JURISDICTION OF.  
[I. L. R., 21 Bom., 764]

**BOMBAY SALT ACT (II OF 1880).**

s. 47 (a)—*Possession of salt water with the intention of manufacturing salt.*—The mere possession of salt water with the intention of manufacturing salt therefrom is not an offence under the Bombay Salt Act (Bombay Act II of 1880). *QUEEN-EMPEROR v. DABHAI KADHAI*

[I. L. R., 23 Bom., 788]

**BOMBAY SUMMARY SETTLEMENT ACT (VII OF 1883).**

*See* LAND REVENUE.  
[13 Bom., Ap., 1, 235, 276]

*See* SERVICE TENURE.  
[I. L. R., 15 Bom., 13]

*See* SETTLEMENT—CONSTRUCTION OF SETTLEMENT. I. L. R., 17 Bom., 407

s. 2.

*See* SERVICE TENURE.  
[8 Bom., A. C., 185]  
[I. L. R., 9 Bom., 108]

ss. 2, 6, 9.

*See* CONTRACT ACT, s. 63, 70.  
[I. L. R., 6 Bom., 244]

*See* CONTRIBUTION, SETT FOR—VOLUNTARY PAYMENTS . . .  
[I. L. R., 6 Bom., 244]

s. 7.

*See* SETTLEMENT—EXPIRATION OF SETTLEMENT . . .  
[I. L. R., 4 Bom., 387]

ss. 27 and 32

*See* DUTIES.  
[2 Bom., 253; 2nd Ed., 239]

s. 32.

*See* JURISDICTION OF CIVIL COURT—REVENUE . . .  
[5 Bom., A. C., 202]

**BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1885).**

*See* BOMBAY LOCAL FUNDS ACT 1863.  
[I. L. R., 17 Bom., 423]

*See* KHOTI SETTLEMENT ACT, s. 17.  
[I. L. R., 21 Bom., 235]

*See* LAND REVENUE I. L. R., 1 Bom., 70

1. ———— *Revenue survey—Entry of tenants in registers—Landlord and tenant.*—The mere entry of the names of the tenants of a khot

[I. L. R., 3 Bom., 134]

# BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865)—continued.

**2. Boundary dispute.**—“Boundary dispute,” as used in the Survey Act (Bombay Act I of 1865), means a contention between two neighbouring land-proprietors as to where a boundary line or boundary marks have or have been fixed by the survey officers. After the functions of the latter officers have ceased in a district, the Collector acting under Act III of 1866 is the proper officer to determine such a dispute, and fix the proper position of the boundary marks. But where a landholder claims to recover from a neighbouring holder land alleged to have been usurped or encroached upon by the latter, the person aggrieved must file his plaint in Court (which in the case of a claim for more possession may be the Court of the Munsiff or the ordinary Civil Court), where the determination of the Collector as to the proper position of the boundary line or marks (although it of itself confers or withholds no right of possession) affords valuable evidence in adjudicating upon the rights of the parties. *PIRAMBAI DHANU C. SAMBHAJI* . . . . . 8 Bom., A. C., 185

**3. Bom. Reg. XVII of 1827.**—*Buildings-sites in towns before Bom. Act IV of 1865.*—*Settle.*—That Bombay Regulation XVII of 1827 and Bombay Act I of 1865 were not applicable to buildings-sites in towns and cities until Bombay Act I of 1865 was expressly made applicable to such sites by Bombay Act IV of 1865. *DADABHAI NARSDAS C. SUB-COLLECTOR OF BROACH*

[7 Bom., A. C., 82

—s. 11.

*See KHOTI TENURE* 7 Bom., A. C., 41

*Entry into private house for survey purposes.*—*Quare.*—Whether s. 11 of Act I of 1865 (Bombay) justifies surveyors in entering private houses for the purpose of measuring them. *REG. C. BHAGTIDAS BHAGYASDAS* 5 Bom., Cr., 51

—s. 14.

*See INSPECTION OF DOCUMENTS.*

[11 Bom., 231

—s. 25.

*See LAND REVENUE.*

[12 Bom., Ap., 1, 225

*Power of Government to raise assessment.*—*Bom. Reg. XVII of 1827, s. 4, cls. 2 and 3.*—The words in s. 25 of Bombay Act I of 1865 confer upon Government no absolute power in all cases to fix any assessment they may please. But that section, as also s. 4, cl. 2, Regulation XVII of 1827, distinctly limit the power of Government to raise the assessment on land held partially exempt by right. Government, however, may set aside such limitations at their discretion by a legislative enactment, as provided by cl. 3 of the above Regulation. But Government can exercise this power only under “specific” rules. In Bombay Act I of 1865, s. 25, no such “specific” rules are to be found as would indicate that the Legislature intended to set aside the provisions of cl. 2, s. 4, Regulation XVII of 1827, and to enable the revenue officers to

# BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865)—continued.

ignore all exemptions except those which they may themselves choose to recognize. Where plaintiff had enjoyed “Saval sut” or a remission of one-fourth for a period of more than thirty years with respect to lands on which assessment became leviable in 1805 A.D., he was held by the High Court to have established a prescriptive right to such a remission. *COLLECTOR OF COLABA C. GANESH MARESHWAR MEHENDAL* . . . . . 10 Bom., 218

—s. 32.

*See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.*

[I. L. R., 21 Bom., 684

*Village cattle—Sanction of Revenue Commissioners to grazing.*—The phrase “village cattle” in s. 32 of Bombay Act I of 1865 does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village. That Act does not vest the right of sanctioning such a diversion of the village grazing ground in the villagers themselves, but in the Revenue Commissioner, whose consent must be obtained. *COLLECTOR OF THANA C. BAL PATEL*

[I. L. R., 3 Bom., 110

—s. 34.

*See LIMITATION ACT, 1877, ART. 14—ADVERSE POSSESSION.*

[I. L. R., 8 Bom., 585

**ss. 35, 48—Power of local Legislature—Government land—Suit to set aside attachment on land—Building, Erection of.**—In a suit for setting aside a summary attachment, under Bombay Act I of 1865, placed by the Collector on land held on a settlement for a period not exceeding thirty years, the value was held to be five times the assessment, and the stamp duty calculated upon it, irrespective of the actual market value or the amount for which the land was attached. The holder of a cocoanut cart in Bandora, in the island of Salsette, in the Thana district, paying an annual assessment of Rs 9 to Government, built a bungalow upon it without the permission of the Collector, who, under the rule purporting to have been issued by the Government of Bombay on the 1st February 1869 in accordance with the provisions of s. 35 of Bombay Act I of 1865, demanded from him a fine equal to sixty times the assessment, and, on the plaintiff’s failure to pay the fine, summarily attached the land under the provisions of s. 48 of that Act. *Held, first*, that the Government of Bombay had no authority to make the rule of 1st February 1869, and that, s. 35 of the Survey Act providing no penalty for building without the Collector’s permission, the attachment was illegal. *Secondly*, that the expressions “Government land” and “Land belonging to Government” in Bombay Act I of 1865 mean land of which Government is the proprietor, and do not apply to land in which the proprietary right in the soil vests in a private individual, whether or not it be subject to the payment of assessment to Government. *Quare.*—Whether the amount of the

# BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865)—concluded.

fine contemplated in s. 35 of Bombay Act I of 1865, if not paid, is a charge leviable by summary attachment under s. 48. COLLECTOR OF THANA v. DADABHAI BOMANJI . . . I. L. R., 1 Bom., 352

— s. 36—Revenue survey—Right of tenant to hold land on paying ordinary assessment—Usage having force of law—S. 36 of Bombay Act I of 1865 applies only to lands to which a revenue survey has been extended under that Act.

or varied by special contract,—e.g., by the terms of a lease inconsistent with it. DULIA KASHAM v. ABRAMJI SALE . . . 8 Bom., A. C., 11

— s. 38.

See KHOJI TENURE . 7 Bom., A. C., 41

— s. 40.

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOODS ON LAND.

[8 Bom., A. C., 188

— s. 42—Survey settlement—Notice of increased assessment.—S. 42 of Bombay

and under a survey settlement, but by implication imposes on the revenue officers the obligation of giving the holder notice when an increased assessment

reason—  
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[8 Bom., A. C., 101

— s. 48.

See LAND REVENUE.

[I. L. R., 1 Bom., 70

— s. 49.

See LAND REVENUE.

[12 Bom., Ap., 1, 225

# BOMBAY SURVEY AND SETTLEMENT ACT AMENDMENT ACT (IV OF 1838).

See BOMBAY DISTRICT MUNICIPAL ACT. 1873, s. 33 . . . I. L. R., 15 Bom., 516

See BOMBAY SURVEY AND SETTLEMENT ACT. 1865 . . . 7 Bom., A. C., 82

1. — Liability to assessment—Possession without payment of land in a town.—Where land in a town in the Presidency of Bombay was found to have been in plaintiff's possession from 1853 to 1871, without any payment by him of land revenue to Government,—Held that it was not liable

# BOMBAY SURVEY AND SETTLEMENT ACT AMENDMENT ACT (IV OF 1838)—concluded.

to pay assessment under Bombay Act IV of 1863. VELJAVALABHAI KUTSHALDAS v. COLLECTOR OF AHMEDABAD . . . 10 Bom., 190

2. — s. 5, cl. (1), para. (2)—Bombay Act I of 1865—Building-sites—Exemption from payment of Government land revenue.—On the 6th April 1836, the Collector of Ahmedabad demised by lease a building-site in that city to the plaintiff's grandfather for a term of ninety-nine years. No rent was reserved by the lease as then presently payable, but it contained a provision that the lessee should pay, in respect of the said site, such land tax as might "fall upon all." The lessee and his heirs held the site from the date of the lease down to 1873 without paying or being required to pay any land tax or rent to Government. In 1873, however, Government levied from the plaintiff Rs. 11-0 as land revenue assessed on the site. Plaintiff thereupon sued

applied to the case. Held, also, that this exemption was not to continue beyond the term for which the site had been demised by Government, but that on its expiration it will be open to Government to

[I. L. R., 4 Bom., 505

— s. 15.

See INSPECTION OF DOCUMENTS.

[11 Bom., 231

# BOMBAY TOLLS ACT (III OF 1875).

— s. 7—Lease to levy tolls—Lessee, Right of, to admit partners—Keeping two sets of accounts—False accounts kept to deceive Govern-

ground that the partnership was illegal, being of opinion that sub-letting and admitting a partner were identical. Held, reversing the decree, that the partnership was not illegal. Where in such a partnership two sets of accounts were kept, one true and the other false, held that such practice, however reprehensible, was not illegal under s. 7 of the Tolls Act (Bombay Act III of 1875), and did not disentitle the plaintiff to show as between himself and his partners what was the actual profit of the concern. GANESH VITHAL v. DEBIPAD DATTOBA NAIK

[I. L. R., 20 Bom., 668

**BOMBAY TOLLS ACT (III OF 1875)**  
—concluded.

s. 10.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.  
[I. L. R., 24 Bom., 623]

**BOMBAY TOLLS ACT AMENDMENT ACT (V OF 1881).**

See BOMBAY TOLLS ACT.

**BOMBAY TRAMWAYS ACT (I OF 1874).**

s. 24.—*Meaning of the words "Regulating the travelling"—Validity of Regulation made under the section for regulating the conduct of the Company's servants.*—The words "regulating the travelling" in s. 24 of the Bombay Tramways Act (Bombay Act I of 1874) mean laying down rules as to how persons shall travel, that is to say, rules for the conduct and behaviour of the persons who travel, and cannot be held to include rules for the conduct of the Company's servants, prescribing what they shall do, or what they shall not do, in the matter, for instance, of issuing tickets. S. 24 of Bombay Act I of 1874 authorizes the Bombay Tramway Company to make regulations "for regulating the travelling in or upon any carriage belonging to them." Under this section, the Company made the following regulation:—"Any conductor who shall neglect to issue a ticket to a passenger, or shall issue to such passenger a ticket bearing a number other than one of the numbers contained in such books, or shall issue a ticket of a lower denomination than the amount of the fare, or non-consecutive in number, or a ticket other than the ticket provided by the Company for the journey to be travelled, shall for every such offence be liable to a penalty not exceeding Rs25." Held that the regulation was *ultra vires*. **MANOOKJI DADABHAI v. BOMBAY TRAMWAY COMPANY** . . . I. L. R., 22 Bom., 739

**BOMBAY UNIVERSITY ACT (XXII OF 1857).**

s. 12.—*Candidate for a degree—Obligation to present certificate of previous examination.*—The words "candidate for a degree" in s. 12 of the Act (XXII of 1857) to establish the University of Bombay mean a candidate for the final examination, the passing of which entitles him to a degree. They do not mean a candidate for a degree at any stage of his University career. Students, therefore, presenting themselves for the previous examination prescribed by the Senate of the Bombay University need not present the certificate required by that section. **IN THE MATTER OF DARASHA RUSTOMJEE**  
[I. L. R., 23 Bom., 465]

**BOMBAY VILLAGE POLICE ACT (VIII OF 1867).**

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER . . . 6 Bom., Cr., 75

**BOMBAY VILLAGE POLICE ACT (VIII OF 1867)—concluded.**

s. 9.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.  
[I. L. R., 4 Bom., 357]

*Police patel neglecting to report encroachment made by villagers on public road.*—Conviction of a police patel for neglecting to report an encroachment made by the villagers on the public road reversed, as the circumstances of the case did not bring it within the provisions of s. 9 of Bombay Act VIII of 1867. **REG. v. UKHA SAV**  
[7 Bom., Cr., 88]

ss. 10, 11, and 12.—*Duties of the police patel in cases of unnatural or sudden death—Ancient village system of Police, how affected by the Code of Criminal Procedure (1882).*—The ancient village system of police, as regulated by Bombay Act VIII of 1867, remains unaffected by the Code of Criminal Procedure (Act X of 1862) except where the Code contains a specific provision. Under Bombay Act VIII of 1867, the police patel has to do much more than merely inform the district police. He has himself to investigate the matter of a crime and obtain all procurable evidence. Under s. 11 of the Act, if an unnatural or sudden death occur, or any corpse be found, he must forthwith hold an inquest and investigate with the panch the causes of death and all the circumstances of the case, and make a written report of the same. If it appears that the death was unlawfully caused, he must immediately give notice to the police station, and if the state of the corpse permits, he shall at once forward it to the Civil Surgeon or other appointed medical officer. These provisions of the law are likely to be defeated if the police patel refrains from the proper action until the district police officers arrive on the spot. **QUEEN-EMPRESS v. RAGHO MAHADU**  
[I. L. R., 19 Bom., 612]

s. 13.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.  
[I. L. R., 4 Bom., 479]

**BOMBAY VILLAGE POLICE ACT AMENDMENT ACT (I OF 1876).**

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.  
[I. L. R., 4 Bom., 357]

**BONA FIDES.**

See DEFAMATION I. L. R., 4 Calc., 124  
[4 W. R., Cr., 22  
2 N. W., 473  
I. L. R., 6 All., 220  
8 Bom., Cr., 168  
I. L. R., 3 All., 342, 664, 815  
I. L. R., 4 Bom., 298  
I. L. R., 9 Bom., 269]

See JUDICIAL OFFICERS, LIABILITY OF.  
[I. L. R., 1 All., 280  
I. L. R., 1 Mad., 89]

**BONA FIDES—concluded.**

See CASES UNDER LIMITATION ACT, 1877,  
ART. 134 (1859, s. 5; 1871, ART. 134).

See TRANSFER OF PROPERTY ACT, s. 53.

[I. L. R., 20 Mad., 435

See UNLAWFUL ASSEMBLY.

[I. L. R., 21 Mad., 249

**BOND.**

See CASES UNDER INTEREST—MISCELLANEOUS CASES—BOND.

See CASES UNDER INTEREST—OMISSION TO STIPULATE, ETC.

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

See CASES UNDER LIMITATION ACT, 1877, ART. 66.

See CASES UNDER MORTGAGE—MONEY DECREE ON MORTGAGE.

See CASES UNDER REGISTRATION ACT, 1866, s. 53.

See CASES UNDER STAMP ACT, 1879, s. 3.

— creating or not charge on immovable property.

See CASES UNDER REGISTRATION ACT, 1877, s. 17.

— payable by instalments.

See CASES UNDER LIMITATION ACT, 1877, ART. 75.

— Recitals in—

See EVIDENCE—CIVIL CASES—RECITALS IN DOCUMENTS.

[I. L. R., 20 Bom., 838

See ONTS OF PROOF—DOCUMENTS RELATING TO LOANS, ETC.

1. — Form of bond—Bond not to be operative until dishonour of hand, with respect to which bond has been executed.—An instrument which is in the nature of a bond is not the less a bond because it does not come into operation unless and until the hand with respect to which it is passed has been dishonoured. *LAKSHMANDAS RAGHUNATHAS v. RAMDHANU MANSARAM*

[I. L. R., 20 Bom., 791

3. — Condition in bond for money

30. *ANNASAMI v. NARASAYAN*

[2 Ind. Jur., O. S., 12

3. — Admission of liability on bond—Emission of condition—Default—Right of suit.—When the full sum specified in a bond was admitted to be due, the fact of the plaintiff having, on condition of the payment of half the amount by a certain day, agreed to remit his claim to the other half, cannot affect his right to recover the entire

**BOND—continued.**

amount due on the defendant failing to fulfil the condition. *VENGATPATTAN v. RAJAPATTAN*

[1 Mad., 208

4. — Bond with collateral agreement to accept rents—Right of suit.—In a suit

absolute payment at the end of a specified period. *DYA CHAND OSWAL v. MOOKTEEDA DABEE*

[13 W. R., 24

this suit also he eventually succeeded. The represent-

of the bond. *RAJAKRISHNA SING v. HIRU SOOD-  
DREES CHOWDRAI*

13 W. R., 313

Held that, as she had failed in her endeavour to be made a party to the original suit, her only course was to sue for her share of the money received under the decree, though she might have sued to have herself

had fully accrued, though a balance of interest was still due. *PUTTAMONISIA v. KOWSHAN JARAN*

[10 W. R., 397

7. — Suit on bond before due date—Denial of execution.—Held, reversing

**BOND—continued.**

the decision of the Court below, that the denial of the execution of a bond in the Criminal Court by the defendant does not give the plaintiff any cause of action to recover the amount of the bond before due date. *SUJEEWUN SINGH v. RUPAL SINGH*

[10 W. R., 351]

8. ——— Failure to deliver bond—*Suit for amount before due date.*—If an obligor fraudulently withholds delivery of a bond which has been executed within a reasonable time after the receipt of the money, the obligee has a right to sue for the return of the money before the time fixed for payment. *PEAREE MONEE DOSSEE v. THAKOOR DOSS DUTT*

21 W. R., 443

9. ——— Right of one of several heirs to sue creditor for share of debt—*Joint obligation—Obligation—Act XXVII of 1860—Contract Act, IX of 1872, ss. 42, 45.*—Held by the Full Bench (MAHMOON, J., dissenting) that when, upon the death of the obligee of a money-bond, the right to realize the money has devolved in specific shares upon his heirs, each of such heirs cannot maintain a separate suit for recovery of his share of the money due on the bond. *KANDHIYA LAL v. CHANDAR*

[I. L. R., 7 All, 313]

10. ——— Suit by obligee against some of obligors taking fresh bond from the rest.—Where an obligee sues some of the persons jointly liable to him under a bond, and takes another bond from the rest for what he considers to be their share of the debt, he does not discharge the latter from their liability to contribute according to the shares in which they are liable among themselves, nor does his transaction with them (they not being sureties) destroy the joint liability. *SHUSHEE MOHUN PAL CHOWDHRY v. RAM KOOMAR KOONDGOO*

[22 W. R., 193]

11. ——— Bond used to pay debt of third party—*Liability of third party.*—The fact that the money raised on a bond is used to pay a debt due by a third party (G) does not make such third party liable to the party who executed the bond, unless the latter joined in the bond at the request of the third party or of some one acting under his authority. *GOUR KISHORE DUTT CHOWDHRY v. OZEER ALI*

[24 W. R., 99]

12. ——— Sale of interest of obligee in a hypothecation-bond—*Civil Procedure Code, 1889, ss. 268, 274.*—The interest of the obligee in a bond hypothecating certain land as security for a debt having been attached under s. 274 of the Code of Civil Procedure and sold, a suit was brought by the purchaser upon the said bond; it was objected that the suit was not maintainable because the bond had not been also attached as a debt under s. 268. Held that the fact of the bond not having been attached as a debt under s. 268 did not affect the right of the purchaser to realize the amount due under it. *SAMI AYYAR v. KRISHNASAMI*

[I. L. R., 10 Mad., 169]

13. ——— Fraudulent alteration of hypothecation clause.—The obligee of a bond

**BOND—continued.**

for the payment of money, in which a certain share of a village had been hypothecated as collateral security, having fraudulently altered such bond so as to make it appear that a larger share of such village was hypothecated, sued the obligor to recover the money due on such bond by the sale of such larger share. The obligor admitted the execution of the bond, and that a certain sum was due thereon. Held, on the question whether under these circumstances the obligee was entitled to relief as regards his claim for money, that he was not so entitled, inasmuch as the bond on which his suit was brought must be discarded, being a forgery, and therefore the suit as brought failed. *GANGA RAM v. CHANDAN SINGH*

[I. L. R., 4 All, 62]

14. ——— Appropriation of payment—*Mode of calculating interest—Reg. XV of 1793.*—Where payment was made upon a bond, the amount paid being less than the interest due,—Held the payment ought to go to reduce the amount of interest due, and the creditor in a suit upon the bond was entitled to a decree for the principal and balance of interest up to date of decree. *LUCHMESWAR SINGH v. LUFT ALI KHAN*

S. B. L. R., P. C., 110

15. ——— Failure of bond—*Evidence—Non-registration.*—In an action on a bond and mortgage, which was not registered, and the *factum* of which was denied, the Principal Sudder Ameen decided in favour of the plaintiffs; but such judgment being reversed by the High Court, the Judicial Committee, considering that too much weight had been given to the fact of non-registration, reversed that finding, and, after a careful analysis of the evidence, found the bond to be genuine. *GANGA-PRASAD v. MAWJI LAL*

[9 B. L. R., 426: 16 W. R., P. C., 30]

16. ——— Presumption of payment—*Possession of bond by obligor.*—The presumption of payment of a bond which arises from its possession by the obligor loses much of its force when raised, not between the original creditor and the debtor, but between the debtor and the purchaser of the debt at an execution sale. *DEBENDRA KUMAR MANDAL v. RUP LALL DASS*

I. L. R., 12 Calc., 546

17. ——— Evidences of payment—*Error in account—Waiver—Estoppel—Indorsement.*—Where the defendant executed to the plaintiff a bond for the payment of the balance found to be due from the defendant to the plaintiff upon an adjustment of the account of their mutual dealings, which bond contained the following stipulation: "I shall pay the money after causing the payment to be entered on the back of this bond, or after taking a receipt for the same. I shall not lay any claim to any payment made except in this way."—Held that though the defendant at the time of the adjustment disputed the correctness of the account, yet that, by having executed the bond and made payments under it, he must be held to have waived his objection, and in a suit on the bond could not be permitted to re-open the question of the correctness of the balance, though he might possibly have been allowed to do so had he alleged that

**BOND—continued.**

ought not to be overlooked, but is by no means con-

**RAMDAS** . . . . . I. L. R., 1 Bom., 45

**KALER DOSS MITTRA v. TARACHAND ROY**  
[8 W. R., 318]

**See GIRDHAREE SINGH v. LALLOO KOONWAR**  
[3 W. R., Mis., 23]

18. ———— **Novation of bond—Surety,**

[9 B. L. R., 384; 14 Moore's I. A., 88;  
16 W. R., P. C., 11]

19. ———— **Bond given in renewal of former bonds.**—Where a bond is given in renewal of former bonds, such bond constitutes a new security, to take effect from its date. **HAMED BUX v. BHINDRABUN** . . . . . 2 N. W., 37

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just  
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or assistance, and acted under threats from the plaintiff, a powerful and wealthy banker, that he would carry on the litigation against him *per fas aut nefas*, was induced, contrary to his own judgment and sense of right, and without any evidence that the sum

**BOND—continued.**

claimed was really due to the plaintiff, to execute a bond in his favour, whereby he bound himself to pay a large sum of money claimed by the plaintiff as being due from the widows; the plaintiff on his part agreeing that he would treat such payment as a satisfaction of his claim against the widows, but meanwhile that he would retain the securities which he held from them. In a suit brought by the plaintiff against the heir to enforce the last-mentioned bond,—*Held* that the bond was wholly invalid and fraudulent as against the defendant, and that, as there was no privity of contract between the plaintiff and defendant independently of the bond, it could not stand as a security for anything

**RANJA KRISHNA MITRU PRCHANJA NAIKAR**  
[13 B. L. R., 509; 23 W. R., 149;  
I. R., 1 I. A., 241]

**Affirming decision of High Court** . . . . . 7 Mad., 85

21. ———— **Bond for pay.**

to be given back until all the instalments should be paid raises a presumption that the bond was only intended to be a collateral security, and not a substitution for the obligation arising from the bills of exchange. Such a presumption may be impliedly rebutted by other circumstances. *Weston v. Foster*, 2 Bing. N. C., 693, cited. **RADHA GOREND SHAHA v. BANK OF BENGAL** . . . . . 2 C. L. R., 565

22. ———— **Verbal assignment of rent of land in satisfaction of interest—"Jamog"**—Mutation of names in favour of assignee not effected—Dut on bond—Claim for interest

right to recover interest from the defendant was gone, and the plaintiff was therefore not entitled to maintain his suit against the defendant in respect of the interest which was payable under the bond. **ACTU BISON v. ARDHRA BAHU** . . . . . I. L. R., 9 All., 249

23. ———— **Bond payable by instalments—Limitation—Act XIV of 1859, s. 1—Cause of action.**—Where a bond, payable by instalments, provided that upon default in payment of any

**BOND—continued.**

one of the instalments the whole amount secured by the bond should become payable.—*Held* that a suit to recover the money due upon the bond, brought after a lapse of more than three years from the date when the first default was made, though within three years from the date of the last payment, was barred by lapse of time. **HURRONATH ROY v. MAHER-  
COLAH MOLLAH**

[B. L. R., Sup. Vol., 618 : 7 W. R., 21

24. ————— *Cause of action—Decree payable by monthly instalments.*—When a bond is entered into to pay off money due under a decree monthly by instalments, each monthly instalment becomes a separate cause of action, and limitation applies to each instalment separately. **KHIDU v. KALI SAHU**

[3 B. L. R., Ap., 112 : 12 W. R., 71

25. ————— *Default—Cause of action.*—Where a bond was given to secure a debt which was to be repaid by seven annual instalments, and the bond provided that upon failure to pay a single instalment the whole principal sum secured should immediately become due and recoverable with interest,—*Held* that the cause of action in respect of the principal and interest arose on failure to pay the first instalment. **KARUPPANA NAYAK v. NAL-  
LAMA NAYAK** . . . . . 1 Mad., 209

**MADHO SINGH v. THAKOOR PERSHAD**

[5 N. W., 35

26. ————— *Limitation—Waiver.*—*Quere*—Whether a suit on a bond for payment by instalments, with a clause making the whole amount payable on default in payment of any instalments, must be instituted within three years from the time of the first default. Payments made and accepted afterwards may operate to waive the effect of a default, and to restore the provision for payment by instalments. **HULLODHUR BANGAL v. HOGG** . . . . . 1 W. R., 189

*See BREEN v. BALFOUR.* . . . . **Bourke, 120**

*Contra, MADHO SINGH v. THAKOOR PERSHAD*

[5 N. W., 35

**SUMBHOO CHUNDER SHAHA v. BARODA SOONDREY  
DEBBA** . . . . . 5 W. R., 45

27. ————— *Suit upon a bond executed by the defendants to the plaintiff for the payment of a sum of money by instalments.* The bond contained a proviso that, on default being made in the payment of any one instalment, the whole amount should become due. Default was made in the payment of several instalments, but subsequently payments were made by the defendants and accepted by the plaintiff on account of the unpaid instalments. The defendants pleaded the law of limitation. The suit was brought more than three years after the first default in payment of an instalment had been made, but within three years from the time when, taking into account the payments that had been made, the first instalment claimed became due. *Held* that these payments as regards both parties must be considered as if made at the time fixed; that the defendants could not rely upon the stipulation as making

**BOND—continued.**

the whole debt due, and fixing the period from which the time of limitation ran; and that, the first of the instalments claimed having become due within three years, the suit was not barred. **RAM KRISHNA  
MAHADEV v. BAYAJI BIN SANTAJI**

[5 Bom., A. C., 35

But see **GUMNA DAMBERSHET v. BHIKU HARIBA**  
[I. L. R., 1 Bom., 125

28. ————— *Execution of decree—Failure to keep decree alive—Suit on bond.*—In execution of a decree, seven out of nine judgment-debtors, with the consent of the decree-holder, filed an instalment-bond, agreeing to pay the amount of the decree with interest thereon in two instalments. The decree-holder neglected to take proceedings to keep alive the decree, and his application to execute the decree was disallowed. In a suit brought by the decree-holder against the person who had executed the instalment-bond for the amount of principal and interest due thereon,—*Held* that the suit was maintainable. **ASHIDHARI CHOWDHRY v. JAGESSUR  
KUMAR** . . . . . 6 B. L. R., Ap., 32

**S. C. ASHIDHAREE CHOWDHRY v. JAGESSUR  
KUMAR** . . . . . 14 W. R., 430

29. ————— *Waiver of default—Limitation.*—Suit brought on 24th April 1873 for principal and interest due on a bond dated 30th October 1850. The debt was payable by eight annual instalments, on failure of any one of which the whole amount was to be payable on demand. No instalment was paid, and when the suit was brought, defendant pleaded that the suit was barred, as three years had elapsed from the date on which the last instalment became due. *Held* that the usual clause, that on failure to pay one instalment the whole amount shall be payable on demand, gave a mere election to plaintiff of converting the obligation into a different one; that that election was never exercised, and that the document continued to be one securing the payment of a debt by instalments, as to all of which the action had long been barred; and that it was unnecessary, therefore, to consider whether, in the present case, "on demand" must not be construed according to its meaning at the period at which the words were written. **EATHAMAKALA SUBBAMMAH v. RAGHIAH** . . . . . 7 Mad., 293

30. ————— *Construction of bond—Payments towards interest and principal.*—Defendants were indebted to the plaintiff in the sum of Rs. 1,400. With the object of liquidating this debt with interest at 12 per cent. per annum, the parties executed a bond, whereby it was agreed that the defendants should grant an ijara lease of certain property for the term of fourteen years to the plaintiff's husband; and that the rent reserved on this lease should be paid by the lessee to the plaintiff during the terms in semi-annual payments each of Rs. 12. *Held* that, on the proper construction of this agreement, the semi-annual instalments were to be applied first to the reduction of the principal money due, and not to the payment of the interest. **SHURNOMOYEE DOSSRE v. UMA SOONDREY CHOW-  
DHRAIN** . . . . . 2 C. L. R., 138

**BOND—continued.**

31. *Waiver of default in payment.*—When a sum of money is payable under a bond by instalments with a condition that, in default of paying one instalment, the whole amount shall then become due, and default is made, but the obligee subsequently accepts payments of one or more sums as an instalment or instalments due under the bond, such acceptance amounts

arise until a new fresh default is made in the payment of a subsequent instalment. *PASSAMMA ROW GARU v. TOLETTI VENEZIA*. 5 Mad., 193

See on the same principle *HUR PERSHAD v. KNOWASEE*. 5 N. W., 18

32. *Default—Waiver.*—Where, after default in payment of an instalment upon a bond, conditioned that upon such a default the whole amount of the bond should become due, plaintiff accepted payment of such instalment, as

first default could not be enforced. *GYAN CHAND v. JAWAHUR*. 2 N. W., 83

33. *Waiver of default*  
—*Limitation Acts, 1871 and 1877, art. 75—Civil*

obligee may waive the default under Acts IX of 1871 and XV of 1877, sch. II, art. 75, but the Courts have no authority to compel him to waive it. Neither Act VIII of 1859, s. 194, nor Act X of 1877, s. 210, confers any authority on the Courts to relieve a contracting party from such an express stipulation in a bond payable by instalments as to the consequence of default in punctual payment of the instalments. A debt being presently due, an agreement to pay it by instalments, with a stipulation that in default the creditor may demand immediate payment of the whole balance due with interest, is not to be relieved against in equity. Such a stipulation is not in the nature of a penalty, inasmuch as its object is only to secure payment in a particular manner. The defendant executed to the plaintiff a bond payable by instalments, and expressly stipulating for the payment of the whole amount on failure to pay any instalment on the day fixed. He paid the first instalment, but made default in paying the second, which fell due on the 2nd August 1878. On the 20th August plaintiff sued to recover the whole balance due on the bond. Defendant admitted the

**BOND—continued.**

bond, but pleaded tender of the amount of the second instalment six months after the due date, and prayed for payment by instalments without any interest. The first Court passed a decree in the plaintiff's favour for the amount claimed with costs, but ordered defendant to pay ₹100 and the costs at once, and the balance by yearly instalments of ₹100 each, with interest at six per cent. till payment. The District Judge, on appeal, affirmed the decree, with a slight variation as to interest, which he directed the defendant to pay on overdue instalments only. *Held* by the High Court, on second appeal, that neither of the lower Courts had jurisdiction, with out the consent of the parties, to substitute, for the contract made by them, terms which the Court preferred. *Held*, also, that plaintiff was entitled to sue on the day after that on which the default was made, viz., on the day after that fixed for the payment of the instalment,—and that the subordinate Judge had no power to rule the contrary. *RAGHO GOVIND PAMNAPPE v. DIPCHAND*. I. L. R., 4 Bom., 96

34. *Waiver of default*  
—*Limitation Act, 1871, art. 75.*—Where a bond is payable by instalments, with a provision that upon default of payment of any instalment the whole sum then unpaid shall become due with interest, the creditor, though he can elect but once to enforce this provision, may waive the benefit of it not only on the first, but on any subsequent default. *SATRACHERIA v. SETARAMA*. I. L. R., 3 Mad., 61

35. *Default in payment*  
—*Expiration of time for specific enforcement of contract.*—A bond for money provided that on failure on the part of the obligor to pay interest as agreed in the bond, and within a certain period from the date of the bond, the obligee might sue for possession of the immovable property mortgaged in the bond. Default was made in the payment of interest as agreed, but the obligee deferred bringing a suit for possession of the mortgaged property so long that the time mentioned in the bond expired before he could obtain a decree. *Held* that under these circumstances a decree for possession of the property could not be granted to him. *BAIWANT SINGH v. GUMANI RAM* [I. L. R., 5 All., 591]

36. *Suit on bond*  
—*Limitation—Burden of proof—Indorsement of payment of instalments.*—Where a defendant sets up the defence of limitation, he must plead it, and so that the claim is barred. If, when the plaintiff has proved his case, the facts show that the cause of action

**BOND—concluded.**

default in payment of the eighth instalment. The bond showed on its face indorsements of the payments for which credit was given. The obligor alleged that no instalments were paid after the third year, that therefore the debt became due at an earlier date than that stated by the plaintiff, and that the claim was barred by limitation. *Held* that, inasmuch as the defendant adduced no evidence to show that the later instalments were not paid, and inasmuch as the evidence produced by the plaintiff did not show that the debt accrued at a date earlier than the limitation period, the plea of limitation failed. **RADHA PRASAD SINGH v. BHAJAN RAI**

[I. L. R., 7 All., 677]

**37. — Power of Court to alter terms of specially-registered bond—Act VIII of 1859, s. 194—Order to pay by instalments—Superintendence of High Court.**—By a bond specially registered under Act XVI of 1864, the obligor stipulated to pay the entire amount accrued thereby with interest at the rate therein mentioned on a day therein mentioned. There was a further stipulation that, on default of payment, the bond was to be enforced as a decree. On failure of payment, the obligee applied for execution under s. 53, Act XX of 1866, but the Subordinate Judge ordered the payment to be made by instalments. On an application to the High Court under s. 15 of the Charter Act, *—Held* that the Subordinate Judge had no jurisdiction to pass a decree on the bond altering or varying its terms. **S. 194, Act VIII of 1859, did not apply. KHETRIYA MOTILAL BANOO v. RASUBHARI BANOO** . 5 B. L. R., 187; 13 W. R., 262

**38. — Bond registered under Act XVI of 1864, ss. 51 and 52—Execution in default of payment of interest.**—Where a bond was registered under ss. 51 and 52 of Act XVI of 1864, and by its terms a fixed amount of interest was to be paid at the end of every month, *—Held* that, by virtue of special registration, the obligee was entitled to move for execution in respect of each instalment of interest due. **MANTHARESWARA AYYAR v. KAMALA NAIKER** . 3 Mad., 88

**39. — Penalty—Stipulation to pay double the amount of debt on default of payment of any instalment.**—A stipulation by which, on default of payment of one instalment, double the entire amount of the debt due under an instalment bond was to become at once payable, *held* to be in the nature of a penalty. **JOSHI KALIDAS v. KOLI DADA ABHESANG** . I. L. R., 12 Bom., 555

**BOOKS.**

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS - BOOKS.

[I. L. R., 15 Mad., 241]

See MERCHANDISE MARKS ACT, s. 2.

[I. L. R., 26 Calc., 232]

**"BOOTH," Meaning of—**

See BOMBAY DISTRICT POLICE ACT, 1867, s. 33 . I. L. R., 22 Bom., 742

**BOTTOMRY-BOND.**

**1. — Advance for repair of ship—Master's lien for wages—Priority.**—A, the agent for a ship in port at Bombay, lent the master money on a bond, in the nature of a bottomry-bond, which he obtained from the master under pressure of necessity. It appeared that A, at the time of the making of the bond, had funds of his principal's in hand. *Held* that the master's lien for wages has priority over the bond-holder. **IN THE MATTER OF THE "GOOD SUCCESS." MACQUEEN v. FUZZEL MAHOMED ESSAU** . 1 Ind. Jur., N. S., 303

**2. — Supply of necessities to foreign ship—Claim for, against proceeds of ship—Statute 7 Geo. 1, c. 21, s. 2.**—The Statute 7 Geo. 1, c. 21, s. 2 (which declared void all contracts by way of bottomry made by any subject of His Majesty on any ship in the service of foreigners bound or designed to trade to the East, and all contracts for loading or supplying such ships with goods, etc., or with any provisions, stores, or necessities, etc.), is repealed by implication. When a suit is brought by material men for necessities supplied to a foreign ship against the surplus proceeds of such ship lying in the registry of the Court, and there is no opposition on the part of the owners of these proceeds, the Court has a discretionary power to allow the claim of the material men to be paid out of such unclaimed proceeds. **IN THE PROCEEDS OF THE "ASIA." EXPARTE HORMASJI** . 5 Bom., O. C., 64

**3. — Master's lien for wages—Sale of ship—Charterer—Priority.**—The charterer of a ship advanced money to enable her to complete the voyage, and obtained as security a "bottomry-bond," signed by both the master and owner. On the completion of the voyage, the charterer got the ship arrested and sold, and the money was brought into Court. Before any order had been made for the payment of the proceeds out of Court, the master also had got the ship arrested at his suit for wages due, but no decree had been obtained. Subsequently, the charterer, without notice to the master, obtained an order of Court for the payment of the proceeds of sale to satisfy his bottomry-bond. Thereupon the master applied to restrain the charterer from taking the money out of Court until the claim for wages had been first satisfied. *Held* that the master had a lien on the proceeds for wages due to him at the time of the sale of the ship, prior to that of the bottomry-bond-holder, and that he was entitled to have the proceeds retained in Court until the hearing of his claim. **IN THE MATTER OF THE SHIP "PORTUGAL,"**

[5 B. L. R., 258]

**4. — Master's lien for disbursements and wages—Towage—Priority of lien.**—A ship was chartered for a voyage from Calcutta to Jedda and back. While at Jedda, the master found it necessary to borrow money for the wages of the crew and other purposes; and with the consent of the owner, tenders were invited by advertisement for a sum for which a bottomry-bond was to be given. Several tenders were made, and one by the charterer of the ship was accepted. A bottomry-bond was executed by the master, with the consent of the

**BOTTOMRY-BOND—continued.**

owner, in which was included the expense of certain repairs which had been found necessary at an intermediate port on the voyage from Calcutta, and for which the master had made himself liable. By the

Hooghly, the ship was taken in charge by a pilot, under whose advice the master engaged a steamer to

bond, he had constituted himself a debtor. IN THE MATTER OF THE SHIP "PORTUGAL"

[8 B. L. R., 323]

5. ——— Right of suit.—A suit will not lie in an ordinary bottomry-bond given by the master of a vessel against the owner to recover the amount thereof. GLADSTONE, WILLIS & CO. v. HARRISON

[24 W. R., 50]

6. ——— Owner's covenant to pay—

and add at 120 per cent. per annum on the amount

date, a  
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The money was not repaid in the stipulated date, and the vessel, after making several voyages, foundered in port. Held that the instrument was not a bottomry bond, and the plaintiff was not entitled under it, regarded as an instrument of hypothecation merely to recover the enhanced interest referred to in the

**BOTTOMRY-BOND—concluded.**

passage above quoted, because that part of the agreement was void for uncertainty. ARAN KUTTU SAHIB MESCOYAR v. RAMANATHAN CHETTI

[I. L. R., 23 Mad., 20]

**BOUGHT AND SOLD NOTES.**

See CASES UNDER CONTRACT—BOUGHT AND SOLD NOTES.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS

[I. L. R., 14 Bom., 103]

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS

[O B. L. R., 245]

[I. L. R., 17 Calc., 173]

See STAMP ACT, 1879, SCH. I, ART. 48.

[I. L. R., 14 Bom., 103]

**BOUNDARIES.**

See DECREE—FORM OF DECREE—GENERAL CASES

[I. L. R., 4 Calc., 69]

——— Alteration of—

See ZAMINDAR—POWER OF ZAMINDAR.

[W. R., 1884, 355]

——— Dispute as to—

See BENGAL TENANCY ACT, s. 103.

[I. L. R., 19 Calc., 641, 643]

See EVIDENCE—CIVIL CASES—MAPS.

[I. L. R., 27 Calc., 338]

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[I. L. R., 19 Calc., 680]

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL

[I. L. R., 21 Calc., 935]

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—LOCAL INVESTIGATION

[I. L. R., 21 Calc., 504]

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 21 Calc., 935]

——— Proof of—

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R., 19 Calc., 313]

——— Specification of—

See GRANT—CONSTRUCTION OF GRANT.

[I. L. R., 23 All., 99]

See CASES UNDER PLAINT—FORM AND CONTENTS OF PLAINT—BOUNDARIES.

**BOUNDARY.**

See EVIDENCE—CIVIL CASES—MAPS.

[I. L. R., 18 Calc., 168]

**BOUNDARY—continued.**

See JURISDICTION OF CIVIL COURT—REVENUE COUNTS—ORDERS OF REVENUE COURTS . . . 18 W. R., 109

See SUNDERBUNS BOUNDARY.

[2 B. L. R., P. C., 33

**Disputed—**

See BENGAL SURVEY ACT V OF 1875.

[I. L. R., 8 Calc., 453

I. L. R., 13 Calc., 330

See BOMBAY LAND REVENUE ACT, 1879,

ss. 119, 121 . I. L. R., 10 Bom., 458

**Fluctuating—**

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—RIVERS OR CHANGE IN COURSE OF RIVERS.

[11 B. L. R., 265 : 18 W. R., 160

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**Marks.**

See BOMBAY LAND REVENUE ACT, 1879,

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See MADRAS BOUNDARY MARKS ACT.

[I. L. R., 1 Mad., 192

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**Interfering with—**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY LAND REVENUE ACT (V OF 1879).

[I. L. R., 13 Bom., 291

See RULES MADE UNDER ACTS.

[I. L. R., 13 Bom., 291

**Question of—**

See BENGAL TENANCY ACT, s. 158.

[I. L. R., 17 Calc., 277

1. ——— Demarcation of boundary line—*Beng. Reg. X of 1822, ss. 2, 3, and 8—Suit for declaration of boundary contrary to survey award—Proprietary rights, Exercise of—Presumption of ownership—Beng. Reg. XI of 1825, s. 5, cl. 12.*—At the time of the Permanent Settlement the northern boundary of the pergunnah Shoosung (situated in Mymensingh, at the foot of the Garrow hills) was not defined by Government. From before that time, and certainly for more than sixty years, the zamindars of the pergunnah have always, but in an irregular and uncertain manner, exercised certain rights in the Garrow hills and over the inhabitants, who are half savages, such as hunting elephants, cutting wood, levying cesses on the inhabitants when possible (including in some parts of the hills a tribute of one rupee per hut), and exacting occasional services from them. Government held a survey, and declared the northern boundary of pergunnah Shoosung to be a line running along the base of the Garrow hills. The zamindar thereupon sued to set aside the survey, and for a declaration that the northern boundary lay many miles further north, and that the intermediate hill country belonged to him as forming part of pergunnah Shoosung. *Held* (by SETON-KARR, J.) that the

**BOUNDARY—continued.**

acts of possession proved by the zamindar were sufficient under the circumstances to prove his proprietary right in the disputed tract, and for the passing of a decree in his favour. *Held* (by MACPHERSON, J.) that they were not sufficient to entitle him to a decree, being acts of mere easement independent of possession. *Held* by PEACOCK, C.J., JACKSON and PHEAR, JJ., on appeal under the Letters Patent.—The rules laid down by Regulation X of 1802 were intended to take effect only within the tract of country described in s. 2, within which the administration of civil and criminal justice, etc., was by s. 3 declared to be vested in an officer to be denominated the Civil Commissioner of the north-eastern parts of Rungpore. The proviso in s. 8 was not intended to give substantive powers to the Governor General in Council in respect of other tracts of the country, and cl. 2 of the same section did not intend to take away the power of any Civil Court except within that tract. The proviso contained in s. 8 does not authorize Government to separate any part of the Garrow country beyond that described in s. 2 from the district and from the general Regulations, but merely directs the separation of such tracts from the estates of the neighbouring zamindars, and the discontinuance of the collection of cesses by the zamindars from the Garrows. By cl. 2, s. 8, the jurisdiction of the Civil Courts is taken away only in respect of acts of the above description, done under the authority of the Government; but that does not take away the right of a zamindar to contest a survey award drawing a line which deprives him of part of his zamindari and his permanently-settled estate. Where a Rajah had exercised rights and collected dues on certain hills and in forests north of an alleged line, and it was the unanimous opinion of all the revenue authorities that the forests were within his permanently-settled estate, the assumption by them and Government of such line as the boundary of the Rajah's estate, throwing upon him the onus of proving his claim to any portion north of that line, was held to be arbitrary and anomalous. If such proceedings were adopted under cl. 12, s. 5, Regulation IX of 1825, they were wholly irregular, and the irregularity can be no ground for excluding the Court from examining them. When a man is found exercising, on both sides of a boundary line, without objection, rights of ownership or incorporeal rights, and when it is not shown that there is any other owner of the soil, or that any objection to the exercise of such rights was made during a long course of years, his acts cannot be treated as the encroachments of a wrong-doer. *Per* PHEAR, J.—Where acts of user illustrate all the modes of enjoyment of which a disputed property can reasonably be expected to be capable, it can be rightly attributed to proprietorship of the tract upon which they were exercised.

GOVERNMENT v. RAJAKISHEN SINGH

[8 W. R., 343; and on appeal, 9 W. R., 426

2. ——— Disputed boundary—*Survey—Suit for land from lessee of adjoining mouzah.*—In a suit by the lessee of a mouzah to recover possession of a piece of land from a lessee of an adjoining mouzah, both making title under one zamindar, where a survey had taken place at a time when both mouzahs

**BOUNDARY—concluded.**

to which respectively the land was claimed as belonging were in his possession, and when neither of the leases were in existence,—*Held* that the suit involved simply a question of boundary, and what was to be ascertained was to which mouzah the land in dispute was found to belong at the time of the survey.

AMEER BEGUM v. GOBIND PANDY

[15 W. R., 35]

**3. ——— Question of boundary—Eri-**

the rule as to the burden of proving the affirmative is not applicable. The litigants are in the position of counter-claimants, and both parties are bound to do what they can to aid the Court in ascertaining the true line. LUKHINARAIN JAGADEB v. JADU NATH DEO

[I. L. R., 21 Cal., 504  
L. R., 21 I. A., 39]

**4. ——— Privy Council,**

that there has been some plain miscarriage in the conduct or decision of the case upon which they can put their hands, and make it the ground for an order rescinding or varying the decree. RAM GOPAL ROY v. GORDON, STUART & Co.

[17 W. R., 285; 14 Moore's L. A., 453]

what the boundaries really were according to the Khusrab. RAJENDRO KISHORE SINGH v. HYASUL SINGH

17 W. R., 379

**BREACH OF CONDITION.**

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

See WILL—CONSTRUCTION 13 B. L. R., 1  
[14 B. L. R., 60; 23 W. R., 377  
L. R., 1 I. A., 387]

**BREACH OF CONTRACT.**

See CASES UNDER ACT XIII OF 1859.

See CASES UNDER CONTRACT—BREACH OF CONTRACT.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

See CASES UNDER DAMAGES—SCITS FOR DAMAGES—BREACH OF CONTRACT.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT.

See CASES UNDER LIMITATION ACT, 1877, ARTS. 115, 116 (1859, s. 1, CLS. 9 AND 10).

**BREACH OF PEACE.**

——— Dispute likely to cause—

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF PEACE.

See CASES UNDER RECOGNIZANCE TO KEEP THE PEACE.

——— Procession likely to cause—

See MADRAS POLICE ACT, s. 21.

[I. L. R., 17 Mad., 37]

**BREACH OF TRUST.**

See CASES UNDER CRIMINAL BREACH OF TRUST.

See CASES UNDER CRIMINAL MISAPPROPRIATION.

See LIMITATION ACT, s. 10.

[I. L. R., 20 Mad., 308]

See PARTNERSHIP PROPERTY.

[13 B. L. R., 307, 308 note, 310 note]

See TRUST . . . 1 C. L. R., 80

**BREACH OF WARRANTY.**

See WARRANTY.

**BRIBE (OFFER OF) TO PUBLIC OFFICER.**

See ACCOMPLICE I. L. R., 14 Bom., 331

**BRITISH SUBJECT.**

See EUROPEAN BRITISH SUBJECT.

See CASES UNDER JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.

——— Offence committed by, in foreign territory.

See WRONGFUL CONFINEMENT.

[I. L. R., 10 Bom., 72]

**BOUNDARY—continued.**

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS 18 W. R., 109  
See SUNDERBUNS BOUNDARY. [2 B. L. R., P. C., 33]

**Disputed—**

See BENGAL SURVEY ACT V OF 1875. [I. L. R., 8 Calc., 453  
I. L. R., 13 Calc., 230  
See BOMBAY LAND REVENUE ACT, 1879. ss. 119, 121. I. L. R., 10 Bom., 456]

**Fluctuating—**

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—RIVERS OR CHANGE IN COURSE OF RIVERS. [11 B. L. R., 265 : 18 W. R., 160  
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**Marks.**

See BOMBAY LAND REVENUE ACT, 1879, s. 56. I. L. R., 15 Bom., 67  
See MADRAS BOUNDARY MARKS ACT. [I. L. R., 1 Mad., 192  
I. L. R., 7 Mad., 280]

**Interfering with—**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY LAND REVENUE ACT (V OF 1879). [I. L. R., 13 Bom., 291  
See RULES MADE UNDER ACTS. [I. L. R., 13 Bom., 291]

**Question of—**

See BENGAL TENANCY ACT, s. 158. [I. L. R., 17 Calc., 277]

1. ——— Demarcation of boundary line—Beng. Reg. X of 1822, ss. 2, 3, and 8—Suit for declaration of boundary contrary to survey award—Proprietary rights, Exercise of—Presumption of ownership—Beng. Reg. XI of 1825, s. 5, cl. 12.—At the time of the Permanent Settlement the northern boundary of the pergunnah Shoosung (situated in Mymensingh, at the foot of the Garrow hills) was not defined by Government. From before that time, and certainly for more than sixty years, the zamindars of the pergunnah have always, but in an irregular and uncertain manner, exercised certain rights regular and uncertain manner, exercised certain rights in the Garrow hills and over the inhabitants, who are half savages, such as hunting elephants, cutting wood, levying cesses on the inhabitants when possible (including in some parts of the hills a tribute of one rupee per hut), and exacting occasional services from them. Government held a survey, and declared the northern boundary of pergunnah Shoosung to be a line running along the base of the Garrow hills. The zamindar thereupon sued to set aside the survey, and for a declaration that the northern boundary lay many miles further north, and that the intermediate hill country belonged to him as forming part of pergunnah Shoosung. Held (by SETON-KARR, J.) that the

**BOUNDARY—continued.**

acts of possession proved by the zamindar were sufficient under the circumstances to prove his proprietary right in the disputed tract, and for the passing of a decree in his favour. Held (by MACPHERSON, J.) that they were not sufficient independent of possession, being acts of mere easement independent of possession. Held by PEACOCK, C.J., JACKSON and PHEAR, JJ., on appeal under the Letters Patent.—The rules laid down by Regulation X of 1802 were intended to take effect only within the tract of country described in s. 2, within which the administration of civil and criminal justice, etc., was by s. 3 declared to be vested in an officer to be denominated the Civil Commissioner of the north-eastern parts of Rungpore. The proviso in s. 8 was not intended to give substantive powers to the Governor General in Council in respect of other tracts of the country, and away the power of any Civil Court except within that tract. The proviso contained in s. 8 does not authorize Government to separate any part of the Garrow country beyond that described in s. 2 from the district and from the general Regulations, but merely directs the separation of cesses by the zamindars from the collection of cesses by the zamindars from the Garrows. By cl. 2, s. 8, the jurisdiction of the Civil Courts is taken away only in respect of acts of the above description, done under the authority of the Government; but that does not take away the right of a zamindar to contest a survey award drawing a line which deprives him of part of his zamindari and his permanently-settled estate. Where a Rajah had exercised rights and collected dues on certain hills and in forests north of an alleged line, and it was the unanimous opinion of all the revenue authorities that the forests were within permanently-settled estate, the assumption by them and Government of such line as the boundary of the Rajah's estate, throwing upon him the onus of proving his claim to any portion north of that line, was held to be arbitrary and anomalous. If such proceedings were adopted under cl. 12, s. 5, Regulation IX of 1825, they were wholly irregular, and the irregularity can be no ground for excluding the Court from examining them. When a man is found exercising, on both sides of a boundary line, without objection, rights of ownership or incorporeal rights, and when it is not shown that there is any other owner of the soil, or that any objection to the exercise of such rights was made during a long course of years, his acts cannot be treated as the encroachments of a wrong-doer. Per PHEAR, J.—Where acts of user illustrate all the modes of enjoyment of which a disputed property can reasonably be expected to be capable, it can be rightly attributed to proprietorship of the tract upon which they were exercised. GOVERNMENT v. RAJKISHEN SINGH [8 W. R., 343; and on appeal, 9 W. R., 426]

2. ——— Disputed boundary—Survey—Suit for land from lessee of adjoining mouzah.—In a suit by the lessee of a mouzah to recover possession of a piece of land from a lessee of an adjoining mouzah, both making title under one zamindar, where a survey had taken place at a time when both mouzahs

**BOUNDARY—concluded.**

to which respectively the land was claimed as belonging were in his possession, and when neither of the leases were in existence.—*Held* that the suit involved simply a question of boundary, and what was to be ascertained was to which mouzah the land in dispute was found to belong at the time of the survey.

AMEEREE BEGUM v. GOBIND PANDEY

[15 W. R., 35

the rule as to the burden of proving the affirmative is not applicable. The litigants are in the position of counter-claimants, and both parties are bound to do what they can to aid the Court in ascertaining the true line. LUKHINARAIN JAGADEB v. JADU NATH DEO

[I. L. R., 21 Cal., 504

L. R., 21 I. A., 39

4. \_\_\_\_\_ Privy Council,

that there has been some plain miscarriages in the conduct or decision of the case upon which they can put their hands, and make it the ground for an order reversing or varying the decree. RAM GOPAL ROY v. GORDON, STUART & Co.

[17 W. R., 285; 14 Moore's L. A., 453

define the boundaries, and that the Court in executing that decree was not precluded from taking into consideration other decrees between the same parties, not as contradicting or altering that khurrah, but as explaining and supporting the views taken by the Court of what the boundaries really were according to the khurrah. RAJENDRO KISHORE SINGH v. HYABUL SINGH

17 W. R., 379

**BREACH OF CONDITION.**

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

See WILL—CONSTRUCTION 12 B. L. R., 1

[14 B. L. R., 60; 23 W. R., 377

L. R., 11 I. A., 387

**BREACH OF CONTRACT.**

See CASES UNDER ACT XIII OF 1859.

See CASES UNDER CONTRACT—BREACH OF CONTRACT.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

See CASES UNDER DAMAGES—SCITS FOR DAMAGES—BREACH OF CONTRACT.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT.

See CASES UNDER LIMITATION ACT, 1877, ARTS. 115, 116 (1859, s. 1, CLS. 9 AND 10).

**BREACH OF PEACE.**

— Dispute likely to cause—

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF PEACE.

See CASES UNDER RECOGNIZANCE TO KEEP THE PEACE.

— Procession likely to cause—

See MADRAS POLICE ACT, s. 21.

[I. L. R., 17 Mad., 37

**BREACH OF TRUST.**

See CASES UNDER CRIMINAL BREACH OF TRUST.

See CASES UNDER CRIMINAL MISAPPROPRIATION.

See LIMITATION ACT, s. 10.

[I. L. R., 20 Mad., 398

See PARTNERSHIP PROPERTY.

[13 B. L. R., 307, 308 note, 310 note

See TRUST . . . 1 C. L. R., 80

**BREACH OF WARRANTY.**

See WARRANTY.

**BRIBE (OFFER OF) TO PUBLIC OFFICER.**

See ACCOMPLICE I. L. R., 14 Bom., 331

**BRITISH SUBJECT.**

See EUROPEAN BRITISH SUBJECT.

See CASES UNDER JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.

— Offence committed by, in foreign territory.

See WRONGFUL CONFINEMENT.

[I. L. R., 19 Bom., 73

**BOUNDARY—continued.**

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS  
18 W. R., 109

See SUNDERBUNS BOUNDARY.  
[2 B. L. R., P. C., 33]

**Disputed—**

See BENGAL SURVEY ACT V OF 1875.  
[I. L. R., 8 Calc., 453  
I. L. R., 13 Calc., 230]

See BOMBAY LAND REVENUE ACT, 1879,  
ss. 119, 121. I. L. R., 10 Bom., 456

**Fluctuating—**

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—RIVERS OR CHANGE IN COURSE OF RIVERS.  
[11 B. L. R., 265 : 18 W. R., 160  
L. R., I. A., Sup. Vol., 34]

**Marks.**

See BOMBAY LAND REVENUE ACT, 1879,  
s. 56. I. L. R., 15 Bom., 67

See MADRAS BOUNDARY MARKS ACT.  
[I. L. R., 1 Mad., 192  
I. L. R., 7 Mad., 280]

**Interfering with—**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY LAND REVENUE ACT (V OF 1879).  
[I. L. R., 13 Bom., 291]

See RULES MADE UNDER ACTS.  
[I. L. R., 13 Bom., 291]

**Question of—**

See BENGAL TENANCY ACT, s. 158.  
[I. L. R., 17 Calc., 277]

1. **Demarcation of boundary line—**Beng. Reg. X of 1822, ss. 2, 3, and 8—*Suit for declaration of boundary contrary to survey award—Proprietary rights, Exercise of—Presumption of ownership—Beng. Reg. XI of 1825, s. 5, cl. 12.*—At the time of the Permanent Settlement the northern boundary of the pergunnah Shoosung (situated in Mymensingh, at the foot of the Garrow hills) was not defined by Government. From before that time, and certainly for more than sixty years, the zamindars of the pergunnah have always, but in an irregular and uncertain manner, exercised certain rights in the Garrow hills and over the inhabitants, who are half savages, such as hunting elephants, cutting wood, levying cesses on the inhabitants when possible (including in some parts of the hills a tribute of one rupee per hut), and exacting occasional services from them. Government held a survey, and declared the northern boundary of pergunnah Shoosung to be a line running along the base of the Garrow hills. The zamindar thereupon sued to set aside the survey, and for a declaration that the northern boundary lay many miles further north, and that the intermediate hill country belonged to him as forming part of pergunnah Shoosung. *Held* (by SETON-KARE, J.) that the

**BOUNDARY—continued.**

acts of possession proved by the zamindar were sufficient under the circumstances to prove his proprietary right in the disputed tract, and for the passing of a decree in his favour. *Held* (by MACPHERSON, J.) that they were not sufficient to entitle him to a decree, being acts of mere easement independent of possession. *Held* by PEACOCK, C.J., JACKSON and PHEAR, JJ., on appeal under the Letters Patent.—The rules laid down by Regulation X of 1802 were intended to take effect only within the tract of country described in s. 2, within which the administration of civil and criminal justice, etc., was by s. 3 declared to be vested in an officer to be denominated the Civil Commissioner of the north-eastern parts of Rungpore. The proviso in s. 8 was not intended to give substantive powers to the Governor General in Council in respect of other tracts of the country, and cl. 2 of the same section did not intend to take away the power of any Civil Court except within that tract. The proviso contained in s. 2 from authorize Government to separate any part of the Garrow country beyond that described in s. 2 from the district and from the general Regulations, but merely directs the separation of such tracts from the estates of the neighbouring zamindars, and the discontinuance of the collection of cesses by the zamindars from the Garrows. By cl. 2, s. 8, the jurisdiction of the Civil Courts is taken away only in respect of acts of the above description, done under the authority of the Government; but that does not take away the right of a zamindar to contest a survey award drawing a line which deprives him of part of his zamindari and his permanently-settled estate. Where a Rajah had exercised rights and collected dues on certain hills and in forests north of an alleged line, and it was the unanimous opinion of all the revenue authorities that the forests were within his permanently-settled estate, the assumption by them and Government of such line as the boundary of the Rajah's estate, throwing upon him the onus of proving his claim to any portion north of that line, was held to be arbitrary and anomalous. If such proceedings were adopted under cl. 12, s. 5, Regulation IX of 1825, they were wholly irregular, and the irregularity can be no ground for excluding the Court from examining them. When a man is found exercising, on both sides of a boundary line, without objection, rights of ownership or incorporeal rights, and when it is not shown that there is any other owner of the soil, or that any objection to the exercise of such rights was made during a long course of years, his acts cannot be treated as the encroachments of a wrong-doer. *Per* PHEAR, J.—Where acts of user illustrate all the modes of enjoyment of which a disputed property can reasonably be expected to be capable, it can be rightly attributed to proprietorship of the tract upon which they were exercised.

GOVERNMENT v. RAJKISHEN SINGH  
[8 W. R., 343; and on appeal, 9 W. R., 426]

2. **Disputed boundary—Survey—***Suit for land from lessee of adjoining mouzah.*—In a suit by the lessee of a mouzah to recover possession of a piece of land from a lessee of an adjoining mouzah, both making title under one zamindar, where a survey had taken place at a time when both mouzahs

**BOUNDARY—concluded.**

which respectively the land was claimed as belonging to; were in his possession, and when neither of the parties were in existence.—*Held* that the suit involved only a question of boundary, and what was to be determined was to which mortgagor the land in dispute was found to belong at the time of the survey.  
**BERRE BROUM v. GORIND PATNEY**  
[15 W. R., 35]

**3. ————— Question of boundary—En-**

rule as to the burden of proving the affirmative is not applicable. The litigants are in the position of counter-claimants, and both parties are bound to do what they can to aid the Court in ascertaining the true line. **LAKSHMAN-  
GADRE v. JADU NATH DEO**

[1 L. R., 21 Calc. 504  
L. R., 21 I. A., 38]

**4. ————— Pricy Council.**  
*Practice of—Reports of Deputy Collectors at local investigations.*—Unless there be very good grounds for dissenting and differing from the reports made by the Deputy Collectors upon local investigations, the Courts even in India, and a fortiori the Courts in England, in dealing with boundary questions ought to give great weight to them and to be guided by them. The Pricy Council will never interfere with the finding of an Indian Court upon a question of boundary, unless they are clearly satisfied that there has been some plain miscarriage in the conduct or decision of the case upon which they can act, and take it as the ground for an order setting or varying the decree. **RAM GOPAL BHOI  
GORDON, STUART & Co.**

[17 W. R., 285; 14 Moore's I. A., 453]

**5. ————— Ascertaining and defining boundaries.**—The appellant having obtained a decree in 1854 declaring him entitled to erect boundary pillars according to a certain plan.—*Held* that it was now a work of great difficulty to ascertain and define the boundaries, and that the Court in executing that decree was not precluded from taking into consideration other decrees between the same parties, not as contradicting or altering that decree, but as explaining and supporting the views taken by the Court of that the boundaries really were according to the plan. **RAMDAS KISHORE SINGH v. HIRJI SINGH**  
17 W. R., 373

**REACH OF CONDITION.**

*See LANDLORD AND TENANT—ATTACHMENT OF CONDITIONS OF TENANT.*

*See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.*

*See WILL—CONSTRUCTIONS* 12 R. L. R., 1  
[14 R. L. R., 80; 22 W. R., 277  
L. R., 1 I. A., 237]

**BREACH OF CONTRACT.**

*See CASES UNDER ACT XIII OF 1859.*

*See CASES UNDER CONTRACT—BREACH OF CONTRACT.*

*See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.*

*See CASES UNDER DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT.*

*See JURISDICTION—CASES OF JURISDICTION—CATER OF ACTION—BREACH OF CONTRACT.*

*See CASES UNDER LIMITATION ACT, 1877, ARTS. 115, 116 (1859, s. 1, cls. 9 and 10).*

**BREACH OF PEACE.**

————— Dispute likely to cause—

*See CASES UNDER POSSESSORY, ORDER OF ORIGINAL COURT AS TO—LIABILITY OF BREACH OF PEACE.*

*See CASES UNDER POSSESSORY TO KEEP THE PEACE.*

————— Proceedings likely to cause—

*See MADRAS PRIZE ACT, s. 21.  
[1 L. R., 17 Mad., 37]*

**BREACH OF TRUST.**

*See CASES UNDER ORIGINAL BREACH OF TRUST.*

*See CASES UNDER ORIGINAL MISFEASANCE.*

*See LIMITATION ACT, s. 19.  
[1 L. R., 20 Mad., 233]*

*See PARTNERSHIP—FIDUCIARY.  
[13 R. L. R., 207, 208 note, 210 note]*

*See TRUST . . . 1 C. L. R., 80*

**BREACH OF WARRANTY.**

*See WARRANTY.*

**BRIBE (OFFER OF) TO PUBLIC OFFICER.**

*See MISFEASANCE* 1 L. R., 14 Mad., 241

**BRITISH SUBJECT.**

*See IMMIGRATION—BRITISH SUBJECT.*

*See CASES UNDER JURISDICTION OF ORIGINAL COURT—MISFEASANCE—BRITISH SUBJECT.*

————— *Other provisions of the Act.*

*See MISFEASANCE—BRITISH SUBJECT.  
[1 L. R., 20 Mad., 233]*

# **BROACH ENCUMBERED ESTATES ACT (XIV OF 1877).**

s. 19—"Suit"—*Application for execution of decree.*—The term "suit" in the last paragraph of s. 19 of Act XIV of 1877 includes applications for execution of decrees. **BHULJI BECHAB v. BAWAJI DAJI** . I. L. R., 5 Bom., 448

# **BROACH TALUKHDARS' RELIEF ACT (XV OF 1871).**

s. 23—*Manager of Thakoor's estate—Liability for damages for attachment in execution.*—The Broach Talukhdars' Relief Act, XV of 1871, does not bar the cognizance, by the Civil Court, of a suit to recover the amount improperly levied as rent of rent-free land, and to obtain a declaration that such land is not subject to the payment of rent, albeit that under s. 23 of the Act the manager of a Thakoor's estate is exempt from personal liability for anything done by him *bona fide* pursuant to the Act, and is not subject to an action for damages on account of the attachment of the plaintiff's property. **ASMAL SALEMAN v. COLLECTOR OF BROACH** [I. L. R., 5 Bom., 135

# **BROACH AND KAIRA ENCUMBERED ESTATES ACT (XXI OF 1881).**

See PUBLIC OFFICER.

[I. L. R., 14 Bom., 395

# **BROKER.**

See CONTRACT—WAGERING CONTRACTS.

[I. L. R., 22 Bom., 899

1. — *Position and rights of broker*  
—*Agent—Right to commission—Claim of brokerage from both vendor and vendee—Vendor and purchaser.*—A broker is entitled to his commission if the relation of buyer and seller is really brought about by him, although the actual sale has not been effected by him. A broker is entitled to his commission where he has induced in the vendor the contracting mind, the willingness to open negotiations upon a reasonable basis, even though a change or modification of the terms of the contract is made by the buyer and seller without his intervention. A broker sued the Municipality of Bombay for brokerage in respect of lands purchased by them. Held that, if during the time that the broker was negotiating with the vendor the latter was induced to consent to the sale, the broker was entitled to his brokerage. It was not material to inquire what operated upon the mind of the vendor, and whether it was the advice of friends, or the knowledge that his land could be acquired compulsorily, or the persuasions of the broker. It was sufficient to support the broker's claim if the vendor's acceptance of the terms was brought about during his intervention; and the fact that the Municipal Commissioner stepped in at the last moment, and himself actually struck the bargain, did not deprive the broker of his brokerage. Primarily a broker is merely the agent of the party by whom he is originally employed. To make the other side liable to pay him brokerage, it must be

# **BROKER—concluded.**

shown that he has been employed by such party to act for him, or that in the contract he has agreed to pay brokerage. **MUNICIPAL CORPORATION OF BOMBAY v. CUVERJI HIRJI. MOTILAL v. CUVERJI HIRJI** . I. L. R., 20 Bom., 124

# **2. — Suit for brokerage—Contract effected by broker not carried out by purchaser—Quantum meruit.**

The plaintiff was employed by the defendants as broker to sell certain property. The defendants' letter, dated 3rd January 1895, engaging him as broker stated as follows:—"It is understood that the brokerage will be paid on receipt by us of the money, and that this transaction is to be completed within a fortnight from date." The plaintiff negotiated with one Pestonji Patel and his brother, who eventually agreed to become purchasers, but stipulated for four or five months within which to pay the purchase-money. On the 1st February 1895, the defendants through the plaintiff finally closed the contract with the purchasers, one of the terms of which provided that Rs. 10,000 should be paid immediately as earnest and the balance (Rs. 27,000) of the purchase-money to be paid within four months. The purchasers were, however, unable to pay the Rs. 10,000 earnest-money, and they handed to the defendants three Bank of Bombay shares as security for the performance of the contract. One of the purchasers shortly afterwards died: the defendants apparently abandoned the idea of enforcing the contract, and at the end of the year they returned to the purchaser's family two of the Bank of Bombay shares, having (as they alleged) sold the third to defray the expenses which they had incurred in connection with the transaction. The plaintiff sued to recover Rs. 1,500 as brokerage from the defendants. Held that under the circumstances the plaintiff was not entitled to recover the Rs. 1,500, but only to a quantum meruit, there being no previous agreement as to the time when the brokerage was to be paid; and that he was only entitled to a percentage (5 per cent.) on the value of the shares which had been actually received by the defendants. Part of the business for which the plaintiff was employed was to find a solvent purchaser. **STOKES v. SOONDERNATH KHOTE** [I. L. R., 22 Bom., 540

# **BROTHER.**

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—NEPHEW.  
[I. L. R., 2 Calc., 379  
See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—SISTER.

# **BROTHERS OF THE HALF BLOOD.**

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—HALF BLOOD RELATIONS.

# **BUDDHIST LAW.**

See BURMESE LAW—DIVORCE.  
[I. L. R., 19 Calc., 489

**BUILDING.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—BUILDING AND HOUSE MATERIALS . . . I. L. R., 21 Bom., 588

— "Completion" of—

See BOMBAY MUNICIPAL ACT, s. 353.  
[I. L. R., 19 Bom., 372]

— occupied for charitable purposes.

See BOMBAY MUNICIPAL ACT, 1858, ss.  
143, 144 . . . I. L. R., 16 Bom., 217

**BUILDING LEASE.**

— Party wall, Liability for cost of—  
Agreement to refer disputes to a third person—

The plaintiff and defendants were lessors of adjoining pieces of land under agreements made between them respectively and the Secretary of State for India in Council as lessor. The terms and conditions

account of the cost of erecting the party wall, but the rest of the cost was defrayed by the plaintiff. The party wall was completed in November 1871.

**BUILDING LEASE—concluded.**

that in the year 1870 they had adjusted accounts with

the arrangement between them and the plaintiff to refer the matter to the Government surveyor; that this latter covenant was only collateral, and did not interfere with the plaintiff's right to sue the defendants for their half share of the cost; that the plaintiff's cause of action in this respect arose on the 15th October 1878, when the contractor's claim was finally settled, and that this suit not having been brought for more than three years after that date, it was barred by limitation. *Held* that the suit was not barred. There was no right of action independently of the valuation and award of the Government surveyor. There was no separate covenant to pay compensation to which the covenant for reference to the Government surveyor could be collateral. The rights of the parties were defined by the contracts, and under these each lessee might have the benefit of a party wall on such terms, and no others, as he on his part submitted to. Payment of a share of the cost was not one of these terms except in so far as each lessee, if a dispute arose, was bound by the decision of a Government surveyor. That decision was not ancillary, serving to give greater explicitness to a right already fully subsisting. It was essential to the right itself, and, until it was made, no cause of action for the moiety of the cost arose. Where,

several lessees  
be contiguous  
mutual relation,  
an inducement  
to the lessee to take the lease, and which he must know

for his benefit as lessee. Each, consequently, has an equitable right to enforce against the other the obligation stipulated for in his indenture, and serving as a part of his inducement (as the other knew) to the contract. *COOVERJI LUDDHA v. BHIMJI GIRDHAR*

[I. L. R., 6 Bom., 523]

See *COOVERJI LUDDHA v. MORARJI PRINJA*

[I. L. R., 9 Bom., 183]

**BUILDING ON LAND WITHOUT TITLE.**

— Right of person building to compensation—*Best* side belief of title—*When* a man builds on land belonging to another, he is not when ejected, be allowed any compensation for his buildings, unless the circumstances show that he had

plaintiff gave them credit. The defendants in their written statement alleged that the party wall had been partly built with materials supplied by them, and

## BUILDING ON LAND WITHOUT TITLE—continued.

In good faith, believing the land to be his own. *Hani Mathab Bai v. Ranjeeb Bai*, 1 B. L. R., A. C., 213, *Ramas v. Jan Mahomed*, 3 B. L. R., A. C., 18, *Hemas Moga Debi v. Kamesh Singh Kout Ranjore*, 17 W. R., 197, and *Hansa Mathab Ranjore v. Jan Keshava Menkerjee*, 7 B. L. R., 152; 12 W. R., 495. *FURKAND ALI KHAN v. ANA ALI MAHOMED*

[3 C. L. R., 104

*See WAHABULLAH v. GHOLAM AKBAR*

[25 W. R., 205

## BUILDING ERECTED BY ADJOINING OWNERS.

**Liability of adjoining owners for costs of party wall.—Agreement for building.—Decision of Government surveyor made final in case of dispute.—Right of suit.—Right of one owner over portion of party wall not used or built on by the other.**—Under separate agreements made by them respectively with Government, the plaintiff and defendant held adjoining plots of land for building. The agreements contained the same terms and stipulations, among which were the following:—“(a) The buildings to be continuous, with party walls common to both adjoining houses. (b) All disputes regarding the cost and maintenance of party walls to be decided by the Government surveyor, whose decision shall be binding on both parties.” The plaintiff employed a contractor to erect a house upon his plot of land. The house was completed in 1870, the north wall of which was built as a party wall in pursuance of the condition contained in the agreement with Government. Disputes subsequently arose between the plaintiff and his contractor, which were not settled until the 29th August 1878, on which date the plaintiff paid the contractor a sum of Rs. 51-4-11, which included the cost of the party wall. After the plaintiff's house had been completed, the defendant built his house upon the adjoining land, and in so doing he used a large portion of the party wall as the southern wall of his house. He paid the plaintiff half the cost of the portion so used by him. The rear portion of the said wall was not used by the defendant, as his house did not extend so far to the rear as the house of the plaintiff. The plaintiff demanded payment of half the cost of that part of the wall not used by the defendants, but the defendants refused to pay. The plaintiff then claimed that part of the wall as his own property, and proceeded to open windows in it. The defendants objected. The plaintiff subsequently filed the present suit, claiming from the defendants payment of half the cost of the said portion of the wall not used by the defendants, and, in the event of such payment not being awarded, he prayed for a declaration that he was the sole owner of the said portion of the wall, and for an injunction restraining the defendants from disturbing him in the sole enjoyment thereof. The brother (Khatav Luddha) of the first defendant was originally made the second defendant of the suit. He, however, disclaimed all interest in the premises, and it appeared that in 1876 the first defendant had sold the property to him (Khatav Luddha), who in 1879 sold it to Kesserbai, the first defendant's wife. Kesserbai accordingly was made the second

## BUILDING ERECTED BY ADJOINING OWNERS—continued.

defendant in the place of Khatav Luddha. Both the defendants pleaded limitation, and denied their liability to pay any part of the cost of that part of the wall which they did not use. The first defendant further alleged that he had paid the whole cost of the foundation and other parts of the said wall, and claimed to set off this payment against the claim of the plaintiff. At the original hearing, *SCOTT, J.*, held (1) that the part of the wall in dispute, although not used by the defendants, was a party wall, having regard to the terms of the agreement under which the said wall was erected; (2) that Kesserbai was liable, equally with the first defendant, to pay for this part of the wall, having purchased the property subject to the terms of the original agreement of which she presumably had notice; (3) that the suit was not barred, but that there was no right of action for the cost of the party wall independently of the award of the Government surveyor, in whose decision lay all disputes as to such cost; and that, until his decision was given, there was no complete cause of action. *SCOTT, J.*, accordingly, on 11th December 1882, decreed that the defendants were severally liable to pay the half of whatever sum the Government surveyor might certify to be due for the cost of the disputed part of the said wall, and that the defendants were entitled to set off, in the calculation of what was due from them, the cost of any work or materials which the Government surveyor might find had been contributed by the first defendant. The case was thereupon adjourned, in order that the certificate of the Government surveyor might be obtained. The Government surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall, but stated that on the evidence before him he was unable to decide as to the ownership of the foundations, &c., of the wall. The case came on again before *SCOTT, J.*, who decided to take evidence on the points left undetermined by the Government surveyor. Witnesses were accordingly examined, and on 11th December 1883 the Court disallowed the defendants' claim of set-off and gave judgment for the plaintiff for half the sum certified by the Government surveyor as the cost of the disputed part of the wall. The defendants appealed. *Held* that, having regard to the terms of the agreements under which the plaintiff and defendants respectively held their property, the Court was not competent to determine the question of the defendant's set-off or the other points raised by the pleadings. These were matters to be decided by the Government surveyor, whose certificate was a condition precedent to the plaintiff's right to sue and upon which the Court might give judgment. *Held*, also, that the plaintiff was not entitled to use the portion of the wall not occupied by the defendants in any way except as a party wall. It was erected under the agreement as a party wall, and that it should be used for a purpose inconsistent with the idea of its being a party wall would be opposed to the true intention of the parties to the agreement, whether Government or the lessees. The plaintiff was not entitled to the full right of ownership over it, as if it had been built on his own ground: the declaration and injunction asked for, therefore, were refused. *COVERJI LUDHA v. MORARJI PUNJA* [I. L. R., 9 Bom., 183



# CALCUTTA MUNICIPAL ACTS (VI OF 1863 AND IV OF 1876)—continued.

*of Justices—Procedure.*—The Chairman of the Justices of Calcutta, on the complaint of the Health Officer, issued a warrant for the seizure of certain articles of food, and without notice to the owners, or reducing the proceedings to writing, condemned them as unfit for use. In support of a rule *nisi* for a *certiorari* for bringing up the order that it might be quashed, it was argued that the Chairman had not, as such, jurisdiction to make the order; and that it was invalid, as notice had not been given, and the proceedings had not been reduced to writing. Cause was shown that the description of the Chairman was immaterial, as he was also a Justice of the Peace, and that such summary proceedings were necessary for the public safety. *Held* that the Act does not empower the Chairman of the Justices, as such, to issue a warrant under the 200th section; that such a warrant must show, on the fact of it, that the Justice issuing it had jurisdiction; that the application under s. 200 must be reduced to writing; that the evidence taken therefrom must be recorded; and that notice must be given to the party proceeded against. *DAY & Co. v. JUSTICES FOR THE TOWN OF CALCUTTA*. . . . . **Bourke, O. C., 232**

— **s. 226—Suit against Justices for damage in repairing drains—Contractors—Negligence—Cause of action—Notice of action.**—In a suit for alleged damage done to the plaintiff's premises by excavations for drainage purposes, which the Justices are authorized to make by Bengal Act VI of 1863, it being shown that the Justices had entrusted the execution of the work to skilled and competent contractors, *Held* the Justices were not liable. In such a suit no cause of action will be allowed to be raised, except that disclosed in the notice of action required to be given to the Justices by s. 226 of the Act. *ULLMAN v. JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA*

[**8 B. L. R., 265**

— **Bengal Act IV of 1876.**

*See* **RIGHT OF WAY.**

[**I. L. R., 13 Cal., 136**

— **ss. 75-79.**

*See* **TRANSFER OF CRIMINAL CASE—GENERAL CASES**. . . . . **I. L. R., 2 Cal., 290**

— **ss. 75, 77, 79—Evidence, Refusal to hear—Finality of assessment—High Court's Criminal Procedure Act (X of 1875), s. 147.**—*A*, alleged to have carried on business in Calcutta without having taken out a license under Bengal Act IV of 1876, was summoned at the instance of the Corporation by *B*, a servant of the Corporation, and also a Justice of the Peace. The case was subsequently heard by *B*, and it was shown that notice of the assessment under class II, sch. 3, had been duly served on *A*, and that, though he then denied his liability to take out any license, and stated that he carried on no business as alleged, he had not appealed against the assessment under s. 79. It was further shown that the assessment had been confirmed by the Chairman of the Corporation, but that the amount

# CALCUTTA MUNICIPAL ACTS (VI OF 1863 AND IV OF 1876)—continued.

had not been paid. *A* thereupon tendered evidence to show that he was not liable to take out any license; but *B* refused to hear such evidence, and, convicting *A*, sentenced him to pay a fine. On an application, under the above circumstances, to the High Court under s. 147, Act X of 1875, *Held* that the finality of the decision of the Chairman referred to in s. 79 has only reference to the class under which a particular person, who is admittedly bound to take out a license under s. 75, should be assessed, and not to the case where the liability to take out a license at all is denied, this being a question which can only be determined judicially after taking evidence by a competent Court in a prosecution under s. 77, and that, therefore, the refusal of *B* to hear the evidence tendered by *A* on this point was illegal. *WOOD v. CORPORATION OF THE TOWN OF CALCUTTA*

[**I. L. R., 7 Cal., 322; 9 C. L. R., 193**

— **s. 77—License—Assessment—Fines—Boarding-house keeper.**—In order to obtain a conviction under s. 77, Bengal Act IV of 1876, for keeping a boarding-house without taking out a license, it must be shown that the accused held himself out to the public as one whose business or profession it is to receive boarders for profit. In order to pass a proper sentence of fine under s. 77, Bengal Act IV of 1876, evidence should be given of the amount of assessment on the accused's house or place of business, and of the amount payable on account of the license which the accused should have taken out. *IN THE MATTER OF THE PETITION OF WOOD. WOOD v. CORPORATION FOR THE TOWN OF CALCUTTA*

[**I. L. R., 8 Cal., 891; 11 C. L. R., 357**

— **s. 88—Municipal Commissioners, Jurisdiction of—Assessment—House rate—Annual value.**—*Per WILSON, J.*—The words "annual value" in s. 88 of the Municipal Act must be taken to mean "annual letting value." *NUNDO LAL BOSE v. CORPORATION FOR THE TOWN OF CALCUTTA*

[**I. L. R., 11 Cal., 275**

— **s. 104 and s. 88—Construction of s. 104.**—*Per WILSON, J.*—*Quere*—Whether s. 104 of the Act is in the nature of an interpretation clause, or merely directory as containing instructions to the Commissioners how to proceed when exercising the jurisdiction conferred by s. 88. *NUNDO LAL BOSE v. CORPORATION FOR THE TOWN OF CALCUTTA*

[**I. L. R., 11 Cal., 275**

— **s. 117.**

*See* **CERTIORARI** **I. L. R., 11 Cal., 275**

— **ss. 189, 191, 213, 252.**

*See* **MUNICIPAL COMMISSIONERS.**

[**I. L. R., 10 Cal., 445**

— **s. 248—Conviction for keeping animals without license—Continuing offence between date of summons and date of conviction—Second prosecution for same offence on different date before conviction.**—Under s. 248 of Bengal Act IV of 1876, a milkman, who has been convicted and fined for keeping an animal without a license, cannot

**CALCUTTA MUNICIPAL ACTS (VI OF 1863 AND IV OF 1876)—concluded.**

again be prosecuted for the continuance of the same offence before conviction, nor can he be separately

offence was stated to have been committed on the 16th March; the case was fixed for the 8th April, when the defendant was convicted and fined by the Magistrate.

against him  
similar offence  
23th March.  
the second c  
RATION FOR  
BEWAIR

ss. 280, 281, 282.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 2.

[I. L. R., 21 Calc., 528

**CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888)—continued.**

of Act II of 1888, and whilst Act IV of 1876 was in force, the municipality took measures under the latter Act to cleanse basti land which was in an insanitary state, and notwithstanding the passing of Act II of 1888, which provided totally different

s. 3.

See BENGAL TENANCY ACT.

[I. L. R., 27 Calc., 203

discretion or taking any judicial action with regard to the list of candidates prepared under that section. In this case, therefore, a rule which had been granted on the application of one of the candidates calling on the Chairman to show cause why the name of another of the said candidates should not be removed from the list, he being merely the manager appointed to vote on behalf of a joint-family under s. 24 and not qualified to be elected as a Commissioner, was discharged by TRIVELIAN, J. IN THE MATTER OF MUTTI LAL GHOSH I. L. R., 10 Calc., 103

2. — and ss. 11, 12.—In a case in 1882 in which a similar rule had been granted calling on the Chairman of the Municipality to show cause why the name of J. J. should not be expunged from the list of candidates for election as Municipal

and no objection being made the rule was made absolute, and directed the Chairman to expunge the name from the list of candidates. IN THE MATTER OF RAJENDRA LALL MITTER [I. L. R., 10 Calc., 105 note

3. — and ss. 8, 24, 25.—In another case in 1882, where a rule had been granted calling on the Chairman to show cause why he should

PIOR, J.—*Seemle* that, as to whether, under s. 357, damage arising out of a subaudence referred to in the notice, but arising after the date of the notice, could be recovered without fresh notice and fresh suit, a liberal construction should be placed upon s. 357 as to the requirements of the notice. DWARKA NATH GUPTA v. CORPORATION OF CALCUTTA

[I. L. R., 18 Calc., 91

**CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888).**

s. 2 and ss. 252, 253, 257, 265  
—*Calcutta Municipal Act (Bengal Act IV of 1876), ss. 250, 251, 252—Basti land—Urgency—*



# CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888)—continued.

[I. L. R., 26 Calc., 74  
3 C. W. N., 70]

that the convictions were had, the lessee alone being answerable in such a case for disregarding the provisions of the Act. The penalty under s. 336 of the Calcutta Municipal Act of 1888 attaches to the owner of any land for permitting any animals to be kept thereon, when he has direct possession of the land, and not when he has leased it out to another. *ABHOY CHAMAN DASS v. MUNICIPAL WARD INSPECTOR* I. L. R., 25 Calc., 625  
[3 C. W. N., 289]

s. 335—Date of taking out license.—

anted for keeping an unlicensed cowshed.—Held that, under the section as it stands, there is nothing to compel a licensee to take out his license before 1st June in every year. *ATKROY CHANDRA HATI v. CALCUTTA MUNICIPAL CORPORATION* I. L. R., 24 Calc., 360

s. 334—Sale of articles of food act of the proper nature, substance, or quality—Mixture, Usage of market, with regard to—Adulteration.—

proving that what is known as mustard-oil in the market was ordinarily prepared in the same manner as the specimen analysed, the case was held to be decided under the first proviso to s. 364 of the

# CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888)—concluded.

Calcutta Municipal Consolidation Act (Bengal Act I of 1888). *BAIRAGAN CHAMAN DAS v. UPENDRA NATH MITRA* 3 C. W. N., 68

that section is to run. *LUTFER RAHMAN NUSKUR v. MUNICIPAL WARD INSPECTOR, CALCUTTA MUNICIPAL CORPORATION* I. L. R., 25 Calc., 403  
*LUTFER RAHMAN NASKAN v. CALCUTTA MUNICIPAL CORPORATION* 3 C. W. N., 145

s. 412 and ss. 417, 410—Bye-laws (C) 4, 6, 7—Permit for removal of offensive matter or rubbish—Failure to take out permit—Continuation of offence—Where a milkman who had been convicted for not taking out before the 1st December 1891 a half-yearly permit for the half-year ending the 31st March 1892, in accordance with bye-laws (C) 4, 6, made by the Municipal Commissioners of Calcutta, under the provisions of s. 412 of Bengal Act

offence. *CORPORATION OF CALCUTTA v. JADU DOOLEY* I. L. R., 23 Calc., 805

# CALCUTTA POLICE ACT (IV OF 1860).

s. 5 and s. 48—Deputy Commissioner may, at any time, act aside any of his orders, or he may give, either in writing or verbally or otherwise, any special direction with regard to any matter. Apart from such special direction, however, any act of a Deputy Commissioner, provided it be within the powers of the Commissioner, is valid, and no instructions, either in writing or otherwise, or general or in regard to specific acts, are necessary to render such act valid. A Deputy Commissioner has power to issue search-warrants under s. 40 of the Act. *FORATH v. WILSON* I. L. R., 20 Calc., 670

ss. 39, 37, 39, 40.

See OFFICE

13 C. L. R., 330

## DIGEST OF CASES.

( 975 )

## CAMP-FOLLOWERS.]

See SMALL CAUSE COURT, MOFUSSEIL—  
JURISDICTION—MILITARY MEN.  
[2 B. L. R., S. N., 7]

## CANARA FOREST RULES, 7, 12, AND 23.

See MADRAS FOREST ACT, s. 26.  
[I. L. R., 13 Mad., 21]

## CANDIDATE FOR DEGREE AT UNIVERSITY.

See BOMBAY UNIVERSITY ACT.  
[I. L. R., 23 Bom., 405]

## CANTONMENT.

1. — Grant of land for building purposes—Right of Government to eject grantee—Regulations and orders for the Bengal Army—Alluvial land—Assessment of rent.—Certain ground situate within the limits of a cantonment was granted for building purposes by the military authorities in 1802. In June 1873 such cantonment was abandoned, and the ground comprised therein was made over to the Collector of the district in which it was situate. The Government subsequently sued P, who had succeeded to such grant, claiming (i) a declaration of its proprietary right to the ground comprised in such grant, and to the alluvial accretions to such ground; (ii) that P should be directed to pay rents for such ground and such alluvial accretions; and (iii) that, should P refuse to pay the rents fixed, she might be ejected and the Government put in possession. Held that, inasmuch as under the Military Regulations relating to such grants such a grant cannot be resumed by the Government without a month's notice and without payment of the value of any buildings which have been authorized to be erected, and as the Civil Court had no jurisdiction in the matter of assessing rent on such alluvial accretions, which were outside the original grant, the Government was not entitled to the second and third reliefs it claimed, but was entitled only to a declaration of its proprietary title to such ground and to such alluvial accretions.  
[I. L. R., 3 All., 669]  
PATTERSON v. SECRETARY OF STATE FOR INDIA

2. — Grant of land by military authorities for building purposes—Resumption of land by civil authorities—Assignment of profits of the land to municipal Committee—Liability of grantee to pay ground-rent—Refusal of grantee to pay ground-rent to municipality—Suit by the Secretary of State for India for declaration of title and assessment of rent—Cause of action—Jurisdiction of Civil Court—Right of grantee to compensation in case of ejectment.—Certain land situate within the limits of a cantonment was granted free of rent for building purposes by the military authorities. Under the Military Regulations relating to such grants, such a grant could not be resumed by the Government without a month's notice, and without the payment of the value of such buildings which

## CANTONMENT—concluded.

might have been authorized to be erected. The land was subsequently resumed by the civil authorities, and, the land being within municipal limits, the ground-rents on it were assigned to the municipality. The Municipal Committee having demanded ground-rent in respect of the buildings erected on such land under such grant from the representative in title of the original grantee, and the latter having refused to pay the same or to vacate the land, the Secretary of State for India in Council sued him in the Civil Court for a declaration of proprietary right to the land, for its assessment to ground-rent, and, in the event of the refusal of the defendant to pay such rent, when fixed, for his ejectment therefrom, and for mesne profits of the land for six years. The cause of action was stated in the plaint to be the refusal of the defendant to pay ground-rent or to accept a lease or to surrender the land, after a notice to that effect had been issued to him by the Municipal Committee as the plaintiff's agents. Held that the Municipal Committee were the plaintiff's duly authorized agents to lease and obtain rent for the land occupied by the defendant's buildings with their compounds; that such notice was properly issued in that character on behalf of the plaintiff; and that the defendant's subsequent refusal to pay rent, or to accept a lease or to evacuate the premises, amounted to a sufficient denial of the plaintiff's title to afford him a good cause of action; that, assuming that no agreement to pay rent existed, the plaintiff was entitled to demand and recover reasonable compensation for the use and occupation of the land by the defendant; and it had suit was maintainable in the Civil Court, and it had power to grant the plaintiff the reliefs sought; that by the conditions of the grant by the military authorities the plaintiff was not disqualified from demanding ground-rent for the land before he had paid the defendant the value of the buildings, but that, looking to those conditions, it would not be fair or equitable to grant the plaintiff a decree, pure and simple, for the ejectment of the defendant, but he should be put under the condition that, if in case of the defendant's refusal to pay the rent fixed he desired to eject him, the value of the buildings as cantonment residences must first be determined and, when determined, must be tendered to the defendant, and, if the latter refused to accept it, the plaintiff would then be entitled to eject him. SECRETARY OF STATE FOR INDIA v. JAGAN PRASAD  
[I. L. R., 6 All., 148]

3. — Right of military authorities to quarter troops in houses belonging to private individuals in cantonments—Military Regulations.—The military authorities have no right to appropriate to their own uses houses the property of private individuals in cantonments, except subject to the conditions prescribed by the Military Regulations, on the faith of which the houses were built or purchased. Held by the Appellate Court that, when a person was in the occupation of a house in cantonments, he could not be ejected without due notice. CAREY v. ROBINSON  
[Ind. Jur., N. S., 88; Bourke, O. C., 399 Cor., 137]  
S. C. in the Court below.

## CANTONMENT MAGISTRATE.

1. — Jurisdiction—Act III of 1859, s. 1—European British subject.—A European British subject, not belonging to or connected with the army, who resides within a cantonment, was amenable to the jurisdiction of a Cantonment Joint Magistrate under s. 1 of Act III of 1859. *SHAFURJI JEHANGIR v. MORGAN*

[4 Bom., A. C., 187

2. — Small Cause Court

the cause of action arose within his jurisdiction. *SUNDARAS JAGJIVANDAS v. MOHANDAS TICUMDAS*  
[I. L. R., 9 Bom., 454

Act III of 1880. The power to cancel licenses belongs to the revenue authorities. *QUEEN-EMPRESS v. RAMDHANI PASSI*

[I. L. R., 15 Calc., 452

4. — Civil Procedure Code (Act XIV of 1852), s. 15.—The plaintiff, who was a money-lender residing within the limits of the Ahmedabad Cantonment, sued the defendants, who resided within the jurisdiction of the City Small Cause Court at the same place, upon a bond executed

the proper Court to try the suit. *Dwarkanath Dutt v. Bhaiten Haxoldar*, 22 W. R., 457, followed. *MOHANLAL RAICHAND v. VIRA PENJA*

[I. L. R., 13 Bom., 169

5. — Madras Act I of 1866, s. 23—General Clauses Act, 1869, s. 5.—S. 5 of the General Clauses Act, 1869, does not authorize a Cantonment Magistrate to award rigorous imprisonment in default of payment of a fine imposed under Act I of 1866 (Madras). *QUEEN-EMPRESS v. GOVINDAR*

[I. L. R., 8 Mad., 350

6. — Summary conviction—Police Act (V of 1861), s. 29—Complaint.—Held that the summary conviction and punishment of two police officers under s. 23, Act V of 1861, by a Cantonment Magistrate, without formal trial, was irregular and

## CANTONMENT MAGISTRATE—concluded.

illegal. Held, also, that a Cantonment Magistrate has power to try cases, under s. 23 of the Police Act, without complaint. *GOVERNMENT v. GIRDHAR LALL*

[1 Agra, Cr., 24

## CANTONMENTS ACT (BOMBAY ACT III OF 1867).

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS.

[I. L. R., 14 Bom., 286

See SANCTION TO PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION.

[7 Bom., Cr., 87

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE

7 Bom., Cr., 87

## CANTONMENTS ACT (MADRAS ACT I OF 1866).

*QUEEN-EMPRESS v. LALLA* I. L. R., 8 Mad., 428

s. 30—Beer—"Spirituos liquor."—Beer is not a "spirituos liquor" as the term is used in s. 30, Madras Act I of 1866. *ANONIMOUS*  
[7 Mad., Ap., 15

## CANTONMENTS ACT (III OF 1880).

See CANTONMENTS ACT (XIII OF 1880).

s. 14—"Soldier"—Sub-Conductor—Sale of spirituos liquor.—A Sub-Conductor in the Commissariat Department is not a "Soldier" within the meaning of s. 14 of Act III of 1880; and consequently the sale of spirituos liquor to the wife of such a person without the license required by that section is not an offence against that section. *EMPEROR OF INDIA v. DONALD FRANK*

[I. L. R., 3 All., 214

Special Excise Act (Bengal Act VII of 1878), ss. 12, 23, 32—Spirituos liquor—Tari—Cantonment Magistrate, Powers of, to cancel license—Excise collection—"Tari" or "toddy" is "spirituos liquor" within the meaning of s. 14 of Act III of 1880. The words "spirituos liquor" "wine," and "intoxicating drugs" in that section must be taken in their popular and ordinary meaning. *QUEEN-EMPRESS v. RAMDHANI PASSI*

[I. L. R., 15 Calc., 453

## CANTONMENTS ACT (XIII OF 1880).

s. 2, cl. (2), and s. 10—Jurisdiction—Order of the Local Government to the contrary—Limits of jurisdiction of Cantonment Magistrate—Cantonments Act (III of 1859), s. 23—Under s. 23 of the Cantonments Act (III of 1859), the Cantonment Judge has jurisdiction to try cases in the absence of any order of

**CANTONMENTS ACT (XIII OF 1880)***—concluded.*

Government to the contrary. In a suit filed in the Court of the First Class Subordinate Judge of Belgaum, in its small cause jurisdiction, to recover Rs 172 as arrears of rent, a question having arisen whether that Court, the pecuniary limit of whose jurisdiction as the Court of Small Causes was Rs 500, or the Court of the Belgaum Cantonment Magistrate invested with small cause powers, had jurisdiction to entertain the suit. *Held* that the Cantonment Court alone had jurisdiction. By Notification No. 2505, published at page 214 of the *Bombay Government Gazette* for 1887, the pecuniary limit of the (Belgaum) Cantonment Court is declared to be Rs 500; and the declaration which was made under Art III of 1880 (which is an Act repealed by the Cantonments Act) is kept alive by s. 2, cl. 2, of the Cantonments Act, and it is, therefore, such an order of the Local Government as is contemplated by s. 10 of Act XIII of 1880. **GULABCHAND MOTILAL v. GROUNDLES** [I. L. R., 18 Bom., 702]

g. 28—*Rule 2 of the rules made under s. 26—Additional fine for continuing offence.*—The additional fine referred to in rule 2 of the rules framed under s. 26 of the Cantonments Act, XIII of 1880, is not only to be imposed after the first conviction, but is to follow proof that failure is persisted in. The additional fine cannot be imposed as a threat in case of possible persistence, which, being in the future, cannot be made matter of present proof. The continuing failure must be matter of later and separate inquiry and proof. *In re Hindaji Talaram*. I. L. R., 23 Bom., 766, followed. **QUEEN-EMPEROR v. PANDARA** . I. L. R., 22 Bom., 841

**CARRIERS.**

See CASES UNDER BILL OF LADING.

See NEGLIGENCE . I. L. R., 1 All., 60  
[9 W. R., 73]

See CASES UNDER RAILWAY ACTS.

See CASES UNDER RAILWAY COMPANY.

1. ——— **Misdescription—Loss of goods.**  
—Misdescription of the nature of goods entrusted to a common carrier disentitles the sender to recover for their loss, although the goods would not be subject to any extra rates had they been properly described. **ROHBERMOOLLAN v. PALMER** . Cor., 133

S. C. in Court below . . . Cor., 24

2. ——— **Time for delivery of goods—**  
**Lien for carriage of goods.**—Although a carrier may not be bound to deliver goods on any specific day or within any specific time, he is bound to deliver them within reasonable time, and what constitutes reasonable time must be determined upon the consideration of all the circumstances of the case. A carrier is entitled to his freight and charges, and he is entitled to retain the goods in satisfaction of his lien upon them. **BULDEO DASS v. NARMOOT**  
[2 Agra, 132]

3. ——— **Delivery of goods to carrier**  
**at consignor's risk—Delivery to consignee—**

**CARRIERS—continued.**

So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee. **WISSEK v. WAT** . 1 Mad., 200

4. ——— **Delivery of goods carried by sea—Landing goods—Custom of port of Bombay—Portation of goods.**—A carrier by sea is obliged to make an actual delivery of goods carried by him to the consignee, but such *prima facie* obligation may be affected by the custom of the port where the goods are to be delivered. Neither by the custom of the port of Bombay nor by the provisions of the Customs Act is the master of a ship bound to wait fifteen days before commencing to land his cargo; but within a reasonable time after the arrival of his ship—15 hours in the case of a sailing vessel, and somewhat less in the case of a steamer—he is at liberty to land goods if the consignee has not sent boats for them; and such landing is not unlawful, nor a breach of contract as carrier on the part of the master. The landing of the goods under the above circumstances and setting them apart for the consignee do not constitute a delivery of them to the consignee; but such goods, after being so landed, continue in the possession of the master as carrier. Course of legislation with reference to the landing of goods on the custom-house wharf reviewed. *Quere*—Whether, under the special circumstances of this case, the goods, when so landed, remained in the custody of the master in his capacity of common carrier or as a warehouseman? **HONGKONG AND SHANGHAI BANKING CORPORATION v. BAKER**

[8 Bom., O. C., 71; 7 Bom., O. C., 188]

5. ——— **Dak-carriage proprietor—**  
**Bailee for hire—Negligence—Onus of proof.**—A person carrying on the ordinary business of a proprietor of dak-carriages does not come within the term "common carrier" as that term is understood in the English law. Such a person is bound to exercise reasonable and ordinary care in respect of baggage entrusted to him, but is not responsible for any loss which may not arise from the negligence or default of himself or his servants, he not being a common carrier bound to ensure the safe conveyance of the baggage against all risk, save the act of God or the Queen's enemies. He is to be regarded as a bailee for hire, and the fact that he does not deliver the baggage at the end of the journey should be accepted as *prima facie* proof that the loss has been occasioned by negligence for which he is responsible, and consequently the onus of proof lies on him that reasonable care was exercised by him. **TODAL SINGH v. THOMPSON** . 3 N. W., 237

6. ——— **Conveyance of goods by Government bullock train—Post Office Act XIV of 1866—Bailee for hire—Negligence—Condition.**—Goods conveyed by the Government bullock train are not entrusted to the Post Office for conveyance within the meaning of Act XIV of 1866. In respect of the Government bullock train, Government must be regarded as an ordinary bailee for hire, and not as a common carrier. As such bailee, apart from any special condition limiting its liability, it is bound to take ordinary care of goods entrusted to it

## CARRIERS—continued.

law, nor a condition repugnant to public policy  
**POSTMASTER OF BARKLEY v. EARLE**

[3 N. W., 195

7. ——— Suit for damages for negligence—*Onus probandi*.—In an action to recover damages for injury caused to the goods by the negli-

**SHETLIFY v. SCOTT** 23 W. R., 39

8. ——— Passenger's luggage, Loss of—*Negligence—Conditions endorsed on ticket—Foreign Steamship Company—Contract Act, s. 151.*

company would not be answerable for unregistered luggage; and that luggage might be insured at any

to him by any person. *Held* that the company being a foreign company were not common carriers; that the plaintiff was bound by the clauses and conditions on the back of the passage-ticket; that none of the conditions had the effect of relieving the company from the consequences of their own negligence; that, in order to establish a defence upon the ground that the plaintiff's luggage was not registered, it was necessary for the defendants to prove, not only that the plaintiff was bound by the conditions, but also that they were ready and willing to register the plaintiff's luggage, and that the plaintiff did not in fact register it; that as the contract was made in Calcutta, the defendants were bound by the provisions of s. 151 of the Indian Contract Act. **MACKILMEAN v. COMPAGNIE DES MESSEAGERIES MARITIMES DE FRANCE** I. L. R., 8 Cal., 227 [7 C. L. R., 49

## CARRIERS—continued.

9. ——— Special contract—*Railway Act (IV of 1879), s. 10—Contract Act (IX of 1872), ss. 151, 161—Railway Company*.—The plaintiff despatched certain goods by the East Indian Railway

all responsibility in regard to any loss, destruction, or

**CARTER** I. L. R., 10 Cal., 210 [13 C. L. R., 123

10. ——— Common carriers—*English 151, 152—Act (IV of 1872) of reasons of of England carriers was*

Act, 1863, and is still in force in this country, and is unaffected by the provisions of the Indian Contract Act. **Kewari Tuladhar v. G. I. P. Railway Co.** I. L. R., 3 Bom., 109, discussed from. The plaintiffs entrusted to the defendants, who were common carriers under the Carriers Act, III of 1865, certain goods which were lost in the course of their carriage on one of the defendants' steamers. On the facts it was found that the defendants took as much care of the goods as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality, and value as the goods lost; and that the loss was not occasioned by the act of God or the Queen's enemies. There was no special contract of the nature provided for by s. 6, Act III of 1865. *Held* that ss. 151, 152 of the Contract Act did not apply, and that the defendants were liable for the loss of the goods. **MOTHOORA KAST DEWAR v. INDIA GENERAL STEAM NAVIGATION COMPANY**

[I. L. R., 10 Cal., 168; 13 C. L. R., 343

*Act*  
*Loss*  
*act.*  
 goods  
 bequeathed to the plaintiff, was lost by coming into contact with a snag in the bed of a certain river, the

**CARRIERS—continued.**

existence of which snag could not have been ascertained by any precautions on the part of the defendants. The goods were received for carriage by the defendants under conditions printed on the back of "forwarding note" signed by the plaintiff, by one of which conditions the defendants protected themselves from liability against accident of certain particular kinds, and "from any accident, loss, or damage resulting from negligence, etc." Held that the loss was not occasioned by the negligence of the defendants; that the forwarding note "was a special contract" within the meaning of the Carriers Act; that the clause purporting to protect the defendants from negligence was bad as being in contravention of the Carriers Act; but that, nevertheless, the contract was not thereby rendered wholly bad, but was divisible, being good so far as it provided that the defendants were not to be liable for loss by accident, but bad so far as it provided that they should not be liable for negligence. *INDIA GENERAL STEAM NAVIGATION Co. v. JOYKRISTO SHAHA*. I. L. R., 17 Cal., 39

12. *Liability of—Railway Act (IV of 1879), s. 210—Loss by negligence—Insurer—Act of God.* A carrier by railway is, under Act IV of 1879, liable as an insurer of goods entrusted to him, and not merely for loss occasioned by negligence. *CHOGEMUL v. COMMISSIONERS FOR THE IMPROVEMENT OF THE PORT OF CALCUTTA*. I. L. R., 18 Cal., 427

13. *Contract Act (IX of 1872), ss. 148, 151, 152—Carriers Act (III of 1865)—Insurers—Railway Acts (IV of 1879 and IX of 1890)—Bailees.* That the duties and liabilities of a common carrier are governed in India by the principles of the English common law on that subject, however introduced, has been recognized in the Carriers Act (III of 1865). His responsibility to the owner does not originate in contract, but is cast upon him by reason of his exercising this public employment for reward. His liability as an insurer is an incident of the contract between him and the owner not inconsistent with the provisions of the Contract Act; and the Law of Carriers partly written and partly unwritten remained as before that Act. The Railway Acts of 1879 and 1890 reduced the responsibility of carriers by railway to that of bailees under the Contract Act, but this does not affect the construction of the law relating to common carriers and the Act of 1865. Notwithstanding some general expressions in the chapter on bailments, a common carrier's responsibility is not within the Contract Act, 1872. The decision of the Calcutta High Court in *Mothoora Kant Shaw v. India General Steam Navigation Co.*, I. L. R., 10 Cal., 166, approved, and that of the Bombay High Court in *Kuverji Tulsi-das v. G. I. P. Railway Co.*, I. L. R., 3 Bom., 109, not supported. *IRRAWADDY FLORILLA Co. v. BUGWANDAS*. I. L. R., 18 Cal., 620 [I. L. R., 18 I. A., 121

14. *Railway Company, Liability (IV of 1879), s. 11—Railway Company, Liability of—Carriage of gold and silver, etc.—Insurance, Increased charge for.* Plaintiffs delivered a box of coins for carriage to the servants of a railway, and

**CARRIERS—concluded.**

declared the nature of the contents at the time of delivery. No demand was made on the part of the railway for any increased payment for insurance. The box having miscarried,—Held on the authority of *Great Northern Railway Company v. Behrens*, 7 H. and N., 950, that the railway were liable for the loss. *SECRETARY OF STATE FOR INDIA v. BUDHU NATH PODDAR*. I. L. R., 19 Cal., 538

**CARRIERS ACT (III OF 1865).**

See BILL OF LADING [I. L. R., 3 Mad., 107

See CARRIERS. [I. L. R., 10 Cal., 166; 13 C. L. R., 342 I. L. R., 17 Cal., 39 I. L. R., 18 Cal., 620 L. R., 18 I. A., 121

See RAILWAY COMPANY. [I. L. R., 3 Bom., 109, 120 I. L. R., 17 Bom., 417 I. L. R., 17 Mad., 445

ss. 6 and 8—Negligence—Accident, Loss by—Special contract—Suit for damages.—The plaintiffs delivered to the defendants certain goods for carriage to Calcutta in a flat belonging to the defendants. The goods were carried under the terms of a special contract or "forwarding note," signed by the shipper. One of the conditions of forwarding note was as follows:—"The Company will not be under any liability for damages or compensation in respect of loss of, or damage to, goods . . . except such liability as they are or may be subject to under the provisions of any law for the time being in force or of any contract other than this for the time being in existence between the Company and the shipper." While on board the defendants' flat, the goods were destroyed by fire. At the trial of the case, the defendants gave evidence showing the state of things before the fire occurred, the circumstances leading to the discovery of the fire (but not the cause or origin of it), and the measures taken to extinguish the fire. Held that the occurrence of a fire, under the circumstances disclosed in the case, without any explanation as to the origin of it, was of itself evidence of negligence. Held, also, reversing the decision of *SALE, J.*, that the defendants had not discharged the onus cast upon them by law of showing that there was no negligence. *Central Cachar Tea Company v. Rivers Steam Navigation Company*, I. L. R., 24 Cal., 787 note, explained. Held on the construction of the above clause (per *SALE, J.*, in the Court below, and per *TREVELYAN, J.*, in the Court of Appeal) that the words "in any law for the time being in force" must be taken to refer not to the common law, but to the law as laid down in the Carriers Act (III of 1865), and that, unless their liability was enlarged by express contract, the defendant company were liable only for loss or damage of which, under s. 6 of that Act, they were not allowed to relieve themselves, that is, only for loss occasioned by their negligence or criminal acts of themselves, their servants or agents. The decision of *HILL, J.*, in

**CARRIERS ACT (III OF 1865)—concluded.**

*Central Cachar Tea Co. v. Rivers Steam Navigation Co.*, unreported, followed. *Semle* on appeal (per MACPHERSON, J., MACLEAN, C.J., doubting) that the above construction of the clause was correct. *CHOUTMULL DOOGUE v. RIVERS STEAM NAVIGATION COMPANY* . . . I. L. R., 24 Calc., 786  
[I. C. W. N., 200]

The Judicial Committee dismissed an appeal in the above case from the decree of the Appellate High Court, which proceeded on a 9 of the Carriers Act (III of 1865), that Court having taken the non-delivery as placing the burden of proving absence of negligence on the carriers. There were facts showing that no adequate means had been provided by the defendants for extinguishing a fire on board, and that the watch was inefficient. The defendants, accordingly, had failed to exonerate themselves. *RIVERS STEAM NAVIGATION CO. v. CHOUTMULL DOOGUE* . . . I. L. R., 28 Calc., 398  
[I. R., 26 I. A., 1  
3 C. W. N., 145]

**CARRYING ON BUSINESS.**

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—DWELLING—CARRYING ON BUSINESS, ETC.

**"CASH ON DELIVERY," MEANING OF—**

See CONTRACT—CONSTRUCTION OF CONTRACTS . . . I. L. R., 18 Calc., 417

**CASTE.**

See CUSTOM . . . I. L. R., 13 Mad., 495  
See DEFAMATION . . . 8 Mad., Ap., 47  
[I. L. R., 8 Mad., 381  
I. L. R., 13 Mad., 495  
I. L. R., 22 Calc., 48  
I. L. R., 24 Bom., 13]

See HINDU LAW—CUSTOM—CASTE.  
[I. L. R., 10 Mad., 133  
I. L. R., 17 Mad., 222]

See HINDU LAW—CUSTOM—IMMORAL CUSTOMS . . . I. L. R., 17 Mad., 470

See CASES UNDER JURISDICTION OF CIVIL COURT—CASTE.

See CASES UNDER RIGHT OF SUIT—CASTE QUESTIONS.

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . . . I. L. R., 13 Bom., 131

See RIGHT OF WAY.  
[I. L. R., 16 Bom., 552]

Authority of, to declare marriage void.

See BIGAMY . . . I. L. R., 1 Bom., 347

Loss of—

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP . . . I. L. R., 1 All., 945

**CASTE—concluded.**

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, ETC.—OUTCASTES.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW  
[I. L. R., 1 Bom., 559]

See HINDU LAW—MARRIAGE—RESTRAINT ON, OR DISSOLUTION OF MARRIAGE  
[3 N. W., 300  
I. L. R., 8 Mad., 169]

**CATTLE TRESPASS.**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT.  
[I. L. R., 18 Mad., 229]

See MISCHIEF . . . 8 B. L. R., Ap., 3  
[10 W. R., Cr., 29  
18 W. R., Cr., 72  
8 Mad., Ap., 30, 37  
4 Bom., Cr., 14  
I. L. R., 7 Bom., 126  
I. L. R., 9 Bom., 173]

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . . 2 B. L. R., A. Cr., 45  
[9 B. L. R., Ap., 38]

**CATTLE TRESPASS ACTS (III OF 1867 AND I OF 1871).****III of 1867.**

See COURT FEES ACT, 1870, SCH. II, ART. 1.  
[8 Bom., Cr., 22]

See DAMAGES—SUITS FOR DAMAGES—TORTS . . . 15 W. R., 279

See FINE . . . 7 Bom., Cr., 55

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.  
[1 Bom., 100  
4 Bom., Cr., 13  
5 Bom., Cr., 13  
7 W. R., 155]

See CASES UNDER MISCHIEF.

See SENTENCE—GENERAL CASES.  
[18 W. R., Cr., 13]

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.  
[5 Mad., Ap., 21  
7 Mad., Ap., 23]

See WITNESS—CRIMINAL CASES—SUMMONING AND ATTENDANCE OF WITNESSES.  
[10 W. R., Cr., 42]

**I of 1871.**

See DAMAGES—SUITS FOR DAMAGES—TORTS . . . I. L. R., 18 Cal., 150

See REVISION—CRIMINAL CASES—GENERAL . . . I. L. R., 19 Mad., 238

See RIGHT OF SUIT—CONFESSION.  
[3 C. L. R., 344  
I. L. R., 10 Calc., 540]

# CATTLE TRESPASS ACTS (III OF 1857 AND I OF 1871)—continued.

See SENTENCE—GENERAL CASES.

[18 W. R., Cr., 12

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE . 2 C. L. R., 507

—Police *patel*.—Where a Magistrate convicted, under s. 27 of Act I of 1871, a person who was not himself a pound-keeper, but was merely entertained by the police *patel*, who was *ex-officio* pound-keeper under s. 6 of the Act, the High Court annulled the conviction and sentence passed upon the accused. REG. v. VAKTA VALAD LAKHU . 9 Bom., 164

s. 10.  
See MISCHIER . I. L. R., 7 Bom., 126  
[I. L. R., 9 Bom., 173

s. 11.  
See FOREST ACT, s. 69.  
[I. L. R., 22 Bom., 933

s. 19.  
See CRIMINAL BREACH OF TRUST.  
[8 B. L. R., Ap., 1

s. 20.  
See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT.  
[2 C. L. R., 507  
I. L. R., 13 Calc., 304  
I. L. R., 9 Mad., 102, 374  
See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.  
[I. L. R., 23 Calc., 300, 442

1. *Criminal Procedure Code (1882), s. 560—Fivolous and vexatious complaint—Complaint of wrongful seizure of cattle*—"Offence."—A complaint of the wrongful seizure of cattle is not a complaint of an offence within the meaning of the Code of Criminal Procedure. Consequently, on the dismissal of such a complaint, it is not competent to a Court to act under s. 560 of the Code and award compensation to the persons against whom the complaint is made. *Pitchi v. Ankappa, I. L. R., 9 Mad., 102, Kottalanada v. Ankappa, I. L. R., 9 Mad., 374, Kala Chand v. Muthaya, I. L. R., 9 Mad., 13 Calc., 304, and Gadadhar Biswas, I. L. R., 13 Calc., 248, Nedaram Thakur v. Joonab, I. L. R., 23 Calc., 248, referred to. MEGHA v. SHEOBHAK*  
[I. L. R., 18 All., 353

2. *Criminal Procedure Code (1882), s. 4 (p), and Ch. XXII—Illegal seizure of cattle—"Offence"*—Summary trial.—The illegal seizure of cattle included in ss. 20 to 23 of the Cattle Trespass Act (I of 1871) is not an "offence" under s. 4 (p) of the Criminal Procedure Code, and cases connected therewith are accordingly not triable by the summary procedure described in Ch. XXII of that Code. *Pitchi v. Ankappa, I. L. R., 9 Mad., 102, and Kottalanada v. Muthaya, I. L. R., 9 Mad., 374, followed. NEDARAM THAKUR v. JOONAB . I. L. R., 23 Calc., 248*

## CATTLE TRESPASS ACTS (III OF 1857 AND I OF 1871)—continued.

s. 22.  
See APPEAL IN CRIMINAL CASE—ACTS—CATTLE TRESPASS ACT.  
[I. L. R., 10 Bom., 230  
3 N. W., 200  
I. L. R., 15 Calc., 712  
I. L. R., 11 Mad., 259  
I. L. R., 19 Mad., 238

See COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE . 2 C. L. R., 507  
[I. L. R., 7 Mad., 345  
I. L. R., 14 Calc., 175  
I. L. R., 19 Mad., 238  
I. L. R., 22 Calc., 139  
7 Mad., Ap., 24

See FINE .  
See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.  
[I. L. R., 23 Calc., 300, 442

1. *Power of Magistrate—Seizure of cattle and dispute as to ownership of land.*—Where there was a dispute as to the ownership of land on which the complainant's cattle were found, the complainant stating the land belonged to A, who gave him the right to graze his cattle there, and the party charged (who had seized and impounded the cattle) claiming the land as his own, it was held that the order of the Magistrate referring the parties to the Civil Court was illegal, and that he should have disposed of the case himself under the Cattle Trespass Act, I of 1871, s. 22. *TUNNOO v. KUREEM BUKSH*  
[23 W. R., Cr., 2

2. *Joint fine—Fine and compensation.*—Proceedings under s. 22 of the Cattle Trespass Act are quasi-civil in their nature, a Magistrate being at liberty under that section to assess and enforce in a summary manner compensation for an injury for which a civil action might be brought. An order, therefore, for the payment of a sum as fine and compensation, passed against two persons under that section, which does not specify the proportionate amount payable by each, is good. In *THE MATTER OF NEAZ v. MONSOP*  
[I. L. R., 14 Calc., 175

3. *Illegal seizure of cattle—Theft—Compensation—Fine—Imprisonment in default of payment of compensation—Criminal Procedure Code (1882), s. 386—Penal Code, s. 378.*—An accused was found to have loosed the complainant's cattle at night from a cattle pen, and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for their release. He was proceeded against under Act I of 1871 (Cattle Trespass Act), and under the provisions of s. 22 ordered to pay compensation to the complainant, and in default to undergo one month's rigorous imprisonment. *Held* that s. 22 was inapplicable to the facts of the case, and that the order must be set aside. On the facts it was not a case of "illegal seizure and detention" of cattle, but rather one of theft, as all the elements of that offence were present,

since is laid down in s. 300 of the Penal Code. The law nowhere provides that fines may be levied by means of imprisonment. *PARTAG RAI v. ARJU MIAN* . I. L. R., 22 Calc., 139

4. *Compensation awarded under Cattle Trespass Act—Imprisonment in default of payment.*—Imprisonment cannot be inflicted in default of payment of the compensation awarded under the Cattle Trespass Act. *QUEEN-EMPRESS v. LAKSHMI NATHAN* (I. L. R., 10 Mad., 238

*NAIK v. GADYANATH MANJARI* (I. L. R., 27 Calc., 992

## CAUSE LIST.

*See PRACTICE—CIVIL CASES—CAUSE LIST*  
[3 Hyde, 88  
Bourko, O. C., 238  
4 B. L. R., Ap., 75  
I. L. R., 27 Calc., 355

## CAUSE OF ACTION.

*See CASES UNDER APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—RIGHT OF SUIT.*

*See CASES UNDER BOND.*

*See CASES UNDER DECLARATORY DECREE, SUIT FOR.*

*See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.*

*See CASES UNDER LIMITATION ACT, 1877.*

*See CASES UNDER POSSESSION—ADVERSE POSSESSION.*

*See POSSESSION—NATURE OF POSSESSION.*  
(I. L. R., 4 Calc., 218, 870  
34 W. R., 33, 418  
6 N. W., 137  
I. L. R., 4 All., 184  
I. L. R., 11 Calc., 93

*See CASES UNDER RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.*

*See CASES UNDER RES JUDICATA—CAUSES OF ACTION.*

*See CASES UNDER RIGHT OF SUE.*

## CAUSING DEATH BY NEGLIGENCE.

*Lessee of Government ferry allowing unsound boat to be used on ferry—Penal Code (Act XLV of 1860), s. 304A.*—The lessee of a Government ferry having the exclusive right of conveying passengers across a certain river at a particular spot allowed an un-sound boat to be used at the ferry. In consequence of its unsoundness, the boat sank while crossing the river, and some of the persons in it were drowned. *Held* that the lessee of the ferry was properly convicted of the offence provided for by s. 304A of the Penal Code. *QUEEN-EMPRESS v. BHUTAN*

(I. L. R., 18 All., 472

## CAVEAT.

*See LETTERS OF ADMINISTRATION.*

[15 B. L. R., Ap., 8  
I. L. R., 4 Calc., 87  
I. L. R., 12 Bom., 184

*See CASES UNDER PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.*

## CEREMONIES.

*See CASES UNDER HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—CEREMONIES*

*See CASES UNDER MAHOMEDAN LAW—PRE-EMPTION—CEREMONIES.*

## CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881).

s. 87.

*See HINDU LAW—PARTITION—REQUISITES FOR PARTITION.*

(I. L. R., 27 Calc., 515  
4 C. W. N., 582

## CERTIFICATE OF ADMINISTRATION.

Col.

1. CERTIFICATE UNDER BOMBAY REGULATION VIII of 1827, AND ACTS XIX AND XX of 1841 . . . . . 991
  2. ACTS XXVII of 1860 AND VII of 1859, AND GRANT OF CERTIFICATE . . . . . 995
  3. RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE . . . . . 998
  4. ISSUE OF, AND RIGHT TO, CERTIFICATE . . . . . 1010
  5. NATURE AND FORM OF CERTIFICATE . . . . . 1018
  6. PROCEDURE . . . . . 1021
  7. EFFECT OF CERTIFICATE . . . . . 1025
  8. CANCELLMENT AND RECALL OF CERTIFICATE . . . . . 1029
  9. BOMBAY MINORS' ACT, XX of 1864 . . . . . 1032
- See CASES UNDER APPEAL—CERTIFICATE OF ADMINISTRATION.*

**CHARGE TO JURY—continued.****3. SPECIAL CASES—continued.**

*intention.*—In a trial with a jury under s. 366 of the Penal Code, the Judge on the question of intent charged the jury in the following words:—"It remains only to consider the question of intent. The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit intercourse. As to this, it is sufficient to say that no other inference is possible under the circumstances. When a man carries off a young girl at night from her father's house, the presumption is that he did so with the intent indicated above. It would be open to him, if he had admitted the kidnapping, to prove that he had some other object, but no other object is apparent on the face of the facts." *Held* that this amounted to a misdirection of the jury. The question of intent was a pure question of fact, but the way in which it had been put to the jury left them no option but adopt the view taken by the Judge. **QUEEN-EMPRESS v. HUGHES**

[I. L. R., 14 All., 25]

**54. ——— Murder—Distinction between murder and culpable homicide.**—When a prisoner is on his trial by a jury upon a charge of murder, it is the duty of the Judge to point out to the jury accurately the difference between murder and culpable homicide not amounting to murder, and to direct the attention of the jury to the evidence, and to leave them to find the facts and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty. **QUEEN v. SHAMSHERE BEG**

[9 W. R., Cr., 51]

**55. ——— Possession of forged document—Penal Code, ss. 474, 475—Possession of forged documents bearing counterfeit marks—Ingredients of the offence.**—To support a charge under s. 474 of the Penal Code, it is necessary for the prosecution to prove (1) that the documents in respect of which the charge is brought are forged; (2) that the accused knew them to be forged; (3) that he was in possession of them; (4) that he intended that they should be fraudulently or dishonestly used as genuine; and (5) that each of the documents is of the description mentioned in s. 466 or s. 467 of the Penal Code. To support a charge under the latter part of s. 475 of the Penal Code, it is necessary for the prosecution to prove (1) that the accused was in possession of the papers referred to in the charge; (2) that the devices or marks were counterfeited on them; (3) that the marks were such as are used for the purpose of authenticating any document described in s. 467; and (4) that the accused intended that the marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. The accused was charged with being in possession of forged documents, an offence punishable under ss. 474 and 475 of the Penal Code. In his summing up, the Sessions Judge, after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged documents were in the possession of the accused, and whether the nature of one, at all events, of the documents was such as to

**CHARGE TO JURY—continued.****-3. SPECIAL CASES—continued.**

connect them with the accused, being the kind of document he would be likely to have in his house and he alone; and that, if they found this issue in the affirmative, they must return a verdict of guilty. *Held* that the charge to the jury was defective and misleading, and insufficiently complied with the requirements of s. 297 of the Code of Criminal Procedure. **QUEEN-EMPRESS v. ABAJI RAM-CHANDRA** . . . I. L. R., 16 Bom., 165

**56. ——— Private defence, Right of—Penal Code, s. 100, cls. 1, 2, and 6—Misdirection.**—*Held* that it was no misdirection on the part of the Judge in not calling the attention of the jury to cls. 1 and 2 of s. 100 of the Penal Code, when he particularly called their attention to cl. 6 of that section. **QUEEN v. MOOKHTARAM MUNDLE**  
[17 W. R., Cr., 45]

**57. ——— Rape—Erroneous verdict owing to misdirection—Failure of justice—Criminal Procedure Code (Act X of 1882), ss. 418, 423 (d), and 537.**—On a charge of rape the Judge in his charge to the jury said: "You will observe that this sexual intercourse was against the girl's will and without her consent, etc.," instead of saying as he ought to have done, "you will have to determine upon the evidence in this case whether the intercourse was against the girl's will, etc.," and the charge went on in the same style of stating to the jury what had been proved instead of leaving it to them to decide what in their opinion was proved. In the concluding sentence of the charge the Judge said: "You have seen the witnesses, and I have no doubt that you will return a just verdict." *Held* that such a charge amounted to a clear misdirection, and that the verdict was erroneous owing to such misdirection. Even the concluding sentence did not satisfy the requirements of a proper charge. The provisions in s. 423 (d) and s. 537 of the Criminal Procedure Code do not require that the Court is to go through the facts and find for itself whether the verdict is actually erroneous upon the facts. **ALI FAKIR v. QUEEN-EMPRESS**

[I. L. R., 25 Calc., 230]

**58. ——— Rioting—Unlawful assembly—Common object—Verdict of jury—Alternative common object—Criminal Procedure Code (1882), s. 303.**—Fourteen accused were charged with rioting armed with deadly weapons, and with murder and causing grievous hurt during such riot. The common object alleged by the prosecution was to compel the payment of certain money by one of the persons of the opposite party. Some of the accused who admitted their presence at the scene of the occurrence stated that they had been attacked on account of an allegation being made that one of the opposite party had enticed away another's wife, and that they had merely acted in self-defence. The case was tried before a jury, and on the close of the case for the prosecution the Sessions Judge, considering that possibly the common object alleged by the prosecution might be considered not to have been proved, amended the charge and added an alternative common object to it, viz., that the object of the assembly was

**CHARGE TO JURY—continued.****3. SPECIAL CASES—continued.**

to punish one of the opposite party for enticing away  
 her wife. There was no evidence on the record

was found to be true. *Held*, further, that it  
 was unfair to use a part of the statements of some  
 of the accused put forward in their defence as justifying  
 the use of force by them in repelling the attack  
 of the opposite party, for the purpose of showing a  
 common object as against them, and that the state-

be convicted of an offence under s. 411 of the Penal  
 Code. *QUEEN-EMPRESS v. BALFA SONTA*

[*I. L. R.*, 15 Bom., 389

80. ——— Unlawful assembly—Code  
 of Criminal Procedure (Act V of 1898), ss. 225,  
 537—Omission to state correctly common object

the accused in their defence. *Sabir v. Queen-  
 Empress, I. L. R.*, 22 Calc. 276, and *Behari Mahtan  
 v. Queen-Empress, I. L. R.*, 11 Calc., 106, distin-

guished. *BAHAMAT ALI v. EMPRESS*  
 [4 C. W. N., 186

time of his trial exhibiting symptoms of unsoundness

**CHARGE TO JURY—concluded.****3. SPECIAL CASES—concluded.**

and should, under s. 425 of the Code of Criminal  
 Procedure, have been first submitted to the jury.  
*QUEEN v. DOORJODHUN SHAMONTO alias DEEJO-  
 BOR* 19 W. R., Cr., 28

misdirection. *QUEEN v. HOSSSEIN*

[8 W. R., Cr., 60

64. ——— Recommendation to

[14 W. R., Cr., 46

**CHARGE-SHEET, COPY OF.**

See ACCUSED PERSON, RIGHT OF.

[*I. L. R.*, 19 Mad., 14

**CHARITABLE REQUEST.**

See CASES UNDER HINDU LAW—WILL—  
 CONSTRUCTION OF WILL—REQUESTS FOR  
 CHARITABLE PURPOSES.

See CASES UNDER WILL—CONSTRUCTION.

**CHARITABLE INSTITUTION.**

Suit relating to—

See COSTS—TAXATION OF COSTS.

[*I. L. R.*, 20 Bom., 301

See RIGHT OF SUIT—SUBSCRIPTIONS, SUITS  
 FOR

10 C. L. R., 197

See TRUSTS ACT, s. 24.

[*I. L. R.*, 18 Mad., 443

**CHARITABLE TRUST.**

See LIMITATION ACT, 1877, ART. 134 (1-71-  
 127, 134) . [*I. L. R.*, 1 Bom., 263

**CHARITABLE TRUST—concluded.**See **MAHOMEDAN LAW—ENDOWMENT.**See **RELIGIOUS COMMUNITY.**

[12 Bom., 323]

See **CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS.**See **RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT** . . . 6 C. L. R., 58See **TRUST** . . . I. L. R., 18 Bom., 551**CHARITIES.**See **ADVOCATE GENERAL.**

[4 Moore's I. A., 190]

See **CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS.**See **SUPREME COURT, MADRAS.**

[4 Moore's I. A., 190]

**CHARTER-PARTY.**See **BILL OF LADING.**

[Bourke, O. C., 171, 309]

Bourke, O. C., 100

I. L. R., 5 Bom., 313

See **DAMAGES—REMOVEDNESS OF DAMAGE.**

[8 B. L. R., Ap., 20]

See **GUARANTEE** 1 Ind. Jur., N. S., 412See **INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT** . I. L. R., 8 Bom., 5See **PRINCIPAL AND AGENT—LIABILITY OF AGENTS** . . . I. L. R., 5 Calc., 71

[I. L. R., 5 Bom., 584]

1. ——— **Nomination of ship's agents by freighters—Right of agents to sue on charter-party—Ships "going seeking," Meaning of.**—A charter-party made between the defendants (the owners of the *Seaforth*) and *H & Co.* (the freighters) provided that the owners should employ at the ports of discharge the consignee nominated by the freighters to transact the ship business there inwards and outwards on the customary terms, not exceeding 2½ per cent. on amount of freight payable inwards, and 5 per cent. outwards. *H & Co.* nominated the plaintiffs to transact the ship's business in Bombay (a port of discharge) with the knowledge and consent of the master of the *Seaforth*, and the plaintiffs accepted and acted under such nomination. The defendants refused to pay the plaintiffs' commission on the outward freight of the *Seaforth* on the ground that, under the circumstances under which such freight was procured, the plaintiffs were not under the charter-party entitled to receive commission on it. Held that the plaintiffs were sufficiently within the consideration of the charter-party to maintain a suit for the breach of such clauses of it as were inserted for their benefit. Meaning of the mercantile expression of ship "going seeking" discussed. **BLACKWALL & Co. v. JONES & Co.** . 7 Bom., O. C., 144

2. ——— **Right to retain cargo for amount of bill for freight dishonoured.**—*M* chartered a ship to load a cargo at Cardiff and proceed therewith to Madras, the freight to be paid in London

**CHARTER-PARTY—continued.**

on unloading and right delivery of the cargo; one-third by *M*'s acceptance at three months from the sailing of the ship (the same to be returned if the cargo were not duly delivered), and the remainder by like bill at three months from the date of delivery in London of the certificate of right delivery of the cargo. The charter-party provided for payment of a commission on the contract, ship lost or not lost, that the £150 should be advanced in cash at the port of discharge on account of the freight against the captain's draft on *M*. The cargo was loaded accordingly, a bill of lading was given for the same, and the ship sailed from Cardiff on the 8th October 1863, *M* having consigned the cargo to *A & Co.*, who carried on business at Madras. On the same day the owners drew a bill on *M* at three months for £261 1s. 10d., being one-third of the freight. On the 10th October 1863, the general agents in London of *A & Co.* advanced to *M*, on *A & Co.*'s account and out of their funds, £700, received as security for such advance the bill of lading blank, and endorsed and forwarded the bill to *A & Co.* On the 29th October 1863, *M* accepted the bill for £261 1s. 10d., and in the following December he suspended payment, and the bill was protested. On the 14th January 1864, the ship arrived at Madras, and thereupon *A & Co.*, as holders of the bill of lading, applied for the delivery of the cargo, and offered to advance the £150 in cash pursuant to the charter-party, but the captain claimed to retain the cargo for the value of the dishonoured bill and the balance of freight due. Held that the terms of the contract were at variance with the right of lien so claimed, and that it was not suspended by the bill, nor revived by the freighters' insolvency. **ABBUTHNOT v. DAIGRE** . . . 2 Mad., 88

See also **BJORCK v. MADRAS RAILWAY COMPANY**

[2 Mad., 102 note]

3. ——— **Freight—Bill of lading—Liability of master where quantity signed for is more than cargo shipped.**—The plaintiff chartered a ship, of which he was master, to one *C H C*, of Calcutta, under a charter-party, by which it was agreed that the ship (which was then at Melbourne) should proceed to certain ports and there load a cargo for Calcutta, "the cargo to be delivered to the charterer at Calcutta, on being paid freight at and after the rate of the lump sum of £1,150 for the full reach of the ship; the said freight to be paid on the unloading and right delivery of the cargo as customary, less any advances that may have been made." On the arrival of the ship at Calcutta, *C H C* requested the plaintiff to deliver the cargo to the defendants as his agents, which the plaintiff agreed to do on having payment of the freight guaranteed by the defendants. The defendants were *bona fide* holders of the bills of lading which had been signed by the plaintiff in respect of the cargo. They sent to the agents of the plaintiff in Calcutta the following letter: "As it will be necessary for us for the protection of our interests to get delivery of the cargo, and as we do not care about further trouble in the matter, we agree to guarantee payment of the balance of freight due on the charter-party, less any claims for short delivery," etc. On unloading there was found to be a deficiency in quantity

## CHARTER-PARTY—continued.

[8 B. L. R., 340; 17 W. R., 49]

4. — Conditions precedent—“*Now on her passage*”—*Breach of warranty—Principal and agent—Undisclosed principal.*—The plaintiffs entered into a contract of charter-party with the defendants, whereby it was agreed between them and the defendants acting for the owners, “that the steamer *Atholl*, now on her passage to Calcutta, being tight, staunch, and

the charter-party, if the steamer has not arrived in Calcutta on 15th April 1871.” The defendants signed the charter-party as “agents of steamer *Atholl*.” The steamer was not, at the time the charter-party was entered into, on her way to Calcutta, being then in the port of London, and she

defendants for damages. Held the defendants were liable. The statement in the charter-party that the steamer was on her passage to Calcutta was a condition precedent. *SCHILLER v. FINLAY*

[8 B. L. R., 544]

5. — Ship unable to enter port

master is not bound to sign bills of lading for, or to sail to, a port where the vessel cannot, by reason of her draught of water, lie and discharge “always afloat” without being previously lightened, even if the cost of the requisite lightening would, by the charter-party, fall on the charterers. By the terms of a charter-party a vessel was to take in a full cargo at Bombay, and therewith proceed to a “safe port in the Mediterranean (Spanish ports excluded),

## CHARTER-PARTY—continued.

that port. *GRAHAM & Co. v. MERVANJI NUSSEEVANJI* I. L. R., 5 Bom., 539

6. — Principal and agent—*Charter-party signed by agents for master and owner—Parties to suit—Liability of master—Liability of Agents—Master of ship, the agent of charterer, to sign bill of lading—Right of master to recover from charterers sums paid by master as*

for the sum of Rs15,000 per month, payable in advance. By subsequent agreement the term was extended to 30th March 1881, and the charterer was

respect of the then intended voyage of the *Hutton*. It was also agreed between the plaintiffs and *E* that the said ship should be consigned to the plaintiffs at Calcutta and also to them at Bombay, and that the plaintiffs should receive all the freight, passage-

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them in Bombay, and interest on the said sum of Rs12,000 at the rate of nine per cent. per annum. Due notice of this agreement was given to *F, M & Co.* On the 11th March, *E*, being unable to pay the Rs6,000, requested the plaintiffs to pay that sum to *F, M & Co.* on his behalf, which the plaintiffs did,—*E* agreeing that the said payment should be on the same terms as those on which the Rs12,000 had been paid. The ship, having proceeded to Cal-

## CHARTER-PARTY—continued.

defendants or their agents in respect of the freight, and for payment of the balance found due after deducting the sums properly payable to the defendants for hire of the ship and for ₹100 damages sustained by the plaintiffs by reason of the wrongful act of the defendants, whereby the plaintiffs had been deprived of the two per cent. commission. The plaintiffs alleged that the balance due to them would be about ₹9,500. The first defendant did not appear. The second defendant (the master) contended that he was not liable; that *F, M & Co.* had been especially appointed as agents of the owner; that they were not his (the master's) agents; and that they had no authority to sign the charter-party for him. He admitted that the sum of ₹12,000 had been paid to *F, M & Co.* by the plaintiffs as agents for the owner; but as to the ₹6,000, he denied that it had been paid to *F, M & Co.* on his account or on account of the owner. He further alleged that there was a large sum due by *E* in respect of hire of the ship and other proper claims against him under the charter-party, and that the defendants were, therefore, justified in refusing the demands of the plaintiffs as assignees of *E* until the whole of their claims against *E* were liquidated. He alleged that *F, M & Co.* had received the freight of the ship, amounting to ₹20,426, and he claimed a lien on this sum in respect of the sum of ₹19,232 due for hire and other charges on the said ship, and ₹605 for money paid for short delivery of goods. The plaintiffs subsequently made *F, M & Co.* defendants to the suit. In their written statement, *F, M & Co.* stated that they had signed the charter-party as agents only and not as principals, and they contended that the plaintiffs could not proceed simultaneously against the first defendant and the second defendant, but must elect to proceed separately against either; and, further, that the plaintiffs could not proceed simultaneously against themselves (*F, M & Co.*) and the second defendant, but should elect to proceed separately against either. They admitted the receipt of the ₹12,000 as agents for the first defendant, and not as agents of the second defendant. As to the ₹6,000, they alleged that it had been paid to them, not on account of the *Hutton*, but in respect of claims which they had against *E* in connection with the *Glan Gordon*, another ship which had been chartered by *E*. They admitted the receipt of the freight of the *Hutton*, amounting to ₹20,426, but claimed a lien on this sum in respect of hire and other proper charges due under the charter-party. *Held* that the second defendant (the master) was not liable on the charter-party. He had given no authority to *F, M & Co.* to sign it as his agents; and his conduct in acting under the charter-party, being referable to his character of, and duty as, master, did not amount to ratification. But inasmuch as he claimed to deduct from the freight received in Bombay sums which were paid either by him or to *F, M & Co.* for him, he was so far a proper party to the suit. *Held* also that, under s. 230 of the Contract Act (IX of 1872), *F, M & Co.* were not liable as principals on the charter-party, as they appeared on the face of the charter-party to have signed merely as agents. But they were liable, under s. 235 of the Contract Act,

## CHARTER-PARTY—continued.

for having untruly represented themselves to be the authorized agents of the master to enter on his behalf into the contract therein contained. Their liability was limited to the amount which could have been recovered from the master if he had really been their principal. No difference was made in their liability by the fact that the owner was also liable. As to the ₹6,000,—*Held* on the evidence that the plaintiffs at the time of the payment had specifically appropriated this sum to the hire then due for the *Hutton*. *Held*, further, that the charter-party was one of the class known as "*locatio navis et operarum magistris*," that under such a charter-party the master would, as between owner and charterer, sign bills of lading as agent of the charterer; that as between the owner and the charterer the latter was liable to defray the damages for non-performance of the contracts contained in the bills of lading, including damages for short delivery of cargo; and that, such being the liability of *E* as charterer, the plaintiffs as his assignees were bound by all the equities affecting him, so that the defendants might set off as against the plaintiffs whatever the owner of the *Hutton* might have set off against *E* if he had been the plaintiff. The second defendant (the master) alleged that he had paid in Bombay certain sums of money to consignees as damages for short delivery of cargo, and he claimed credit for such payments as against the plaintiffs. *Held* that he had no power to bind *E* by making such payments on his behalf in Bombay, where both *E* and the plaintiffs were resident, without the consent either of *E* or of the plaintiffs. In order to establish these charges against *E* and his assignees (the plaintiffs), it was necessary for the defendants to prove either that they were in fact due, in which case the master would be justified in paying them under s. 69 of the Contract Act, or that their correctness had been admitted by *E* or his agents. The defendants having failed to produce the required proof, the claim of the second defendant was disallowed. *HASONBOY VISRAM v. CLAPHAM*

[I. L. R., 7 Bom., 51]

7. — Misdescription of tonnage of ship—*Misrepresentation in contract—Contract Act (XI of 1872), ss. 10, 13, 14, 18, 19—Condition precedent.*—The defendants in Bombay chartered a ship from the plaintiffs, which was described in the charter-party as of the measurement of about 2,700—2,800 tons nett register. The ship had never been in Bombay, and was wholly unknown to the defendants. Evidence was given that in the negotiations for the charter-party the plaintiffs stated to the defendants that the ship was certainly not more than 2,800 tonnage register. She, however, turned out to be of the registered tonnage of 3,045 tons, and the defendants refused to accept her in fulfilment of the charter-party. *Held* by PARSONS, J., that the defendants were entitled to treat the contract as void by reason of the erroneous statement of the plaintiffs with regard to the size of the ship. (Contract Act, IX of 1872, ss. 10, 13, 14, 18, 19.) *Held* on appeal by SARGENT, C.J., and PARSONS, J., (1) that the representation in the charter-party as to

**CHARTER-PARTY—continued.**

the tonnage of the vessel was intended to be a substantive part of the contract between the parties; (2) that the statement in the contract was a condition entitled to would have (p; 3) that radiating the contract. OCEANIC STEAM NAVIGATION COMPANY v. SOONDERDAS DHURUMSEY

[I. L. R., 15 Bom., 389]

Affirming the decision in S. C.

[I. L. R., 14 Bom., 341]

**S. ———— Optional clause—**

*Choice of ports to load cargo—Election of port.*—The plaintiff chartered the defendants' ship to

**CHARTER-PARTY—continued.**

conclusively determined their election in favour of Aden at latest on the 22nd July when they accepted the Rs500 "for filling up salt to go to Aden." ABDUL RAHMAN ALLABAKHIA v. HASAREHOY VISRAM

[I. L. R., 16 Bom., 501]

**9. ———— Mistake in date—**  
*Mistake mutual or unilateral—Rectification or rescission of contract.*—The plaintiffs required a steamer to sail from Jeddah "fifteen days after the Haj," in order to convey pilgrims returning to Bombay. They chartered a steamer from the

10th August 1892" was given or accepted by the plaintiffs in the belief that it corresponded with the fifteenth day after the Haj. The defendants had no belief on the subject, and contracted only with respect to the English date. The 19th July

one for the 19th July 1892. Held that the agreement was one for the 10th August 1892, and that, as that date was a matter materially inducing the agreement, there could be no rectification, but only cancellation even if both parties were under a

[I. L. R., 16 Bom., 561]

captain, however, believing that the plaintiff would not find salt at Aden for Calcutta, refused to sail to Aden to load there and r guaranteed refused to do captain, on formed the load salt was with the defendants, and that they named Ras Rawaya as the port where the plaintiff was required to load his salt, and refused to go to Aden. The plaintiff refused to go to Ras Rawaya. There was, to the defendants' knowledge, no salt at Ras Rawaya. There was plenty of salt at Aden, though none offering for Calcutta, owing to the prices ruling at the latter port. The captain refus-

because, if the election of the port was with the defendants, they, through their agent at Jeddah,

according to their usual practice. On 11th May 1893, the defendants chartered the steamship *Paddington* of which they were also the owners

**CHARTER-PARTY—concluded.**

agents in Bombay, and on the 12th May assigned a half share of their interest under the charter-party to *K D & Co.* By the charter-party a full and complete cargo was to be loaded, and the freight was to be £1-10 per ton. The captain, however, was authorized to sign clean bills of lading at any rate of freight required by the charterers without prejudice to the charter-party, but at not less than the chartered rate, unless the difference was paid in cash before sailing. *K D & Co.*, having thus sub-chartered the *Paddington*, declared that steamer to the plaintiffs for 2,747 tons of cargo under their contract of the 3rd March 1898, and the name of the steamer was then entered in the shipping orders for that amount of cargo. The plaintiffs thereupon commenced to load a cargo of wheat. By the 21st June, 2,100 tons had been put on board; mate's receipts were given to the plaintiffs and bills of lading were prepared by them, stating the rate of freight to be 16s. 6d. per ton as per the shipping orders, and were presented for signature to the captain. He refused to sign them unless the difference between 16s. 6d. and the chartered rate, *viz.*, £1-10, was paid to him as provided in the charter-party. The plaintiffs thereupon refused to ship any more cargo, and demanded the return of the cargo already shipped on board the *Paddington*. On the 24th June the *Paddington* sailed from Bombay, the captain having previously authorized the defendants to sign bills of lading for him after his departure, provided they were in accordance with the charter-party. After some delay the plaintiffs on the 29th June accepted bills of lading for the 2,100 tons at £1-10, and paid under protest the difference between that rate and their contract rate (16s. 6d.) and certain other sums, for which the defendants as agents for the owners claimed a lien. The plaintiffs now sued to recover from the defendants the amount so paid under protest. The defendants contended that as agents for owners they were justified in refusing to give bills of lading until the sums due and for which they claimed a lien were paid. *Held* that the defendants had no lien for the sums paid, and that the plaintiffs were entitled to recover the amount claimed. *Per CANDY, J.*—The plaintiffs were entitled upon demand to have the said 2,100 tons re-delivered to them by the captain. On 29th June the plaintiffs were entitled to clean bills of lading at 30s., and the sum paid by them under protest in order to obtain such bills of lading was recoverable by them. Under the circumstances, the defendants had no lien for freight and demurrage. *Per STABLING, J.*—The captain was justified in refusing to re-deliver the said 2,100 tons. The plaintiffs were entitled to clean bills of lading at 30s., and there was no lien for freight and demurrage in respect of which the plaintiffs had paid under protest the sum claimed by defendants. *RALLI BROTHERS v. CHABILDA LALLUBHAI*. I. L. R., 23 Bom., 551

**CHEATING.**

See BANKERS . I. L. R., 16 All, 88

See CHARGE—FORM OF CHARGE—SPECIAL CASES.

[1 Mad., 31: 1 Ind. Jur., O. S., 94

**CHEATING—continued.**

See FORGERY

21 W. R., Cr., 41  
I. L. R., 19 Calc., 380  
I. L. R., 13 Mad., 27  
I. L. R., 15 All., 210

1. ——— Want of dishonest intention—*Penal Code, s. 415.*—To induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, is not cheating. To describe these consequences as more serious than they were likely to be may be to deceive, but is not cheating, if done without any fraudulent or dishonest intention. *QUEEN v. RAJCOOMAR BANERJEE*  
[W. R., 1864, Cr., 25]

2. ——— Dishonest intention at time of taking money.—The mere taking money one day, and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money, and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention. *QUEEN v. HERRAMUN HULWYE*  
[5 W. R., Cr., 5: 1 Ind. Jur., N. S., 97]

3. ——— Giving false information—*Penal Code, s. 415.*—A person attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that he had not committed the offence of "cheating" within the meaning of s. 415 of the Penal Code. *EXPRESS v. DWARKA PRASAD*  
[I. L. R., 6 All., 97]

4. ——— Passenger by railway—*Penal Code, s. 417—Railway Act, 1854.*—A passenger by railway travelling in a carriage of higher class than that for which he has paid fare is not guilty of cheating under s. 417 of the Indian Penal Code, but is indictable under the Railway Act XVIII of 1854. *REG. v. DAYABHAI PARJARAM*  
[1 Bom., 140]

5. ——— Unlawful entry to exhibition—*Penal Code, s. 415.*—Where the accused secretly entered an exhibition building without having purchased a ticket, and was there apprehended, it was held that such act did not amount to the offence of cheating under s. 415 of the Penal Code. *REG. v. MAHERVANJI BEJANJI*  
8 Bom., Cr., 6

6. ——— Intention to cheat—*Penal Code, s. 417.*—To justify a conviction for the offence of cheating, there must be some evidence of an intention to cheat at the time when the promise (the omission to perform which completes the offence of cheating) is made. *REG. v. HARGOVANDAS*  
[9 Bom., 448]

7. ——— False representation in application to Collector.—The defendant was convicted of cheating. He applied to the tahsildar for a specified quantity of land on cowle tenure free of tax for five years, and falsely represented that the land was waste land. *Held* a good conviction. *ANONYMOUS*  
[6 Mad., Ap., 12]

## CHEATING—continued.

ment, and ordered a re-trial of the accused. REG. v. RAMAJIBAY JIVEJIBAY. 12 Bom., 1

9. ———— Proof necessary for offence of cheating.—A contractor in the Public Works De-

by the pretence on account of their belief in its truth, and (4) that the accused received the money with the intention of causing wrongful loss to the Government. QUEEN v. KALPUNDO PORAMANICK [23 W. R., Cr., 43

## CHEATING—concluded.

13. ———— Criminal Procedure Code, ss. 269, 417, and 420—Communicating syphilis by the act of sexual intercourse.—A prostitute, who, while suffering from syphilis, communicates the disease to a person who has sexual intercourse with her, is not liable to punishment under s. 268 of the Indian Penal Code (Act XLV of 1860) "for a negligent act and one likely to spread

RAKHMA . . . I. L. R., 11 Bom., 59

14. ———— Attempt to cheat —Penal Code, ss. 417, 463, 464, 465, 511—Forgery —False document—Fraudulent entry in a book of account—Prisoner was requested to make an entry in a book of account belonging to the complainant, to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts—instead of making this entry as requested, prisoner entered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery under s. 465 of the Penal Code. Held that the offence was not forgery, but an attempt to cheat. QUEEN-EMPRESS v. KUNJU NAYAR [I. L. R., 12 Mad., 114

## CHEATING BY PERSONATION.

and 416. QUEEN v. DABEE SINGH [7 W. R., Cr., 55

11. ———— Obtaining money on false pretences—Taking money on promise to return

DURSHUN DASS . . . 3 N. W., 17

12. ———— Wrongful gain or loss—Penal Code, s. 415 and ss. 23 and 24.—A person who purchased rice from a famine relief officer at a certain rate (16 seers to the rupee) on condition that he

[16 W. R., Cr., 42

**CHEATING BY PERSONATION**  
—concluded.

4. ————— *Penal Code, ss. 416, 419, 463—Forgery.*—A falsely represented himself to be B at a University examination, got a hall ticket under B's name, and headed and signed answer papers to questions with B's name. *Held* that A committed the offences of forgery and cheating by personation. *QUEEN-EMPRESS v. APPASAMI*

[I. L. R., 12 Mad., 151]

5. ————— *Cheating by personation—Penal Code (Act XLV of 1860), ss. 415, 419—Registration of false divorce—Bengal Act I of 1876.*—To constitute the offence of cheating under s. 415 of the Penal Code, the damage or harm caused, or likely to be caused, to the person deceived in mind, body, reputation, or property must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom. Where, therefore, certain persons were charged under s. 419 of the Penal Code, one with personating another person before a Registrar, and the others with abetting such personation and causing the Registrar to register a divorce under the provisions of Bengal Act I of 1876 with the wife of the personated person, and where the lower Courts convicted the accused under that section, holding that, as such registrations were voluntary and a source of gain to the Registrar, harm was caused to the Registrar in mind and reputation by registering false divorces as well as by losing his fees in the future through persons being less likely to avail themselves of his services, and that therefore an offence under the section had been committed:—*Held* that the possibilities contemplated by the lower Courts were too remote; that the facts did not constitute an offence under the section, and that the conviction must therefore be set aside. *MOJEY v. QUEEN-EMPRESS. SABYA NASHYO v. QUEEN-EMPRESS*

[I. L. R., 17 Calc., 608]

**CHEMICAL EXAMINER, REPORT OF—**

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER . 6 B. L. R., Ap., 122

[6 Bom., Cr., 75]

6 Mad., Ap., 11

I. L. R., 10 Calc., 1028

**CHEQUE.**

See STAMP ACT, 1879, SCH. I, ART. 11.

[I. L. R., 16 Calc., 432]

————— Payment of—

See BANKER AND CUSTOMER.

[L. R., 18 I. A., 111]

————— taken in payment, dishonour of—

See BILL OF EXCHANGE . 7 B. L. R., 431

————— taken in payment of rent.

See TENDER . I. L. R., 4 Calc., 572

**CHERRA POONJEE RAJ.**

See FOREIGN STATE.

[I. L. R., 11 Calc., 17]

**CHIEF JUDGE OF SMALL CAUSE COURT, BOMBAY.**

————— Decision of, as to compensation for land.

See APPEAL—BOMBAY ACTS—BOMBAY MUNICIPAL ACT I. L. R., 18 Bom., 184

**CHIEF JUSTICE, POWER OF—**

————— Refusal by Bench of Judges to hear affidavits in support of application for transfer of trial to another district—*Application to the Chief Justice to appoint another Bench to hear and determine case—Interlocutory order in criminal matters, Finality of—High Court Charter Act (24 & 25 Vic., c. 104), s. 14.*—Where a rule had been obtained on behalf of a prisoner, calling on the prosecution to show cause why the case should not be transferred for trial to some other Court of Session than that in which it was then pending, on the ground that such strong feeling and prejudice existed in the district against the accused as to render it unlikely that he would get a fair trial, a Division Bench of the High Court, duly constituted, consisting of two Judges, refused to allow the affidavits in support of the application to be read and discharged the rule. Subsequently, an application was made to the Chief Justice to appoint another Bench of the High Court to hear and determine the rule on the ground that it had not been heard, and that consequently the order passed by the Bench discharging it was null and void. *Held* that the Chief Justice, having once appointed a Bench under s. 14 of the Charter Act (24 & 25 Vic., c. 104) to hear any particular case, has no power to interfere when the case has been disposed of by that Bench. *Held*, also, that the refusal of the Bench to hear the affidavits read, if an error at all, was simply one of law in the course of dealing with a matter clearly within their jurisdiction; and that, therefore, the decision could not be treated as a nullity, or its legality questioned by the Chief Justice. *Held*, further, that whether the judgment had been signed or not, previous to the application being made to the Chief Justice, an interlocutory order of such a nature in a criminal matter is not final, but may be reviewed or reconsidered, or a similar application may be entertained as often as the Court in its discretion may think proper. IN THE MATTER OF THE PETITION OF ABDUL SOBAN

[I. L. R., 8 Calc., 63]

**CHILD.**

See CUSTODY OF CHILDREN.

See MARRIAGE ACT, s. 68.

[I. L. R., 18 Mad., 230]

————— Detention of female, for unlawful purpose.

See CRIMINAL PROCEDURE CODE, 1898, s. 551 . I. L. R., 16 Calc., 487

————— Evidence of—

See OATHS ACT, s. 13.

[I. L. R., 16 Bom., 359]

I. L. R., 16 Mad., 105

**CHILD-WIFE.**

See HURT—GRIEVOUS HURT.  
[I. L. R., 18 Calc., 49]

**CHILDREN.**

See ABANDONMENT OF CHILDREN.  
[19 W. R., Cr., 12  
I. L. R., 18 All., 364]

See HINDU LAW—WILL—CONSTRUCTION  
OF WILLS—GIFTS TO A CLASS.  
[I. L. R., 20 Bom., 571]

Access to—

See DIVORCE ACT, s. 41 . 5 B. L. R., 71

Custody of—

See CRIMINAL PROCEDURE CODE, 1882,  
s. 551 . I. L. R., 18 Calc., 487

See CASES UNDER CUSTODY OF CHILDREN.

See DIVORCE ACT, s. 41. 6 B. L. R., 318

See CASES UNDER HINDU LAW—GUARDIAN.

See MAHOMEDAN LAW—DIVORCE.  
[I. L. R., 2 All., 71]

See CASES UNDER MAHOMEDAN LAW—  
GUARDIAN.

See MAINTENANCE, ORDER OF CRIMINAL  
COURT AS TO . I. L. R., 19 Mad., 461

See MAJORITY ACT, 1875.  
[I. L. R., 9 Mad., 391]

See CASES UNDER MINOR—CUSTODY OF  
MINORS.

Proof of age, and order of birth  
of—

See EVIDENCE ACT, s. 32.  
[I. L. R., 24 Calc., 265]

**CHITTAGONG HILL TRACTS ACT  
(XXII OF 1860).**

See HIGH COURT, JURISDICTION OF—CAL-  
CUTTA—CRIMINAL.  
[I. L. R., 27 Calc., 654]

**CHOSE IN ACTION.**

See ASSIGNMENT OF CHOSE IN ACTION.

**CHOTA NAGPORE.**

See SALE FOR ARREARS OF RENT—UNDER-  
TENURES, SALE OF . 10 C. L. R., 76

**CHOTA NAGPORE RAJ.**

See HINDU LAW—ALIENATION—RE-  
STRAINT ON ALIENATION.  
[I. L. R., 7 Calc., 461]

**CHOTA NAGPORE ENCUMBERED ES-  
TATES ACTS (VI OF 1876 AND V OF  
1884).**

See SPECIFIC PERFORMANCE—SPECIAL  
CASES.

[I. L. R., 17 Calc., 223  
L. R., 18 I. A., 221]

See STATUTES, CONSTRUCTION OF.  
[I. L. R., 20 Calc., 609]

" 23 (c). 4-12—Meaning of the

him to the estate, and on *B* dying in 1893 without  
leaving a male issue, *J* succeeded him. On the 8th

1876 explained, *KOKA MANTON v. MANKI JAGAR*  
*NATH SARI* . I. L. R., 27 Calc., 462  
[4 C. W. N., 168]

and void in their inception. *KAMESHAR PRASAD v.*  
*BHUKHAN NARAIN SINGH, BHUKHAN NARAIN SINGH*  
*v. KAMESHAR PRASAD* . I. L. R., 20 Calc., 609

# CHOTA NAGPORE LANDLORD AND TENANT ACT (I OF 1870).

See LANDLORD AND TENANT—EJECTMENT  
—NOTICE TO QUIT. 4 C. W. N., 702

Beng. Act I of 1870, s. 37—*Appeal in ejectment suits.* There is no prohibition in s. 37 of Act I of 1870 against an appeal in ejectment suits in Chota Nagpore. *RAMAN KHAN v. RAMAN CHAMAN*. 11 C. L. R., 480

PIRAS NATH SAH DEO v. MOHA MUNDIA  
(I. L. R., 24 Calc., 240  
1 C. W. N., 181

Cates, KUNDA MAHTO v. HEDDUN MAHTO  
(I. L. R., 27 Calc., 508

n. 30.

See APPEAL—BENGAL ACTS—CHOTA NAG-  
PORE LANDLORD AND TENANT PROCE-  
DURE ACT. I. L. R., 24 Calc., 249  
(I. L. R., 27 Calc., 508

n. 38.

See EJECTMENT OF DECEASED—DECREE TO  
BE EXECUTED AFTER APPEAL ON REVIEW.  
(I. L. R., 23 Calc., 467

1. ——— n. 124—*Jaghir tenure—Sale in execution of a decree for rent—Right, title, and interest of registered "daladar"—Joint holders.*—Where a suit was brought for the recovery of arrears of rent due in respect of a jaghir tenure, the joint property of four brothers governed by the Mitakshara law, the arrears having accrued during the lifetime of their father, and a decree was obtained against the eldest brother, who was the sole registered *ilakadar*, or person held responsible in the *zamindar's* book, it was held that the decree related to the arrears due in respect of the whole tenure and not merely of the judgment-debtor's individual interest, and that a sale of his right, title, and interest under s. 124 of Bengal Act I of 1870 would, under the circumstances of the case and by the incidents attaching to such tenure, include the right, title, and interest of any person claiming jointly with him, and whose interest was inseparably united with his. *MOHURCHUND NATH TEWARI v. HIRU RAM PANDY*

(I. L. R., 25 Calc., 300  
3 C. W. N., 94

2. ——— *Jaghir and under-tenures—Decree for arrears of rent.*—No decree for arrears of rent can be made against any person other than the actual tenant, or a one who may be security for him, and consequently there can be no decree for rent against persons holding subordinate interest in a jaghir tenure which have been created by the jagirdar. *PURTAH UDAI NATH SAH DEO v. PARDHAN MOKAND SING*. I. L. R., 25 Calc., 309  
(3 C. W. N., 98

ss. 137 and 144.

See APPEAL—BENGAL ACTS—CHOTA NAG-  
PORE LANDLORD AND TENANT PROCE-  
DURE ACT. 1 C. W. N., 341

# CHOTA NAGPORE LANDLORD AND TENANT ACT (I OF 1870)—concluded.

— n. 140.

See BENGAL ACT VI OF 1862, s. 20.  
(I. L. R., 20 Calc., 425

# CHOTA NAGPORE TENURES ACT (BENGAL ACT II OF 1869).

See EVIDENCES—CIVIL CASES—MISCELLA-  
NEOUS DOCUMENTS—REGISTERS.  
(I. L. R., 19 Calc., 91  
I. L. R., 23 Calc., 113

— Powers of Special Commissioner.  
—The scope and object of Bengal Act II of 1869 is to determine the quantity of lands of certain specified descriptions within villages to which the Special Commissioner named under the Act may have been appointed. Nothing in the Act empowers an officer so appointed to determine a question of disputed boundary between two villages, and to oust the Civil Courts of their ordinary jurisdiction in determining the rights of parties under conflicting titles as proprietors of such villages. *SHAM CHUNDER ADHICARY v. SOBIN HUGOAL SING*

(I. L. R., 8 Calc., 307  
10 C. L. R., 410

# CHOWKIDAR.

See CONFESSION—CONFESSION TO POLICE  
OFFICERS. 2 C. W. N., 71

See LIMITATION ACT, 1877, ART. 7 (1859,  
s. 1, CL 2). 18 W. R., 298

# Village—

See BENGAL REGULATION XX OF 1817, s. 21.  
(18 W. R., 203

See CASES UNDER VILLAGE CHOWKIDARS  
ACT.

# CHOWKIDARI TAX.

See CASES. I. L. R., 23 Calc., 680

# CHRISTIANS.

— in Sulotto.

See SALTETTE, LAW APPLICABLE IN.  
(I. L. R., 19 Bom., 680

# Native—

See CONVERTS. I. L. R., 20 Bom., 53

# CHUR LANDS.

See CASES UNDER ACCRETION—CHUR OR  
ISLAND IN NAVIGABLE RIVER.

See CASES UNDER ONUS OF PROOF—LIMITA-  
TION AND ADVERSE POSSESSION.  
(I. L. R., 5 Calc., 36

1. ——— Possession of chur lands—  
Title—Evidence.—The cultivation of chur lands,  
like that of waste or jungle lands, carries no *prima*

**CHUR LANDS—concluded.**

*facie* character of usurpation or wrong; and the claimant against a purchaser, *bond fide* and without notice, in possession, must strictly prove his title.

AKOWEI SING v. HIRALAL SEAL

[3 B. L. R., P. C., 4: 11 W. R., P. C., 2  
12 Moore's L. A., 136

**2. — Suit for chur lands**

**—Survey—Possession—Title.**—In a suit regarding a chur claimed by defendant as having formed on the bank of the river adjacent to his village, the plaintiff on the ground that the bed of the

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v. ASSANCOLLAH . . . . . 17 W. R., 73

judgment of the Court of first instance, given after local investigation, was upheld against the decision of the High Court founded on inspection of the maps and on the arguments adduced before it.

SABAT SUNDARI DEBI v. PROSONNO COOMAR TAGORE . . . 6 B. L. R., 677: 15 W. R., P. C., 20  
[13 Moore's L. A., 607

**CHURCH.**

[I. L. R., 17 Mad., 447

**CIRCULAR ORDER 41 OF 1866.**

See LOCAL INVESTIGATION

[I. L. R., 4 Calc., 718

25 of 1870.

See LOCAL INVESTIGATION.

[I. L. R., 4 Calc., 718

10th July 1874.

See BENGAL RENT ACT, 1869, s. 58.

[I. L. R., 3 Calc., 547: 1 C. L. R., 149

**CIRCULAR ORDER BY JUDICIAL COMMISSIONER OF PUNJAB.**

See INDIAN COUNCILS ACT.

[12 B. L. R., 167: 13 W. R., 389

**CIRCULAR ORDER OF HIGH COURT (CRIMINAL).**

No. 9 of 6th September 1869.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[I. L. R., 24 Calc., 429

**CITATION.**

See LETTERS OF ADMINISTRATION.

[I. L. R., 4 Calc., 87

I. L. R., 12 Bom., 164

**CIVIL COURT.**

See JURISDICTION OF CIVIL COURT.

See MADRAS FOREST ACT, s. 4.

[I. L. R., 17 Mad., 193

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877).**

See BHOOTAN DUARS ACT.

[4 C. W. N., 287

s. 2 (Civil Procedure Code, 1859, s. 356).

See CASES UNDER APPEAL—DECREES.

See CASES UNDER APPEAL—ORDERS.

1. — Decree, Definition of—  
*Orders in a suit or in execution of decree.*—Per JACKSON, J.—The word "decree," as defined in Act X of 1877, does not include "orders," either original or appellate, upon matters arising in the course of a suit or in execution of a decree. RUNJIT SINGH v. MRHEBBAN KORB

[I. L. R., 3 Calc., 662: 2 C. L. R., 391

[I. L. R., 8 All., 108

4. — and ss. 53, 54—*Rejection of plaint.*—The words "rejecting the plaint" in s. 2 are not limited to the cases provided for in ss. 53, 54. BENI RAM BHUTT v. RAM LAL DHUBRI

[I. L. R., 13 Calc., 189

# CIVIL PROCEDURE CODE, ACT XIV OF 1859 (ACT X OF 1877)—continued.

to such person being able to use a stamp that he should be unable to write his name. **MAHARAJA OF BENARAS v. DATT DAYAL NAMA**

[I. L. R., 3 All., 575]

8. ——— Public Officer. Official trustee. The official trustee is a "public officer" within the definition given in s. 2, Act X of 1877. **SHANKARANATH DEB v. FORT STANLEY**

[I. L. R., 7 Cal., 400]

7. ——— Subordinate Court—Collector's Court—*Recall Civil Courts Act, 1871, s. 15*. A Collector's Court, although it exercises certain powers under the Civil Procedure Code, is not a Civil Court within the meaning of s. 15 of Act VI of 1871, nor is it subordinate to a District Court within the meaning of Act X of 1877, s. 2. **IN RE MATTA OF BHOJA RUDRA**

3 C. L. R., 508

s. 3.

See CASES UNDER APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL.

See CASES UNDER EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

1. ——— Effect of repeal of Civil Procedure Code, 1859—*General Clauses Ordinance, Act I of 1905, s. 6, "Proceedings"*.—*Procedure*.—In all suits instituted before Act X of 1877 came into force, in which an appeal lay to the High Court under Act VIII of 1859, an appeal still lies notwithstanding the repeal of that Act by Act X of 1877. *PER GARDIN, C.J.*—A suit is a "judicial proceeding" and the words "any proceedings" in s. 6 of Act I of 1905 include all proceedings in a suit from the date of its institution to its final disposal and therefore include proceedings in appeal. The word "procedure" in s. 3, Act X of 1877, has not the same meaning as the word "proceedings" in the above-mentioned section. The proceedings in a suit instituted before Act X of 1877 came into force, including a special appeal if the old Code allowed one, go on to the end of the suit, notwithstanding the repeal of the old Code. The "procedure"—that is to say, the machinery by which those proceedings are conducted—is, after decree, to be that provided by the new Code. **RUNIR SINGH v. MEHERRAN KOER**

[I. L. R., 3 Cal., 682]

**BURKET HOSSAIN v. MAJIDUNNISSA**

[3 C. L. R., 208]

**NADIR HOSSAIN v. BISSEN CHAND BASHARAT**

[3 C. L. R., 437]

2. ——— Suit instituted before, but appeal brought after, repeal of Act VIII of 1859—*Effect of repeal—Civil Procedure Code, 1877, ss. 556, 558, and 558—Appeal*.—Where a suit had been instituted under Act VIII of 1859, but decided at a time when Act X of 1877 had come into operation, and an appeal was presented against such decision, s. 3 of Act X of 1877 distinctly indicates

# CIVIL PROCEDURE CODE, ACT XIV OF 1859 (ACT X OF 1877)—continued.

that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal presented when Act X of 1877 was in force has been dismissed under s. 556 of that Act, the appellant may apply for its readmission under s. 558; and if such readmission is refused, he is entitled to an appeal under s. 559 (c). **RAHIM BUKSH v. MAHOMED**

[I. L. R., 4 Cal., 825  
3 C. L. R., 593]

3. ——— Decree, Meaning of.—The effect of the provision in s. 3 of the Civil Procedure Code of 1877 taken in connection with the definition of the word "decree" in s. 2 is that in all suits pending when that Code came into force, the practice and procedure to be followed down to the final disposal of each suit (i.e., when nothing remains to be done but to execute the decree or to appeal from it) are the same as previously existed, but that in all subsequent proceedings in execution of the decree, or in appeal therefrom, the practice and procedure provided by the Civil Procedure Code of 1877 are to be observed. The word "decree" in s. 3 of the Civil Procedure Code, 1877, means an order final in its nature, and does not include an interlocutory order, such as an order of reference to take accounts, although such order may, in general, be properly termed a "decree," and, therefore, a suit which has been referred by the Court to the Commissioner to take accounts is still in a stage "prior to decree" within the meaning of s. 3 of the Civil Procedure Code of 1877. **RESTONJI BHOOMJI v. KESOWN NAIR**

[I. L. R., 3 Bom., 181]

4. ——— Effect of change of law on proceedings already commenced—*Attachment—Enforcement of decree—Political pension*.—On the 28th of September 1877, i.e., three days before the new Code of Civil Procedure (Act X of 1877) came into operation, an application was made for the enforcement of a money decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under s. 216 of the former Code (Act VIII of 1859), a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed, at which date the new Code had come into force, and contended that, under s. 206, cl. (g), of the new Code, the pension was no longer attachable. *Held* that all proceedings commenced and pending when Act X of 1877 became law were, under the General Clauses Act (I of 1905), s. 6, to be governed by the Code theretofore in force, the general rule of construction contained in that section not being affected or varied by ss. 1 and 3 of Act X of 1877; and that a *bona fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment. **VIDYARAM v. CHANDRASHEKHARHAM**

[I. L. R., 4 Bom., 183]

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

5. *Effect of repeal of Civil Procedure Code, 1877—Proceedings commenced before repeal.*—Cl. 3 of a. 3 of the Civil Procedure Code (XIV of 1882) provides that nothing in that Code shall apply to all proceedings after decree that

intimately connected with the proceedings prior to that date as to be regarded as part of them. A decree was passed in 1870 by which the suit was

give inspection of certain books. Held that the question as to inspection was so intimately connected with the taking of the accounts that it should be regarded as part of the same proceedings, and as these had commenced and were still pending on the 1st June 1882, the question whether the order refusing inspection was appealable or not was (under a. 3 of Act XIV of 1882) to be determined by the Civil Procedure Code (Act VIII) of 1859, and not by the Code of 1882. *RUSTOMJI BURJORJI v. KESROWJI NAIK*. . . I. L. R., 8 Bom., 287

s. 5.

See LOCAL GOVERNMENT, POWER OF.  
[I. L. R., 9 Mad., 112]

See SMALL CAUSE COURT, MOFUSSEIL—  
PRACTICE AND PROCEDURE—MISCELLANEOUS CASES. I. L. R., 2 Bom., 641

s. 6 (1859, s. 383).

See DEPUTY COMMISSIONER OF AKBAR.  
[I. L. R., 4 Calc., 84]

s. 11 (1859, s. 1).

See CASES UNDER JURISDICTION OF CIVIL COURT.

See CASES UNDER RIGHT OF SUIT.

s. 12.

See RES JUDICATA—MATTERS IN ISSUE.  
[I. L. R., 8 Calc., 802  
I. L. R., 22 Mad., 256  
I. L. R., 11 All., 148]

1. PAKESHA . . . I. L. R., 23 Bom., 840

s. 13 (1859, s. 2).

See ESTOPPEL—ESTOPPEL BY JUDGMENT.  
[7 B. L. R., 673  
I. L. R., 14 All., 64]

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

See CASES UNDER RES JUDICATA.

s. 15 (1859, s. 6, first paragraph).

See SUBORDINATE JUDGE, JURISDICTION  
OF . . . I. L. R., 7 All., 230  
[I. L. R., 17 Calc., 155  
I. L. R., 23 Mad., 367]

s. 16 (1859, s. 5).

See CASES UNDER JURISDICTION—CAUSES  
OF JURISDICTION—DWELLING, CARRYING  
ON BUSINESS, ETC.

See CASES UNDER JURISDICTION—CAUSES  
OF JURISDICTION—DWELLING, CARRYING  
ON BUSINESS, ETC.

See CASES UNDER JURISDICTION—SUITS  
FOR LAND.

s. 16A.

See JURISDICTION—SUITS FOR LAND—  
PROPERTY IN DIFFERENT DISTRICTS.  
[I. L. R., 24 Calc., 449]

s. 17.

See CASES UNDER JURISDICTION—CAUSES  
OF JURISDICTION.

See SMALL CAUSE COURT, MOFUSSEIL—  
JURISDICTION—DWELLING OR CARRYING  
ON BUSINESS 6 Bom., A. C., 131, 258  
3 Mad., 374  
18 W. R., 312

s. 19 (1859, parts of ss. 11 and 12).

See EXECUTION OF DECREE—TRANSFER  
OF DECREE FOR EXECUTION AND POWER  
OF COURT AS TO EXECUTION OUT OF ITS  
JURISDICTION. I. L. R., 14 Calc., 881  
[I. L. R., 21 Calc., 639  
I. L. R., 22 Calc., 871]

s. 24 (1859, s. 13).

See TRANSFER OF CIVIL CASE—GENERAL  
CASES . . . I. L. R., 5 All., 60  
[I. L. R., 2 All., 241  
I. L. R., 3 All., 568]

s. 25 (1859, s. 6, latter part).

See EXECUTION OF DECREE—TRANSFER OF  
DECREE FOR EXECUTION, ETC.  
[Marsh., 185  
I. L. R., 1 All., 180  
I. L. R., 5 Bom., 680  
I. L. R., 17 Mad., 309  
I. L. R., 18 Bom., 61]

See CASES UNDER TRANSFER OF CIVIL  
CASE.

s. 26.

See MISCELLANEOUS . . . I. L. R., 8 Mad., 381  
[I. L. R., 16 Bom., 119  
I. L. R., 23 Calc., 833]

ss. 26-41, ch. III (1859, s. 73).

See CASES UNDER PARTIAL.

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**s. 27.**

See LIMITATION ACT, 1877, s. 22.

[I. L. R., 14 Calc., 400

I. L. R., 17 Bom., 413

See PARTIES—ADDING PARTIES TO SUITS

—PLAINTIFFS . I. L. R., 6 Calc., 370

[I. L. R., 14 Calc., 400

I. L. R., 17 Bom., 413

I. L. R., 20 Bom., 677

**s. 28.**

See CASES UNDER MULTIFARIOUSNESS.

**s. 30.**

See CASES UNDER PARTIES—SUITS BY SOME  
OF A CLASS AS REPRESENTATIVES OF  
CLASS.

See RIGHT OF SUIT—CHARITIES.

[I. L. R., 8 Calc., 32

I. L. R., 7 All., 178

I. L. R., 8 Bom., 432

I. L. R., 11 Calc., 33

I. L. R., 11 All., 18

**s. 31.**

See MISJOINDER . I. L. R., 14 Calc., 435

[I. L. R., 16 Bom., 119

See MULTIFARIOUSNESS.

[I. L. R., 4 Calc., 949

I. L. R., 14 Mad., 103

I. L. R., 16 All., 279

I. L. R., 18 All., 131, 219

**s. 32.**

See APPEAL—ORDERS.

[I. L. R., 13 Calc., 100

I. L. R., 12 Mad., 489

See LIMITATION ACT, 1877, s. 22.

[I. L. R., 14 Calc., 400

I. L. R., 17 Mad., 12

See CASES UNDER PARTIES—ADDING PAR-  
TIES TO SUITS.

**s. 36 (1859, s. 16).**

See ADVOCATE . I. L. R., 9 All., 617

See LUNATIC . I. L. R., 7 Calc., 242

See PLEADER—APPOINTMENT AND APPEAR-

ANCE . I. L. R., 8 Bom., 105

[I. L. R., 9 All., 613

I. L. R., 16 All., 240

**s. 37 (1859, s. 17).**

See LEGAL PRACTITIONER'S ACT, s. 32.

[I. L. R., 14 Calc., 556

See CASES UNDER SUMMONS, SERVICE OF.

**ss. 37, 38, 417, 432 (1859, s. 17,  
cl. 2).**

**1. ——— Recognized agent—  
Gomastah.**—A recognized agent, under cl. 2, s. 17,  
Act VIII of 1859, cannot prosecute or defend a suit  
in his own name. A gomastah of a firm ceases to be a

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

recognized agent under cl. 2, s. 17, Act VIII of 1859,  
when the business of the firm ceased before the insti-  
tution of the suit. *MOKHA HARAKRAJ JOSHI v.*  
*BISESWAR DOSS* . . . 5 B. L. R., Ap., 11  
[13 W. R., 344

**2. ———**

**Filing and verifica-  
tion of plaint.**—Held that an agent of a party residing  
within the jurisdiction of the Court, not being an  
authorized agent as contemplated by cl. 1, s. 17,  
Act VIII of 1859, was not competent to appear as  
plaintiff on behalf of his principal, and to file and  
verify the plaint as required by s. 27 of that enact-  
ment. *THORNHILL v. TAYLOR* . . . 1 Agra, 115

**3. ———**

**Presentation of  
plaint—Munim of firm—Partner.**—The munim of a  
firm is not, for the purpose of presenting a plaint,  
the recognized agent (under s. 17 of the Civil Pro-  
cedure Code) of a partner who is present within the  
jurisdiction. The munim and such partner should  
join in presenting the plaint or appointing a pleader.  
The partner's not so joining is not a ground on which  
an Appellate Court should reverse the decree of a  
lower Court, unless the irregularity affects the  
merits of the case or the jurisdiction of the Court.  
*BISANDAS VALAD MAGNTRAM v. LAKHMICHAND KI-*  
*SANCHAND* . . . 6 Bom., A. C., 150

**4. ———**

**Ground for dismissing  
suit.**—Where a lower Appellate Court threw out a  
case on the ground that the plaint had not been  
filed by a recognized agent within the meaning of  
s. 17, Act VIII of 1859, though that point had been  
disposed of by the Court of first instance,—Held  
that the case should not have been thrown out on  
such a technical objection not affecting the merits of  
the case. *MANNOO DOSSEE v. ISHAN CHUNDER*  
*BONNERJEA* . . . 15 W. R., 245

**5. ———**

**Munim of firm  
being wound up.**—The munim of a firm which has  
ceased to carry on business, who is engaged in collecting  
the assets of such firm and otherwise winding up its  
affairs, is a recognized agent of the owner of such firm  
within the meaning of s. 17, cl. 2, of the Civil Procedure  
Code, and can, on behalf of his absent principal, main-  
tain or defend a suit brought in respect of the business  
of the firm whose affairs he is engaged in winding  
up. *TUKAJI MAHARAJ HALKAR v. PITAMBARDAS*  
*NARANGI* . . . 9 Bom., 427

**6. ———**

**Mooktear.**—A mere  
mooktear, unless specially authorized, is not the  
recognized agent of the judgment-debtor on whom  
notice can be rightly served within the meaning of the  
Civil Procedure Code. *KRISTO CHUNDER GOPTO*  
*v. FUZUL ALI KHAN* . . . 17 W. R., 389

**7. ———**

**Authority of the Poli-  
tical Agent appointed by Government as manager of  
the estate of a minor Chief to sue in respect of  
the Chief's property in British territory.**—A suit  
was brought by the Political Agent, Southern Mara-  
tha Country, as administrator of the estate of the  
Chief of Mudhol, who was described in the plaint as  
being nineteen years of age, to eject the defendants  
from certain lands, belonging to the Chief situated

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

in the Satara District. The defendants raised a preliminary objection to the institution of the suit by the Political Agent on the ground (among others) that he was not a recognized agent within the meaning of s. 37 of the Civil Procedure Code. *Held* that the Political Agent was not a "recognized agent" of the Chief of Mudhol within the meaning of s. 37, cl. (c), of the Code of Civil Procedure. **VENKATRAY RAJE GHORPADE v. MADHARAY RAMCHANDRA**

[L. L. R., 11 Bom, 53

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resided at Thana, outside the jurisdiction of the Mahad Court, she authorized her agent, under a general power-of-attorney, to conduct the suit on her

Court at Thana. Then, for the first time, the judgment-debtors challenged the agent's right to represent P, who was residing within the District Court's jurisdiction. This objection prevailed, and the appeal was dismissed. *Held* that the agent could not be prevented from executing the decree which he had obtained as agent. No objection had been taken to the agent's right to represent P at any

litigations. **PARYATIBAI v. VINAYEK PANDURANG**  
[L. L. R., 12 Bom., 68

9 ss. 38 and 35 (1859, s. 17 and s. 115)—*Application by representatives for execution of decree—Authority to appear.*—*Held* that, where one of several representatives of a deceased judgment creditor applies for the execution of a decree, the general powers-of-attorney contemplated by s. 17, cl. 1, of Act VIII of 1859 are not necessary, but it is sufficient if the applicant is authorized under s. 115 to act for the other representatives. **ANBARAY HARIYALLABHDAS v. HULAT SING KALIANJI**  
2 Bom., 109; 2nd Ed., 103

s. 39.

*See* ADVOCATE . L. L. R., 9 All., 617  
*See* PLEADER—APPOINTMENT AND APPEAR-  
ANCE . 8 W. R., 82

[L. L. R., 9 All., 613

L. L. R., 15 Mad., 135

L. L. R., 16 All., 240

L. L. R., 20 Bom., 198, 293

s. 43 (1859, s. 7)

*See* ONUS OF PROOF—RELINQUISHMENT OF  
PORTION OF CLAIM . 19 W. R., 429

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

*See* CASES UNDER RELINQUISHMENT OF,  
OR OMISSION TO SET FOR, PORTION  
OF CLAIM.

s. 44.

*See* CASES UNDER JOINDER OF CAUSES  
OF ACTION.

s. 45.

*See* CASES UNDER MULTIFARIOUSNESS.

ss. 49-54 (1859, ss. 20-32).

*See* CASES UNDER PLAINT.

s. 50—*Suit by person claiming under  
Will—Probate—Mofussil of Bombay Presidency*

CHABDAS

L. L. R., 6 Bom., 73

But *see* now Probate and Administration Act  
(V of 1881).

s. 53 (1859, ss. 29 and 32).

*See* CASES UNDER PLAINT—AMENDMENT  
OF PLAINT.

s. 54 (1859, ss. 31, 32).

*See* LIMITATION ACT, 1877, s. 4.

[L. L. R., 15 All., 65

L. L. R., 20 Cal., 41

L. L. R., 20 Mad., 319

*See* CASES UNDER PLAINT—REJECTION OF  
PLAINT.

*See* CASES UNDER PLAINT—RETURN OF  
PLAINT.

1. ———— **Plaint insufficiently**

[L. L. R., 15 All., 65

**BALKARAN RAI v. GOBIND NATH TIWARI**

[L. L. R., 13 All., 120

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

s. 56 (1859, s. 36).

See APPEAL—ACTS—ACT XXVI OF 1867.

[6 B. L. R., Ap., 11, 12

7 B. L. R., 663, 664 note

s. 57 (1859, s. 30: Act XXIII of 1861, s. 3).

See CASES UNDER PLAINT—RETURN OF PLAINT.

s. 59 (1859, s. 39).

See CASES UNDER PRODUCTION OF DOCUMENTS.

s. 63 (1859, s. 39, para. 4).

See PRODUCTION OF DOCUMENTS.

[1 L. R., 8 Bom., 377

1 L. R., 8 Mad., 373

1 L. R., 22 Bom., 971

ss. 66 and 67 (1859, s. 42)—*Order for personal appearance—Hearing ex-parte.*—An order may be made for an *ex-parte* hearing on proof of service of summons issued under s. 42, Act VIII of 1859. KISTODRONE DUTT v. NILMONEY SINGH

[Cor., 3

s. 69 (1859, s. 45)—*Allowance of time for appearing and answering.*—Under s. 45 of the Code of Civil Procedure, a defendant in a suit is entitled to "sufficient time to enable him to appear and answer in person or by pleader." What may be "sufficient time" in a particular case can only be determined by considering the peculiar circumstances of the case. Where the time allowed is manifestly insufficient, an Appellate Court will interfere. KHADAR BHI v. RAHIMAN BHI . . . 3 Mad., 167

ss. 74 and 76—*Effect on those sections of s. 443 of Code of Civil Procedure—Service of summons on minors.*—Ss. 74 and 76 of the Code of Civil Procedure are controlled by s. 443 of the said Code. JATINDRA MOHAN PODDAR v. SRINATH ROY

[1 L. R., 26 Cal., 267

ss. 75-89.

See PROCESS, SERVICE OF.

See CASES UNDER SUMMONS, SERVICE OF.

s. 87—*Prisoners' Testimony Act, (XV of 1869), ss. 15 and 16—Act XV of 1869, s. 16—Signature of jailor—Judicial notice.*—The Court will take judicial notice of the signature of the jailor under s. 16, Act XV of 1869, Prisoners' Testimony Act. TAMOR SENG v. KALIDAS ROY

[4 B. L. R., O. C., 51

1. s. 97 (Act XXIII of 1861, s. 5)—*Default in depositing allowance for notice to defendant—Dismissal of suit.*—Where the Court of first instance ordered a co-defendant to be joined in the suit, but the plaintiff failed to pay the allowance necessary for the purpose of causing a notice to be served on such co-defendant, who accordingly did not appear at the hearing,—*Held* that the proper course for the Court to have adopted was to dismiss the suit under s. 5 of Act XXIII of 1861. *Semble*—The provisions contained in the first portion of s. 5 of

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

Act XXIII of 1861 are imperative. ABAS v. IBRAHIMJI . . . 5 Bom., A. C., 119

2. *Default in depositing allowance for notice to respondent.*—A notice to a respondent having been returned unserved, owing to the omission on the part of the appellant to deposit the requisite talabana in the proper Court, the default under ss. 5 and 6, Act XXIII of 1861, was held to be in no way excused by the fact of its having been committed by an ignorant karpardaz, or man of business, whom appellant chose to employ rather than a vakil. PRAN CHUNDER ROY v. JUGGEESUR MOOKERJEE

[11 W. R., 417

ss. 97, 98.

See APPEAL—DEFAULT IN APPEARANCE.

[1 L. R., 10 Mad., 270

*Default in appearance of parties.*—A District Munsif struck a case off the file of his Court on neither party appearing. *Held* that the order to strike off the case was illegal. ALWAR v. SESHAMMAL . . . 1 L. R., 10 Mad., 270

1. ss. 98, 99 (1859, s. 110)—*Restoration of case struck off by mistake as being compromised.*—It is incidental to every Court of Justice to be able, in its discretion, to restore to its files any case which it has itself removed therefrom undetermined. DEEN DYAL PARAMANICK v. RAM COOMAR CHOWDHRY . . . 9 W. R., 283

2. *Default in appearance—Inability to attend.*—The affidavit of a party alleging inability to attend from illness is not enough to satisfy the Court, but for this purpose there must be a medical certificate, or the affidavits of third parties. DHUNSOOK DOSS v. HURRY BABOO

[Bourke, O. C., 115

3. *Case struck out for default in appearance.*—Where a case had been struck out for non-attendance of the parties, an order was made for its restoration on an affidavit that the absence of the parties was owing to an understanding between them for an adjournment, and that the plaintiff had a case on the merits. The order was made apparently under s. 119. DAMOODUR DOSS v. CHOONEE BIBEE . . . Cor., 120, 123: 2 Hyde, 216

4. *Practice.*—When a case has been struck out in consequence of the non-appearance of the plaintiff, the Court will grant a fresh summons. PEARLY MOHUN DOSS v. PARBUTTY CHURN MOOKERJEE . . . 1 Ind. Jur., N. S., 40

5. *Dismissal for default in appearance—Non-appearance of plaintiff—Fresh suit.*—When a suit is dismissed for default of the plaintiff, and no appearance has been entered by the defendant, the plaintiff can, under s. 110, Act VIII of 1859, bring a fresh suit after a lapse of thirty days, if it be not otherwise barred by lapse of time. NABADWIP CHANDRA SIKKAR v. KALINATH PAL . . . 3 B. L. R., Ap., 130

See POGHA MAHTON v. GOOROO BABOO

[24 W. R., 114

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

RAJPAL C. CHOORAMUN . . . 4 N. W., 10  
See SERTUL PERSHAD C. MAHOMED KUREEM  
KHAN . . . 5 N. W., 164

preclude the plaintiff from instituting a fresh suit.  
GULAB DAI C. JIWAN RAM . I. L. R., 3 All., 318

2. ——— and s. 97 (Act XXIII  
of 1861, s. 7 and s. 5)—Neglect to deposit talu-

immaterial. *Held* that the matter was dealt with  
by s. 98 of the Civil Procedure Code, and that s. 647  
of the Code, prescribing that the procedure laid

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

in the present case, taking the circumstances into  
consideration, an absence of counsel for fifteen  
minutes was not enough to preclude the Court from  
restoring the petition to the register. LAXMI  
CHAND C. GUTTO BAI . I. L. R., 7 All., 542

s. 99A.

See PRINCIPAL AND SURETY—DISCHARGE  
OF SURETY I. L. R., 14 Bom., 287

See SUMMONS, SERVICE OF.  
[I. L. R., 13 Bom., 500

1. ——— s. 100—*Procedure where plaintiff*

the attendance of the defendant as witness should  
be exhausted. It is sufficient that due service of

2. ——— Dismissal of suit for  
default—*Application to restore suit—Failure to  
serve notice of application—Second application  
for issue of notice—Practice—Procedure—Civil  
Procedure Code, 1882, s. 607—Costs.*—A suit having  
been dismissed for plaintiff's default, he applied for  
the restoration of the suit to the file, and a notice

[I. L. R., 13 Bom., 59

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

3. — s. 100, para. 2, and s. 101 (1859, s. 111).—*Non-appearance of defendant—Adjourned hearing—Costs.*—A case had been placed on the undefended board in consequence of the non-appearance of the defendant, and the hearing had been adjourned at the instance of the plaintiff to a subsequent day. On that day the defendant appeared, and it was contended that he could not be heard until he had shown good cause for his previous non-appearance, or at least that the Court would put him on terms. The Court held that the defendant was entitled to appear as a right, and an application that he should pay the costs of a postponement was refused. The costs were ordered to be costs in the cause. *NEWTON v. KURNEEDHON*

[9 B. L. R., Ap., 15]

4. — s. 100, para. 3 (1859, s. 113).—*Adjournment for defendant to produce evidence where he appears, although proper notice not given.*—Where, if defendant had not appeared, the Court would have been bound, under s. 113, Act VIII of 1859, to adjourn the hearing to a future day on the ground that sufficient time had not been given to him to appear and answer to the suit, it was held that his appearing ought not to put him in a worse position, and that it was a reasonable request made on his behalf by his vakil that time should be given to him to produce such evidence as he could in support of his case. *ABDOOL KUREEM v. AWLAD*

[18 W. R., 141]

— s. 102.

See *APPEAL—DEFAULT IN APPEARANCE.*

[I. L. R., 8 All., 20]

I. L. R., 20 Bom., 736

ss. 102, 103 (1859, s. 114).

See *APPEAL—DEFAULT IN APPEARANCE.*

[I. L. R., 3 All., 292]

I. L. R., 9 All., 427

1. — Dismissal of former suit for default.—The plaintiff bought from *L* an estate which *L* had purchased from *G*. *L* sued *G* for confirmation of possession, and that suit was dismissed for default. The plaintiff's purchase was made pending that suit. In a suit for possession on the allegation of dispossession,—*Held* that the plaintiff's suit was not, under s. 114 of Act VIII of 1859, barred by the former decision against *L*. *MAHABIE PRASAD v. LALA RAM*

[5 B. L. R., 327 note : 11 W. R., 193]

2. — First hearing of suit.—*Non-appearance—Civil Procedure Code, 1859, ss. 110, 111, and 114.—Semble*—S. 114 as well as ss. 110 and 111 of the Code have reference only to the first hearing of the suit, which may be either on the day named in the summons or on a subsequent day to which such hearing may have been adjourned. *COMALALIMMAL v. RUNGASWAMY IYENGAR*

[4 Mad., 56]

3. — Abandonment of proceedings under s. 269, Act VIII of 1859.—The abandonment of proceedings taken under s. 269,

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

Civil Procedure Code, 1859, does not amount to dismissal in default under s. 114, and is no bar to plaintiff's bringing a fresh suit. *FUTTEH ALI v. KUREEM ALI*

10 W. R., 61

4. — Case in execution of decree.—The judgment-debtors having appeared and raised objections to the execution of a decree, the Court after investigation proceeded to pass judgment in the absence of the decree-holder. *Held* that the action of the Court was taken under s. 114, Code of Civil Procedure, and that the decree-holder had no right of appeal, but if aggrieved might apply for a re-hearing. *KALEE KRISTO THAKOOR v. MAHOMED KADAR*

12 W. R., 428

5. — Dismissal for default.—*Party interested refused relief.*—*S* sued to establish his claim to certain property, as the next heir of its former owner, on the death of whose grand-mother the property had been taken possession of by defendant, *P*, and obtained a decree. Upon this *P* appealed, and while the case was under appeal, *S* sold his rights to *H*, who on application to the Court was made a party to the suit. The case was then remanded for further enquiry to the first Court, which dismissed the claim on account of default of both plaintiff and defendant. *H* then applied for opportunity to show that he had not been in default, but his application was rejected on the ground that he was no party to the suit. He then appealed, but the Judge also ruled that he was no party. *Held* that, when the case was remanded for re-trial, some date should have been fixed for the re-hearing, which would have given the parties opportunity to appear and take measures to carry on the suit, and that the Judge's decision must be set aside, *H* having been in reality a party to the suit. *HARADHUN CHUCKERBUTTY v. PROTAB NARAIN CHOWDHY*

14 W. R., 401

6. — Non-attendance of plaintiff.—The dismissal of a suit for the plaintiff's non-attendance is a highly penal matter, and the punishment ought not to be inflicted unless after a distinct order to attend, and upon proof that the plaintiff has deliberately disobeyed the Court's order. *PEAREE MOHTUN BOSE v. HURISH CHUNDER GHOSE*

[17 W. R., 141]

7. — Order striking off suit.—An order made in a suit "number kharij or struck off" is not a passing of judgment against the plaintiff by default under s. 114, Act VIII of 1859, precluding him from bringing a fresh suit in respect of the same cause of action. *KHOOB LALL SINGH v. TOOLSEE SINGH*

17 W. R., 219

8. — Suit struck off for default.—*Appeal—Civil Procedure Code, 1859, ss. 114, 119.*—In a case struck off for default, if the order has been properly made under Act VIII of 1859, s. 114, the remedy is by motion under s. 119; if improperly made, it is open to appeal. *ULUOK MONEE CHOWDHRAIN v. PANCH COOMAR CHUNDER CHOWDHRY*

21 W. R., 124

9. — Identity of causes of action in two suits, notwithstanding

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

was that, the mortgagor having brought a suit in 1864 to redeem, and not having appeared at the hear-

[L. R., 15 I. A., 66

10 ——— Dismissal of suit for

plaintiff asks the Court to decide in his favour.

KOUR c. PARTAB SINGH . I. L. R., 18 Calc., 98  
[L. R., 15 I. A., 158

the above circumstances amounted to an appearance on the part of the plaintiff. RAMPERTAB MULL c. JAKENBAM AGUEWALLAH I. L. R., 23 Calc., 991

12. ——— Suit brought by next friend of minor and struck off for default of appearance—Gross negligence on the part of next

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

absence of any statutory provision. LALLA SHRO CHUEN LAL c. RAMNANDAN DOBEY [I. L. R., 23 Calc., 8.

See HANMANTAPPA c. JIVUBAI [I. L. R., 24 Bom., 547

13. ——— Appearance of party—

1882), s. 39—Dismissal for default—Remedy of plaintiff.—A suit and cross-suit between the same parties were on the board of a Judge of the Small Cause Court for hearing on the 23rd April 1898. On that day A, the counsel who was instructed for

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877) —continued.

he appeared, or the suit in which he took no appearance, or, immaterial. But where the party is absent and an application for adjournment is made on his behalf by a pleader who has no other instructions, and whose functions are at an end when the adjournment is refused, in that case, the party has not appeared within the meaning of the chapter. Where the pleader who applies for an adjournment is accompanied by a recognised agent of the party, but the latter neither makes any application nor does any act, the question is whether he intends to appear, and in fact does appear for the party in the exercise of his powers under s. 36 of the Civil Procedure Code. That question is merely permissive and controlling. If the recognised agent, although able to do so, does not think proper to conduct the case on behalf of his principal, his mere presence in Court is not an "appearance" in the suit. An appearance may be made by a pleader or a recognised agent, but the concurrence of the pleader or agent is essential. As soon as he ceases to intend to represent the principal, the latter is unrepresented. S. 39 of the Presidency Small Cause Courts Act does not preclude a plaintiff whose suit has been dismissed for default from applying under s. 103 of the Civil Procedure Code to have the order of dismissal set aside. There is no inconsistency between the two sections. A plaintiff whose suit has been dismissed for default has two separate remedies under different enactments. If he chooses to apply for a new trial under s. 39, he must do so within eight days. If he prefers to apply for an order setting aside the dismissal under s. 103 of the Civil Procedure Code, he can do so within thirty days (Limitation Act, XV of 1877, sch. II, art. 163). **SOONDHULAL v. GOORPRASAD**

[I. L. R., 23 Bom., 414]

14. — Dismissal of the suit for non-appearance of plaintiff or of the Official Assignee — *Insolvency Act (11 of 1876, c. 21), s. 7* — Whether s. 370 of the Civil Procedure Code applies to a case where there has not been a completed bankruptcy or insolvency — *Civil Procedure Code, ss. 102, 103, 157, 370*. — S. 370 of the Code of Civil Procedure does not apply to a case where there has been only an application to declare the plaintiff to a suit an insolvent and a vesting order made, but the proceedings are subsequently annulled, and the party is not declared either a bankrupt or an insolvent; therefore in such a case, where a suit has been dismissed for the non-appearance of the plaintiff or the official assignee on the date fixed for hearing, s. 103 of the Civil Procedure Code applies. — **AMRITA LAL MUKHERJEE v. RAHMAT DASSI DEBI**

[I. L. R., 27 Cal., 217  
4 C. W. N., 294]

15. — Order dismissing a suit for default of appearance — *Civil Procedure Code, s. 157* — Application for restoration of suit — What constitutes an "appearance" — In construing an order alleged by one side and denied by the other to be an order under s. 102 of the Code of Civil Procedure, the order will be considered as an order under s. 102, if apart from the mere description which

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877) —continued.

the Court gives of its action, and apart from the actual fact of the plaintiff's appearance or non-appearance, the real meaning and substance of the Court's action be, that it dismisses the suit on the plea, whether right or wrong, that the plaintiff appears and the defendant does not appear. Where his suit having been dismissed for default of appearance under s. 102 of the Code, the plaintiff applies for its restoration, the defendant endeavours to prevent the application as being one which cannot be entertained at all under s. 103 by showing that at the time of the dismissal there was an appearance by the plaintiff in fact or in law; but as an answer to the application on the merits, the defendant can raise the contention that the plaintiff was not prevented from appearing because in fact he did appear. It is not an "appearance" within the meaning of s. 102 of the Code when the plaintiff is represented only by a pleader who is without instructions enabling him to proceed with the case, and who is merely instructed to apply for an adjournment. *Shankar Das Datta v. Radha Krishna, I. L. R., 20 All., 165*, and *Sona Lal v. Gopprasad, I. L. R., 23 B. om., 117*, approved. *Mahomed Azeez-ool-ah v. Ali Bux, 5 N. W. 74*, *Kurki Parashad v. Deo Din, 7 N. W. 77*, and *Kanahi Lal v. Nand Lal, I. L. R., 3 All., 319*, referred to. **LALTA PRASAD v. NAND KISHORE**

[I. L. R., 22 All., 88]

See RES JUDICATA — JUDGMENTS ON PLEAS.  
MINOR POINTS — I. L. R., 9 Cal., 428

See SPECIFIC RELIEF Act, s. 9.

[I. L. R., 4 Mad., 217]

1. — Suit by purchaser of mortgaged land against mortgagee for redemption — Subsequent suit by purchaser against vendor and mortgagee for possession — Cause of action. — In 1879 the plaintiff purchased from one B (defendant No. 1) the land in question in the suit, which was then in the possession of one R (defendant No. 2) as mortgagee. B undertook to pay off the mortgage, but failed to do so. In 1881 the plaintiff brought a suit for redemption against R, which was dismissed for non-appearance of the plaintiff under s. 102 of the Civil Procedure Code (X of 1877). He subsequently filed the present suit against B and R to recover possession of the land. The defendant pleaded that the suit was barred under the provisions of s. 103 of the Civil Procedure Code. Held that the cause of action in the two suits was different, and that the present suit was not barred. **RAMCHANDRA JIVANI TILVE v. KHATAL MAHOMED GORI**

[I. L. R., 10 Bom., 28]

2. — Sufficient cause for non-appearance of plaintiff when suit called on for hearing — Application to set aside order of dismissal made under s. 102. — The plaintiff duly attended the Court on the day fixed for the hearing of his case, and waited for some time, as the Judge happened to be sitting on that day at first in the Appeal Court. Believing that when the Judge took his seat in his own Court a part-heard case would be proceeded with and would occupy some time, the plaintiff left the

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

Court-house and went to assist his employer, who had sent for him to explain some matters connected with

above circumstances did not amount to "sufficient

[I. L. R., 13 Bom., 12

3. ———— Adjournment for defendant—*Default by plaintiff—Dismissal of suit*

VENKATA RAMAYA APPARAU v. ANUMUKONDA RANGAYA NAYUDU . . . I. L. R., 7 Mad., 41

s. 108 (1859, s. 119).

See CASES UNDER APPEAL—EX-PARTE CASES.

See CASES UNDER LIMITATION ACT, 1877, ART. 164 (1871, ART. 157, ACT VIII OF 1859, s. 119).

1. ———— Cases in appeal.—S. 119, Act VIII of 1859, did not apply to cases in appeal. ANONYMOUS CASE . . . 1 Ind. Jur., O. S., 68

RAM LAL CHOWDHRY v. SURDABER JAH [W. R., 1884, Mis., 21

OMDA BEBER v. ACOWRIN SINGH . . . 7 W. R., 425

2. ———— A party to a suit against whom a judgment *ex-parte* has been passed in regular appeal cannot prefer a special appeal from that judgment. He must first proceed under s. 119 of the Civil Procedure Code to get rid of the *ex-parte* judgment against him. DEVAPPA SETHI v. RAMANADHA BHATT . . . 3 Mad., 109

But see CHINNAPPA CHETTI v. NADARAJA PILLAI [8 Mad., 1

[7 B. L. R., 207; 18 W. R., 17

4. ———— Decree under s. 148, Civil Procedure Code.—S. 119 of Act VIII of 1859 did not empower a Judge to set aside a decree

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

passed under s. 148 of the same Act. COMALANAH v. RAMASAWMY IVENGAR . . . 4 Mad., 58

5. ———— Validity of attachment.—The effect of granting an application under s. 119 of Act VIII of 1859 is to declare that there has not been yet a valid decree in the suit, and thereby any attachment that has issued in execution of the decree which has been set aside becomes invalid. LALA JAGAT NARAYAN v. TULSI RAM

[I. B. L. R., A. C., 17

6. ———— Effect of order under s. 101 against a defendant and not appealed from on his right to apply to set aside

[I. L. R., 21 Mad., 324

7. ———— *Ex-parte* decree—*Satis*

Code. ZENDOOAL NARDEAL v. KISHORILAL MENTHAI . . . I. L. R., 23 Bom., 716

8. ———— Ground for setting

MOODA DOSSEE . . . 15 W. R., 210

See RADHA BENODE CHOWDHRY v. DEGUMBURER DOSSEE . . . B. L. R., Sup. Vol., 947

SHIB CHUNDER BHADOORY v. LUKHEE DERIA CHOWDHRAIN . . . 6 W. R., Mis., 51

But he must prove the allegation. KALES PRASAD v. DIGUMBER CHATTERJEE . . . 25 W. R., 72

in which case the proof was held to be insufficient.

9. ———— *Fraudulent personation*.—Where a party applies, under s. 119, Code of Civil Procedure, to have an *ex-parte* decree set aside,

if it be established, the decree may be set aside. KOROONAMOYEE DASSEE v. NOBO KISHORE SIN

[9 W. R., Mis., 36

[I. L. R., 28 Calc., 232  
3 C. W. N., 223

( 1131 )  
CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877) - continued.

CIVIL PROCEDURE CODE  
OF 1982 (ACT X OF 1973) -

11. Appearance - Appearance by pleader - Appearance in person or by pleader, without putting in any answer or written statement, is an appearance within the meaning of s. 110 of Act VIII of 1929, and the judgment pronounced thereafter is not an appealable judgment, and therefore an appeal will lie. *March, 32*

JANAKI RAM DADA v. CHUDHARAY DADA  
[W. R., 23]

JANAKI RAM DADA S. CHUDHARIDUTTA DADA  
[7 W. R. 205]

12. *Forfeiture Hearing* - Held that the hearing of a writ in which a pleader was duly appointed as counsel for the defendant, but not instructed as to what to answer at all, was an "ex parte hearing" and that no appeal lay from a judgment passed in such case. *MURTHAYIA AND VANDANA V. KANHAIYA AND ANANDHARAYA* (1 Bom. A. C. 200)

13. Where a defendant appears in person by  
pleader, the fact that the defendant is not prepared  
to put in a written statement does not warrant the  
issuance of a writ *ex parte*. *SHIVARAJASWAMI NIA-  
KANTHAM PILLAI v. OFFICE GENERAL MANAGER PAN-  
THER* 2 Mad. 311

14. -- *Appearance by*  
 pleader. When a duly authorized pleader of the  
 defendant makes a vakalatnamah filed in Court ap-  
 pears for his client on the day fixed, and the case  
 comes on for hearing, the decree passed on such  
 hearing is not an *ex parte* decree, even though the  
 pleader be not sufficiently instructed to proceed with  
 the case. *DRAS BHADUR C. BANISTER DUTT SINGH*  
 (20 W. R., 53)  
*Decree ex parte*  
 instructed. --

**DILIP BHASKAR**

**Decree ex-parte.**

15. —Pleader retained in suit, but not instructed.—A party defendant retained a pleader to defend the suit against him, and the pleader filed a vakalatnamah and did certain acts for the defendant. However, when the suit came on for hearing, the pleader came into court, and stated that he had no instructions and could not go on with the case, practically that he had retired from the case. The Court proceeded with the suit, and made a decree in favour of the plaintiff. Held that this decree was a decree *ex-parte* within the meaning of s. 108 of the Code of Civil Procedure. *Bhagwan Dasi v. Hira*, I. L. R., 19 All., 355, and *Jongardan Potey v. Ramdhane Singh*, I. L. R., 23 Cal., 758, referred to. *Zin-ul-Abdin Khan v. Ahmed Razvi Khan*, I. L. R., 2 All., 67; I. L. R., 5 I. A., 233 distinguished. **SHANKAR DAT DUBEY c. RADH KRISHNA**. I. L. R., 20 All., 19.

Sufficient cause for non-appearance of counsel or attorney.—  
119 of Act VIII of 1859.

18. Sufficient cause for non-appearance—Absence of counsel or attorney.—On an application made under s. 119 of Act VIII of 1859 to set aside a judgment by default,—Held that the words "prevented by any sufficient cause from appearing" should be read so as to include the case of the absence of the plaintiff's counsel or attorney, when such absence has been caused by a bona-fide mistake. Under such circumstances, a judgment

CIVIL PROCEDURE CODE, ACT XIV  
OF 1931 (ACT X OF 1977)-continued.

CIVIL PROCEDURE  
OF 1932 (ACT X OF 1877)—Contd.

17. \_\_\_\_\_ Absence of pleaider.--  
When, in the absence of a plaintiff's pleaider, the case  
was decided, it was held to have been decided ex-  
parte, and his proper course was held to be an  
application for review, not a special appeal. **Benzor**  
**Thomas Sirova v. Ratha Bhaboh Bhaboh**  
**[10 W. R., 318]**

18. Ex parte case.—Where a defendant entered appearance and filed a written statement, the case can not be ex parte, though the defendant does not appear in person at the hearing; and the defendant's statement is entitled to be examined by the plaintiff's witnesses. PARANTAN C. JAGANNATH BHUXAIN [11 W. R. 5]

10. ~~Written statement~~ ~~Appeared~~  
Tender of ~~Ex-parte decree~~ ~~Appeared~~  
of defendant. The Court of first instance  
refused to receive the defendant's written statement  
because it had been tendered after the day on  
which the Court had ordered it to be filed, and the  
Court, however, framed the issues in the presence of  
the defendant's pleader, who was also allowed to  
cross-examine the plaintiff's witness. The Court  
made a decree in favour of the plaintiff. In appeal,  
the District Judge held that the decree of the first  
Court was *ex-parte* under s. 119 of the Civil Pro-  
cedure Code, and that, therefore, no appeal lay. Held  
by the High Court, in special appeal, that the decree  
of the first Court was not *ex-parte* under the circum-  
stances. *RAGHUPA C. HANMAYA C. PARAPA BIS  
SHIVAYA* I L R., 1 Bom., 217

20. **Non-appearance at adjourned hearing.—***Appeal.*—The provision in *Ex-parte* judgment—Appel.—The provision in s. 119 of Act VIII of 1859 that “no appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared” must be understood to apply to the case of a defendant who has not appeared at all, and not to the case of a defendant who, having once appeared, fails to appear on a subsequent day to which the hearing of the cause has been adjourned. [L. R., 2 All., 67: L. R., 5 L. A., 233] *See* *Devi v. Mohdoo Sooray Ghose* [6 W. R., 86]

21. ————— Ex-parte decree—  
*Defendant not appearing at an adjourned hearing—*  
*Act VIII of 1859, ss. 119 and 157.—S. 108 of the Code*  
*of Civil Procedure (Act XIV of 1882) applies to*  
*every case in which a decree is passed ex-parte*  
*against a defendant either under s. 100 by reason of his*  
*non-appearance at the first hearing, or under s. 157 by*  
*reason of his non-appearance at an adjourned hearing*  
*Zain-ul-Abdin Khan v. Ahmad Raza Khan*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

*I. L. R.*, 2 *All.*, 67, *L. R.*, 5 *I. A.*, 233, distinguished. *Sital Hari Banerjee v. Heera Lal Chatterjee*, *I. L. R.*, 21 *Calc.*, 269, overruled. *JONADAN DOBEY v. RAMDHONE SINGH*

[*I. L. R.*, 23 *Calc.*, 738

22. ————— *Presidency Court of Small Causes—Adjourned hearing—Ex-parte decree—Civil Procedure Code, s. 157.*—A defendant is entitled to avail himself of s. 108 of the Civil Procedure Code (Act XIV of 1882) where an *ex-parte* decree is passed against him at an adjourned hearing. *HILDEBRITH v. SAYAJI PIRAJI*

[*I. L. R.*, 20 *Bom.*, 380

the consequence of their non-appearance at first hearings, whereas Ch. XIII, of which s. 157 forms a

given against him,—*Held* that such a decree was not made *ex-parte* so as to enable the defendant to obtain benefit of s. 108 of the Code, but that his only remedy was under s. 37 of Act XV of 1882. *SITAL HARI BANERJEE v. HEERA LAL CHATTERJEE*

[*I. L. R.*, 21 *Calc.*, 269

24. ————— *Revival of suit*

s. 108 of the Civil Procedure Code, and does not include cases dismissed for default. *Sital Hari Banerjee v. Heera Lal Chatterjee*, *I. L. R.*, 21 *Calc.*, 269, referred to. *Tonuda Dobe v. Ramdhone Singh*, *I. L. R.*, 23 *Calc.*, 738, followed. *JAMINA BIMI v. SERI CHAND BHAGAT* . 2 *C. W. N.*, 893

25. ————— *Appeal from ex-parte decree.*—A suit was postponed on the application of the defendant's pleader, but on his applying

allowed, and the case was sent back for re-trial. *AMRINATH JHA v. ROY DRUMPUT SINGH*

[*S B. L. R.*, 44:15 *W. R.*, 503

26. ————— *Rescinding granted after expiration of time limited for application—Ex-parte decree.*—The plaintiff obtained an *ex-*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

jurisdiction. *RUNGLALL MISSEER v. TOKHUN MISSEER*  
[*I. L. R.*, 2 *Calc.*, 114:25 *W. R.*, 304

any other instructions whatever, either as to the

the circumstances stated, the defendant's pleader

a fair inference that the defendants did not appear, and the case was disposed of under s. 157 of the Civil Procedure Code; and that, under these circumstances, the provisions of s. 108 were applicable, and the decree was an *ex-parte* decision, which it was open to the Munsif to reconsider. *Hira Dai v. Hira Lal*, *I. L. R.*, 7 *All.*, 538, followed. *RAMTARAL RAM v. RAMESHAR RAM* . *I. L. R.*, 8 *All.*, 140

28. ————— *Ex-parte decree—“Appearance.” What constitutes—Civil Procedure Code, s. 100.*—A summons was issued to a defendant in a civil suit. The serving officer, being unable to find either the defendant or any person empowered to accept service for him at the address given, affixed a copy of the summons to the outer door of the defendant's house, and returned the original to Court. On the day notified in the summons, the

## DIGEST OF CASES.

( 1135 )

CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.

was adjourned to the day following. On that date, no one appeared for the defendant, and a decree was passed against him. *Held* that there was no appearance on behalf of the defendant within the meaning of s. 100 of the Code of Civil Procedure, and that the decree passed on the adjourned date was therefore an *ex-parte* decree. *Hira Dai v. Hira Lal, I. L. R., 7 All., 538, and Ram Tahal Ram v. Rameshar Ram, I. L. R., 8 All., 140, referred to. Fazal Ahmad v. Bahadur Singh, Weekly Notes, All. (1893), 25, Ganga Dass v. Indarman, Weekly Notes, All. (1893), 208, and Zain-ul-Abdin Khan v. Ahmad Raza Khan, I. L. R., 2 All., 67; I. A., 233, distinguished. CHAUDHRI RAJ KUMAR v. JUGAL KISHORE, I. L. R., 18 All., 241.*

29. *Absence of defendant on adjourned hearing—Non-appearance.*—S. 119, Act VIII of 1859, does not apply to a defendant who is only absent on an adjourned hearing. It relates only to one who has never appeared. *GORACHAND GOSWAMI v. RAGHU MANDAL* [3 B. L. R., Ap., 121: 12 W. R., 169]

30. *Non-appearance of defendant after filing written statement.*—A defendant filed a written statement in a suit, and, when the case was called on for final disposal, an application was made by counsel on his behalf for an adjournment; but the application was refused, and no one appearing for him, the case was proceeded with, and a judgment was obtained by the plaintiff. The defendant afterwards applied for an order setting aside the judgment on the ground that he was prevented from appearing when the suit was called on. *Held* that the application was within s. 119 of Act VIII of 1859, and the Court had no power in granting the order to impose terms as under s. 111. *ADMINISTRATOR GENERAL OF BENGAL v. LALA DYABAM DASS* 6 B. L. R., 688

DOYAL MISTREE v. KUPPOOR CHAND  
[I. L. R., 4 Calc., 318: 3 C. L. R., 482]

31. *Default in appearance after adjournment.*—The parties to a suit appeared on the day fixed for the first hearing. On the application of defendant's vakil, the hearing of the suit was adjourned in order to enable them to obtain certain documents from the Collector's office, and afterwards put in written statements. This they failed to do on the day to which the hearing was adjourned, and when the suit came on for final hearing, they were still in default, and also failed to appear in person or by vakil. A decree was given for the plaintiff. *Held* that the decree of the original Court was not an *ex-parte* decree under s. 147 of the Code of Civil Procedure for non-appearance, but a decree under s. 148, and was therefore appealable. *RANGASAMY MUDALIAR v. SIRANGAN. THANDRAYA GOUNDEN v. SITHAIYAN* 4 Mad., 254

32. *Absence at adjourned hearing—Putting in written statement.*—A mere formal appearance in Court with no further action than the putting in a written statement does not

CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.

prevent a decision in the absence of the defendant from being regarded as an *ex-parte* decision under the Civil Procedure Code. *PURUS RAM v. JYUNTTEE PERSHAD* 1 N. W., Ed. 1873, 154

33. *Failure of defendant to file affidavit of documents, defence struck out in consequence and decree made ex-parte.*—Application to set aside the decree under s. 108—Civil Procedure Code, 1882, s. 136.—Where the defendants had entered appearance and filed their written statements, but their defence had been struck out under s. 136 of the Civil Procedure Code for failure to file their affidavit of documents and the suit had been placed in the undefended list of cases and a decree made therein, and the defendants subsequently sought to set aside that decree under s. 108, Civil Procedure Code:—*Held* that the wording of s. 108, Civil Procedure Code, as well as its position in the Act, shows that its operation is limited to decrees made *ex-parte* under the provisions of Ch. VII, and does not govern other decrees made *ex-parte* unless where it has been extended to those decrees by other provisions of the Code. *Held*, also, that whatever may be the effect of the words "and to be placed in the same position as if he had not appeared and answered" in s. 136, it does not intend to introduce into the class of cases dealt with by s. 108 a new class of cases of an entirely different character, and the decree in the suit was not an *ex-parte* decree within the meaning of s. 108. *Choonee Lal v. Chaman Lal, I. L. R., 7 Mad., 139, Mullins v. Howell, 11 Ch. D., 767, referred to. Assanulla Joo v. Abdul Aziz, I. L. R., 9 Calc., 923, distinguished. KESHARIA ACCOMAR SREESUNGE v. POTOOAH SETT* [2 C. W. N., 678]

34. *Ex-parte decree against one defendant—Right to re-open the whole case.*—Act X of 1859, s. 58.—When a suit has been decreed against several defendants, and one of them, who was not present at the hearing, obtains a re-hearing and files a written statement in which for the first time the objection is taken that the suit could not have been proceeded with, inasmuch as plaintiff had improperly joined two distinct causes of action against two different individuals, the Court is not justified in re-opening the whole case. S. 119, Act VIII of 1859, does not contemplate the setting aside of that portion of the decree in such a case which refers to the other defendants. S. 58, Act X of 1859, treated as an authority by analogy in such a case; and s. 119, Act VIII of 1859, interpreted. *HURO KRISHNO DASS v. MOTEECHAND BABOO* [8 W. R., 280]

See, however, *NISTABINEE DOSSEE v. DEBNATH BOSE* and *BROJONATH SURMAH CHUCKERBUTTY v. ANUND MOYEE DEBIA CHOWDHRAIN* 7 W. R., 287

35. *Effect of a decree set aside at the instance of some only of several defendants against whom the decree passed was ex-parte.*—Meaning of the words "the decree."

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

entered appearance at the original hearing. **MA-  
HOMED HAMIDULLA v. TORURENMISSA BISI**

[L. L. R., 25 Calc., 155  
1 C. W. N., 652]

**DOYAMOYI DAS v. SARAT CHUNDER MOJUMDAR**

[L. L. R., 25 Calc., 175  
1 C. W. N., 656]

*co-defendant to set aside decree—Civil Procedure  
Code, s. 106.*—Where a decree is set aside on the  
application of a defendant against whom it was  
passed *ex-parte*, the case is not re-opened as against a  
co-defendant who had appeared and defended the  
suit. **MANAKU v. SITARAM ATMARAY VAGH**

[L. L. R., 18 Bom., 142]

[3 Bom., O. C., 80]

**38.** ————— **Non-appearance of one  
of several defendants—Ex-parte decree.**—In a  
case in which one of many defendants, who was made

**CHURN CHUCKERBUTTY** . . . **9 W. R., 597**

**39.** ————— **Right of party who  
has not come in to take benefit of order  
of dismissal of suit.**—A suit having been decreed  
against a number of defendants, some of whom did  
not appear, one (K) of the latter applied for a  
new trial under s. 119, Act VIII of 1859, and the case  
was remanded by the Judge to the Sudder Ameen.  
On the last day of the new trial, another (K) of  
the defendants, against whom judgment had been  
given *ex-parte*, tendered a written statement, in  
which it was alleged that summons had not been  
duly served upon her. The statement was received,  
and the suit was dismissed *en toto*. In appeal, the  
Principal Sudder Ameen reversed that part of  
the decree which related to K, on the ground that

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

she had presented no petition in conformity with  
s. 119 of the Code. *Held* that K was properly  
before the Sudder Ameen's Court and was entitled to  
the benefit of the order of dismissal, and that the  
Principal Sudder Ameen went on too narrow a  
ground, and should have tried the case on its merits.  
**KOOROOMOYER DEBIA v. NUBOKISHEN MOOKER-  
JEE** . . . **11 W. R., 18**

in both Courts, and the defendants, who had not  
appeared nor been parties to the appeals, applied  
to the Munsif and got the decree (*ex-parte* as against  
them) set aside altogether and the Munsif made  
an order allowing the two defendants who had  
appeared to defend the suit *de novo*.—It was *held* that  
the Munsif had no jurisdiction. o set aside the

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Biber . . . . . MONO-  
**MOHINI CHOWDHRAIN v. NARA NARAYAN ROY  
CHOWDHREY** . . . **4 C. W. N., 466**

**41.** ————— **Decree obtained on**

concerned, was a cheat and a forgery, and asked for  
an enquiry and to be relieved from the execution.

**42.** ————— **Insufficient reason  
for non-appearance—Ex-parte decision.**—Where

**SINGH v. MEGHRAJ SINGH** . . . **12 W. R., 207**

**43.** ————— **Ground for setting  
aside ex-parte decree—Order for review.**—  
Where after an *ex-parte* decree defendant appeared

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

earlier than fifteen days after service of process, and swore that no summons had been served on him in the case which led to the *ex-parte* decree, and that the contract under which the case had been decreed against him had been broken by the plaintiff himself, it was held that good and sufficient cause was shown for defendant's previous non-appearance, and a *prima facie* case had been made out to lead to the conclusion that there had been failure of justice. *Held* that, as this evidence was given in the presence of the mooktears on both sides, the Court's order that the case should be entered on the register of cases was a proper order admitting the review. **ANUND MOYEE DASSEE v. ANUND SOONDUR MOZOOMDAR**

[13 W. R., 237]

**44. ——— Defendant showing no sufficient cause for non-appearance—Appearance by vakil—Ex-parte case.**—One of several defendants in a suit did not enter appearance until nearly a month after the date fixed for the first hearing, when he applied by a vakil for leave to be heard in answer, under the last part of s. 111, Code of Civil Procedure. In the absence of good and sufficient cause for previous non-appearance, his application was rejected and an *ex-parte* judgment given against him. After this he applied, at the instance of the Appellate Court, for a re-hearing on the ground that the summons had not been duly served upon him. This application was rejected and the order of rejection was upheld on appeal. In special appeal he contended that the case did not fall within s. 119, and that he was entitled to have the regular appeal previously preferred determined upon the record as it stood, notwithstanding his prayer had been rejected under s. 113. *Held* that the mere fact of the special appellant having appeared by a vakil in the way mentioned above could not be taken as an appearance within the meaning of s. 119, and was not sufficient to prevent the Court from passing a judgment *ex-parte* against him. **MAHOMED HOSSEIN v. MUNTOZUL HUG**

[18 W. R., 400]

**45. ——— Cause for non-appearance at adjourned hearing—Appearance at first hearing.**—Where a defendant was prevented by the fraud of the plaintiff from appearing on the last day of hearing, the suit was held to have been decided *ex-parte*, notwithstanding that the defendant had been represented on the first day of hearing; and the first Court was held to have done right in restoring the case to the file under Act VIII of 1859, s. 119. **DENOO PAROYE v. CHINTA MONEE CHOWDHRY**

[18 W. R., 457]

**46. ——— Prevention from appearing by sufficient cause—Ex-parte decree against minors.**—An *ex-parte* decree having been granted in a suit against A, personally and as guardian of her infant sons, the infants subsequently applied, under s. 119 of Act VIII of 1859, to set aside the decree on the ground that the summons had not been duly served upon A, and the application was dismissed. On appeal to the High Court, —*Held*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

that, although, so far as the decrees made A personally liable, the Court had no power to interfere, yet, as the infants were not responsible for their non-appearances, it might be said that they had been prevented by "sufficient cause from appearing," and that the decrees might be set aside under s. 119 of Act VIII of 1859 (Act X of 1877, s. 108) as against them. **KESHO PERSHAD v. HIRDOY NARAIN**

[6 C. L. R., 69]

**47. ——— Dismissal for default of prosecution—Absence of witnesses.**—The plaintiff's witnesses not being present on the day fixed for the hearing of the plaintiff's suit, it was dismissed for default of prosecution under s. 114 of the Code of Civil Procedure, and was afterwards re-admitted under s. 119. *Held* that, the default not being of the nature described in s. 114, the suit was wrongly dismissed under that section, and for the same reason that the suit was improperly dismissed under that section, it was also improperly re-admitted under s. 119. **MAHOMED AZEEMOOLLA v. ALI BUKSH**

5 N. W., 75

*See also* **RAM SUNDAR SINGH v. RAM BANDHAN SINGH**

7 N. W., 126

**48. ——— Dismissal for default of case in execution of decree—Appeal.**—The remedy, when a case in execution of a decree is disposed of in the absence of the judgment-debtor, is that provided by s. 119 of Act VIII of 1859, and not an appeal. **SHEETUL PERSHAD v. MAHOMED KUREEM KHAN**

5 N. W., 164

**RAJPAL v. CHOORAMUN**

4 N. W., 10

**49. ——— Decree ex-parte—Death of judgment-debtor—Application by legal representative to have the decree set aside.**—*Held* that, where a defendant against whom a decree has been passed *ex-parte* for default of appearance dies, his legal representative is not competent to apply under s. 108 of the Code of Civil Procedure for an order to set the *ex-parte* decree aside. **JANKI PRASAD v. SUKHRANI**

[I. L. R., 21 All., 274]

**50. ——— Procedure on grant of new trial of ex-parte case.**—Where the lower Appellate Court admitted an application under s. 119 for re-trial of a case which had been decided *ex-parte* by the Munsif, it was held to have done right in sending for the record, in order that the case as a suit should be heard and tried by the Appellate Court; the object of the law being that a suit should assume a complete form and go to a full trial, and not be divided between different Courts. **KHOOB LALI SAHOO v. KADIR BUKSH**

15 W. R., 431

**51. ——— Ex-parte decree passed on appeal—Procedure.**—A sued A and others on a bond-debt, and obtained a decree against A alone. He appealed to the District Judge, who passed a decree declaring all parties to be liable jointly. On the decree-holder taking out execution, two of the defendants applied to the Subordinate Judge under Act

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

VIII of 1859, s. 119; and their application being

52. ————— “Appearance” of defendant under Civil Procedure Code, ss. 100, 101—*Ex-parte decree*.—The first hearing of a suit was fixed for the 12th December 1883, on which day the defendant did not appear, and the case was adjourned to the 18th December, and, as

before judgment. *Held* that these acts on the defendant's part did not constitute an “appearance” by him within the meaning of s. 100 of the Civil Procedure Code, which referred to an appearance in answer to a summons to appear and answer the claim

*Khan v. Ahmad Raza Khan, I. L. R., 2 All., 67 I. R., 5 I. A., 233*, distinguished *Administrator General of Bengal v. Dycram Das, 6 B. L. R., 658, Bhunacharya v. Fakirappa, 4 Bom., 206, and Bibee Haloo v. Atwaro, 7 W. R., 81*, referred to. *Per* MARMOON, J.—That the Court on the 18th December seemed to have acted under s. 157 of the Civil Procedure Code, and, choosing the first of the alternative courses allowed by that section, acted under Ch. VII of the Code, and passed an *ex-parte* decree under the provisions s. 100 of that chapter. *HIRA DAI v. HIRA LAL*

[I. L. R., 7 All., 538]

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

interfered with, except by the Privy Council. *NUBO KRISTO MOOKERJEE v. NADIAH CHUND HATTER.*

[12 W. R., 374]

54. ————— Whether an auction-purchaser is a necessary party to an application to set aside an *ex-parte* decree. —An auction-purchaser of property sold in execution of an *ex-parte* decree is not a necessary party to an application made by the judgment-debtor to set aside the said decree, inasmuch as the auction-purchaser does not come under the description of “opposite party” in s. 109 of the Code of Civil Procedure. *JATINDRA MOHAN PODDAR v. SRINATH ROY* [I. L. R., 23 Calc., 267]

ss. 110-116.

*See* CASES UNDER WRITTEN STATEMENT.

s. 111 (1859, s. 121).

*See* CASES UNDER SET-OFF.

*See* SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—SET-OFF.

[I. L. R., 21 Calc., 419]

ss. 118, 119 (1859, s. 125)—*Non-appearance of defendant—Appearance by pleader*.—Where defendants summoned under s. 41, Act VIII of 1859, did not appear on the day fixed for them to appear and answer, and their reasons for non-attendance not having been considered sufficient, they were

appeared at the proper time afterwards appears by pleader. *JOY PRUKASH SINGH v. MECHRAJ SINGH* [12 W. R., 207]

2. ————— Inability of pleader to answer material questions—*Materiality of absent witnesses*.—Instead of dismissing plaintiff's suit on account of his pleader's inability on the day of

*HURISH CHUNDER GROSS* . . . 17 W. R., 141

3. ————— Refusal of a plaintiff to attend as a witness.—A plaintiff who was represented by a pleader was summoned at the instance of a defendant to attend the Court and to give evidence on his behalf on the day fixed for final hearing. The plaintiff refused to attend on the ground that he

there was sufficient cause for the non-appearance of the defendant. This was done, and the defendant was allowed to defend the suit. The plaintiff then appealed to the Judge, who reversed the last order. Both parties then went back to the Munsif, who, on 26th April 1867, recorded a proceeding that the original *ex-parte* order was to stand. In the meantime

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

was a person of rank and was exempted from personal appearance in the Courts of a Native State. The first Court, considering the personal appearance of the plaintiff necessary, issued an order under s. 120 of the Civil Procedure Code that he should attend, and, on his failure to do so, passed a decree against him. On appeal, the Judge reversed the decree and remanded the case for trial. *Held*, confirming the order of remand, that the order and decree of the first Court were alike illegal, as the plaintiff having appeared by a pleader, the Court had no power to issue an order under s. 120, unless the pleader had refused or was unable to answer a material question. *SATU v. HANMANTRAO GOPALRAO NIMBALKAR*

[I. L. R., 23 Bom., 318]

ss. 121-127.

See CASES UNDER INTERROGATORIES.

[I. L. R., 17 Calc., 840]

I. L. R., 18 Calc., 420

I. L. R., 23 Calc., 117

See CASES UNDER PRACTICE—CIVIL CASES—INTERROGATORIES.

ss. 129-136.

See CASES UNDER INSPECTION OF DOCUMENTS.

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

s. 136.

See APPEAL—EX-PARTE CASES.

[I. L. R., 7 All., 159]

See CONTEMPT OF COURT.

[I. L. R., 7 Bom., 1, 5]

See INTERROGATORIES.

[I. L. R., 18 Calc., 420]

Exercise of powers given by section.—The powers given to the Court by s. 136 of Act X of 1877 should not be exercised except in extreme cases. *SHAM KISHORE MUNDLE v. SHOSHI BHOOSAN BISWAS*

[I. L. R., 5 Calc., 707; 5 C. L. R., 509]

1. s. 137 (1859, s. 138)—*Application for production of documents in another case—Discretion of Court.*—*Per NORMAN, C.J.*—When a proper application was made to a Judge under s. 138, Act VIII of 1859, to send for, from the records of his own Court, papers which would be evidence in the case before the Court, the Judge had no discretion in the matter, but the section must be treated as giving a power which the Judge was bound to exercise,—the principle being that where a statute conferred an authority to do a judicial act in a certain case, it was imperative on those authorized to exercise the authority when the case arose. *Per KEMP, J.*—It was in the discretion of the Court to send for them or not. *Per STEER, J.*—Though the Judge was not bound to send for them, it would be unfair not to do so. *RUGHOO-NATH BOSH v. OOMED ALI* . W. R., F. B., 177

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

2. Papers specially mentioned.—*Production of record.*—Under s. 138, a Court was not bound to send for the whole record, but only for such papers as might be specially mentioned in the application. *JANOKEE BEEBEE v. HABEEBUL HOSSEIN* . W. R., 1864, 272

3. Decision on document sent for from record of another case.—A Judge may send for and inspect any document filed with any record in his Court, and there is nothing in the Code of Procedure to prevent his basing his decision, wholly or mainly, on such document. *BUNWAREE LALL v. KISTO BEHARY ROY*

[1 W. R., 63]

4. Admissibility of documents from record of another case.—*Held* that a Civil Court which inspects the records of another case under s. 138 of Act VIII of 1859 can only use as evidence such documents as are otherwise unobjectionable and admissible for or against either of the parties to the suit. *NARAPPA BIN APPA HEGDI v. GAPPAY BIN KAPPAY*

[2 Bom., 361; 2nd Ed., 341]

5. Objection of Judge to send for record in another case.—A Judge was not bound, under s. 138, Act VIII of 1859, upon the application of any of the parties to a suit, to send for the record of any other suit. *HEERAMUN ROY v. TAHOOOR ENAM* . 7 W. R., 109

*CORAAH v. GOOROO CHURN GHOSH*

[18 W. R., 13]

6. Omission to summon Registrar.—In a suit on a registered bond in which defendant asked the Court to send for the registration books, with a view to prove the non-existence of the bond at the time it purported to be certified,—*Held* that, as defendant had failed to summon the Deputy Registrar, it was not necessary for the Judge to use the discretion given in s. 138, Act VIII of 1859. *MONMOHINEE DABEE v. SREEDHAM CHURN RANNA*

[14 W. R., 302]

7. Records from Court of Wards.—Where records from a Government office are required as evidence, it is for the Court to send for them; but papers required from a Court of Wards, which is not a Government office, must be obtained by the party who needs them, by means of a summons on the proper officer. *SOBBEE JHA v. SHOSHRENAUTH JHA* . 15 W. R., 150

8. Public record.—*Case's book.*—A case's book is not strictly an official record, Before a document could be inspected under the provisions of s. 138, Code of Civil Procedure, which applied to Appellate as well as Original Courts, the Court was bound to see whether it came under the description of a public record. *JUGGERNATH SAHOO v. MAHOMED HOSSEIN* . 15 W. R., 173

9. Sending records sent for by another Court.—*Discretion of Court.*—A Court had no discretion to refuse to send records which had been sent for by another Civil Court

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

under s. 138 of Act VIII of 1859. IN THE MATTER  
OF GOLAP COOMARY DASSEE v. SOONDUR NARAIN  
DEO . . . . . 4 C. L. R., 38

ss. 138 and 139 (1859, s. 128).

**1. — Documentary evidence.**

—Parties are required to have with them in Court, at  
the first hearing of the suit, all their documentary evi-  
dence, but need not file it then unless it is called for.  
MAHBUB HOSSEIN v. PATASU KUMARI

[1 B. L. R., A. C., 120; 10 W. R., 179]

[Bourke, O. C., 91; Cor., 151]

**3. — Documents produced.**

but not filed.—This section applies to documents  
which have been produced at the filing of the plaint,  
but not filed, and in this way is not incompatible  
with s. 39. PERMSOOKH CHUNDER c. RAJKISTO  
MITTER . . . . . 1 Hyde, 145

**4. — Exhibits.—Documents**

produced in Court under s. 128, Act VIII of 1859,  
become, upon and by reason of their production,  
exhibits in the case. RAOJER GUNESH c. RAO JALEE  
PERSHAD . . . . . 8 W. R., 91

which he acts should be stated on the record. WAT-  
SON & Co. v. KUNHYA BAHADOOR . 9 W. R., 294

**6. — Documents not filed**

with record owing to mistake of Court's  
officers.—A Civil Court is bound to receive as evi-

record RAM RUNJUN CHUCKERBUTTY c. ANUND  
COOMAR MOOKERJEE . . . . . 15 W. R., 323

DHRY v. PRAN HOREE LARA . . . . . 21 W. R., 42

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.****8. —**

The main object  
of s. 128 was to prevent parties from manufactur-  
ing evidence pending the trial, to meet unexpected  
exigencies, and not to shut out true, good, and valu-  
able evidence, merely because the party had, without  
good and assignable cause, abstained from bringing  
it before the Court at the first hearing. IERAM  
HOSSEIN v. RAM LOCKUN DUTT . 23 W. R., 23

**9. — Production of**

documents.—S. 138 of the Civil Procedure Code was  
enacted to prevent fraud by the late production of

[1 L. R., 22 Bom., 173]

s. 140 (1859, s. 129).

See SUPERINTENDENCE OF HIGH COURT—  
CHARTER ACT, s. 15 . 19 W. R., 511

**1. — Opportunity for Court**

to inspect evidence.—A Court cannot be said to

KHINA CHOWDHRY v. RAJ MOHUN BOSE

[11 W. R., 350]

**2. — Reception on record of**

irrelevant and inadmissible documents.—

ments which are either irrelevant or inadmissible.  
ISSUR CHUNDER GHOSH v. RUSSEK LAL MUNDUL

[11 W. R., 576]

Court by the Judge's own note. TUMEEZODDY v.  
BUSARUT . . . . . 21 W. R., 79

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

— s. 141 (1859, s. 132)—*Production of documents—Endorsement.*—Exhibits produced in Court ought to be endorsed with the name of the person who produces them as required by s. 132 of Act VIII of 1859. *BISRAM SINGH alias BISHEN SINGH v. INDURJEET KOONWAR* . 6 W. R., 1

## s. 142A.

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

[I. L. R., 14 All., 358

— ss. 146, 153 (1859, ss. 139, 144).

See CASES UNDER ISSUES.

— ss. 154, 155 (1859, s. 145).

1. ———— *Power of Sitting Judge—Practice.*—When the issues are framed and the plaintiff and defendant are ready and willing to proceed, the sitting Judge has power under s. 145 to proceed to the hearing and final disposal of the case. ANONYMOUS . 1 Ind. Jur., O. S., 14

2. ———— *Procedure where day is fixed for settlement of issues.*—When a day is fixed for the settlement of issues in a case, the Court ought not to proceed to dispose finally of the case except with reference to the specific circumstances detailed in s. 145, Act VIII of 1859. *JEEAWAN v. GOOLAB KHAN* [1 N. W., 97: Ed. 1873, 147

3. ———— *Adjournment of case—Necessity of further evidence.*—Although a case may have been set down for final disposal, if it be a case in which further evidence is required, the Judge is bound, under s. 145, Act VIII of 1859, to adjourn the case unless he is satisfied that the plaintiff has, without sufficient cause, failed to produce his evidence. *AMEER ALI v. RAM BAHADOOR SINGH* [7 W. R., 84

4. ———— *Disposal of suit at first hearing.*—A Judge cannot dispose of a suit at the first hearing if a party appears and objects to the adoption of that procedure. *KRISHNABHUPATI v. RAMAMURTI* . I. L. R., 16 Mad., 198

5. ———— *Non-production of evidence at proper time.*—The great object of the Procedure Code in requiring a day to be fixed for the hearing of a case and all the evidence to be adduced on that day is that parties may thus be confronted with each other, and the whole evidence on either side be at one and the same time before the Court. Where a party fails to produce his documents at the proper time, a Court commits no error in law in refusing to send for them subsequently, if not satisfied that they are necessary for the ends of justice. *SOBBEE JHA v. SHOSHEENATH JHA* [15 W. R., 150

1. ———— s. 156 (1859, s. 146)—*Adjournment of case—Sufficient cause—Suit not fixed for hearing.*—Without defining what is the right mode of exercising the discretion vested in the Judge with regard to adjournments, the High

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

Court held that the Judge ought, under s. 146 of the Code, to have granted an adjournment in this case when it was applied for, on the first day after the Judge's return to the district that the applicant really had an opportunity of appearing before the Judge, in order to enable the applicant to file his documents and produce his witnesses; s. 147, Act VIII of 1859, not applying to a case where no day has been fixed for the hearing of the case. *SEETA-RAM SAHOO v. GOLAM SAHOO BAHADUR* 18 W. R., 325

2. ———— *Ground for adjournment—Medical certificate.*—Where defendant had known for some time previously that his case was coming on and what evidence was necessary, a medical certificate, to the effect that he was confined to his bed by lumbago, was held to be no sufficient ground for adjournment. *ELIAS v. JORAWAR MULL* [24 W. R., 202

3. ———— and s. 157—*Application for restoration of suit—Adjournment—Civil Procedure Code (Act XIV of 1882), ss. 156, 157, 102, 103.—Semb'e.*—Ss. 156 and 157 of the Civil Procedure Code do not apply to an adjournment which is not made at the instance of the parties, but which is necessitated by the rules of Court which regulate the disposition of its own business. *TOOLSX MONEY DASSEE v. PROSAD MONEY DASSEE* . 2 C. W. N., 490

## s. 157.

See s. 108 . I. L. R., 21 Cal., 269  
[I. L. R., 23 Cal., 738  
I. L. R., 20 Bom., 380  
2 C. W. N., 683

## ss. 157, 158.

See APPEAL—DEFAULT IN APPEARANCE.  
[I. L. R., 10 Mad., 270  
I. L. R., 20 Bom., 736  
I. L. R., 19 All., 355

## s. 158 (1859, s. 148).

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.

[I. L. R., 13 Mad., 510  
I. L. R., 15 All., 49  
I. L. R., 18 Mad., 131, 466

1. ———— *Remand by Appellate Court.*—The terms of s. 148, Act VIII of 1859, do not prevent an Appellate Court, on good and sufficient cause shown, from remanding a case disposed of thereunder, in order that justice may be done between the parties. *LOCHUN MUNDUL v. WUZEER PARAMANIOK* . 13 W. R., 464

2. ———— *Fresh evidence.*—When a case is remanded by an Appellate Court under s. 148, Act VIII of 1859, with a direction that it shall be proceeded with, the Court of first instance has no authority to receive new evidence, nor the lower Appellate Court to decide thereupon. *PADMA LOCHUN v. SIRDAR KHAN* . 3 B. L. R., Ap., 91

S. C. PUDDO LOCHUN v. SIRDAR KHAN

[12 W. R., 23

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

3. ————— *Dismissal of suit for insufficient Court-fee on plaint.*—The Court of first instance, being of opinion that the plaint bore an insufficient Court-fee, and the plaintiff, not making good the deficiency, dismissed the suit after recording evidence, but without entering into the merits. On appeal the lower Appellate Court held that the Court-fee was sufficient, and remanded the case for trial on the merits. *Held* that s. 158 of the Civil Procedure Code was not applicable to the case. **MUHAMMAD SADIQ v. MUHAMMAD JAN**

[I. L. R., 11 All., 91]

4. ————— *Adjournment for final disposal—Dismissal of suit after adjournment—*

**RYALL v. SHERMAN** . . I. L. R., 1 Mad., 267

5. ————— *Dismissal of suit after adjournment.*—The first hearing of a suit took

the Judge was justified in dismissing the suit. **COMALAMMAL v. RANGASAWMY IYENGAR**

[4 Mad., 58]

6. ————— *The first hearing of a suit was fixed for the 10th July 1867. Neither of the parties nor their vakils appeared. There-*

under s. 148 (whether the first or second decree was not specified) upheld, upon the ground that, as

being a decree which might have been made under

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

s. 147, was one to which s. 119 might be applied. That the second decree of dismissal was one to which s. 148 alone applied, consequently one subject only to review or to an appeal, and the proceeding had in October 1867, being substantially an application for review, was one which the Court had power to grant. **AMBALAVANA PADRIYATCHI v. SABBAMANIA PADRIYATCHI** . . . . . 6 Mad., 292

7. ————— *Application for succession certificate—Order for costs of adjourn-*

the costs, and the certificate was issued to the widow. *Held* that s. 158 of the Civil Procedure

**CHINNANMA** . . . I. L. R., 21 Mad., 403

appeal. On special appeal,—*Held* that the Civil Judge was wrong on the latter point, that if the plaintiff had been prevented from examining the

were consequently set aside and the case remanded. **LATCHMANA RAU SAIB v. ROGNATHA RAU**

[6 Mad., 299]

first instance subsequently entertained and rejected an application under s. 119 for a re-hearing. The lower Appellate Court admitted and allowed an appeal against the order of the Court of first instance.

# CIVIL PROCEDURE CODE, ACT XIV OF 1882, (ACT X OF 1877)—continued.

Both the orders of the lower Courts were reversed, it being held that the Court of first instance must be regarded as having acted under s. 148 of the Code. **KASHEE PERSHAD v. DEBI DAS** . 7 N. W., 77

10. ————— Adjourment for process to enforce attendance of witnesses.—Where adjournments are made by a Court, in order to give effect to its processes for compelling the attendance of the witnesses, being thus made as much on its own motion at the instance of the defendant as at the instance of the plaintiff, the case cannot be said to come under Act VIII of 1859, s. 148, which contemplates a case where a party has obtained time to produce his witnesses and has failed to do so. **PEARSEE MOHUN BERA v. SHAMA CHURN MYTTEE** [19 W. R., 34]

s. 159 (1859, s. 149).

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES.

[3 C. L. R., 589  
I. L. R., 9 Bom., 308  
I. L. R., 15 Bom., 86  
I. L. R., 16 All., 218]

s. 168 (1859, s. 159).

See CASES UNDER WITNESS—CIVIL CASES—DEFAULTING WITNESSES.

ss. 174, 175 (1859, s. 168).

See CASES UNDER WITNESS—CIVIL CASES—DEFAULTING WITNESSES.

1. ————— s. 177 (1859, ss. 126, 170)—Order of Court requiring party to attend, Disobedience to—*Subsequent decree in his favour*.—The plaintiff was ordered to attend and give evidence under s. 170, Act VIII of 1859, but failed to do so. The Court, however, being satisfied with the evidence in support of his case, gave a decree in his favour. *Held* that the decree was valid. **BISSONAUTH MOJOOOMDHUR v. KHETTER CHUNDER SEN** . Marsh., 467

2. ————— Defendant *bonâ fide* requiring evidence of plaintiff—*Non-attendance of plaintiff*.—A defendant, who *bonâ fide* and for a substantial reason requires the evidence of the plaintiff to be taken, ought not, in ordinary circumstances, to have a decree made against him until that evidence has been given. **ROY DHUNPUT SINGH v. PREM BIBE** . 24 W. R., 72

3. ————— Appearance of some of several plaintiffs.—S. 170, Act VIII of 1859, authorized dismissal for default only against the plaintiff who failed or refused to attend, not against the plaintiffs who appeared. **PROSUNNO COOMAR SHAHA v. GOOROO PERSHAD ROY** . 1 W. R., 25  
**BINODE RAM SEIN v. BROHMO MOYEE DEBIA**

[1 W. R., 168]

4. ————— Claim barred by limitation—*Defendant not appearing*.—S. 170, Act VIII of 1859, was not intended to empower a Court to decree a claim which on the face of it is barred by limitation, simply because the defendants had been

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

summoned and did not appear. **DOORGA DUTT SINGH v. KALIKA SOOKUL**, **GIREEDHAR SINGH v. KALIKA SOOKUL** . 7 W. R., 46

5. ————— Non-attendance of witness.—The discretion which a Court had, under s. 170 of Act VIII of 1859, of passing judgment against a party for non-compliance with the Court's order to attend and give evidence or produce documents in a suit was not confined to cases where the party summoning him could not prove his case otherwise than by the evidence of such other party, or where the fact to be proved was solely and exclusively within the knowledge of such other party. **KASHINATH SHAHA v. DWARKANATH SIRKAR** . 9 B. L. R., 215: 17 W. R., 550

**ISHAN CHANDRA GHOSE v. HARISH CHANDRA BANERJEE**

[9 B. L. R., 218 note: 12 W. R., 369]

6. ————— In a suit for contribution in respect of Government revenue, the defendants, co-sharers, were, on the application of the plaintiff, ordered to attend to give evidence, but they failed to appear. The Principal Sudder Ameen thereupon dismissed the suit on the ground that, as the plaintiff's case had not been established, he was not entitled to a decree simply by reason of the defendants' failure to enter appearance. *Held* the suit should not have been dismissed. In a case where a party summoned to attend as a witness refuses to attend and give evidence, and the party who requires the evidence is unable to make out his case without it, his suit should not be dismissed for want of proof, when the points on which he fails depend upon matters of fact which may reasonably be presumed to be peculiarly in the knowledge of the defaulting parties, as for instance in the present case, the extent of their own shares, and the amount they had paid on account of revenue. **HEMANGINI DAS v. RAMNIDHI KUNDU**

[1 B. L. R., S. N., 10: 10 W. R., 158]

7. ————— Default of defendant to attend—*Examination of parties to the suit*.—When a plaintiff alleges that the defendant has a personal knowledge of the matters in dispute and the defendant denies that he has such knowledge, the Court, before exercising the discretion of decreeing the suit as upon default, should be satisfied on evidence as to the existence of such knowledge on the part of the defendant. **LATH NARAIN DEO v. BOLAKEE CHOWDHRY** . W. R., 1864, 24

8. ————— Dismissal of suit on plaintiff's non-appearance when summoned as witness by defendant.—A Court is not bound to dismiss a case on account of the non-appearance of a plaintiff summoned by the defendant to attend as a witness, when the defendant did not petition for attachment or other legal process to be made by the Court to compel the plaintiff's appearance. **BUSTEE NARAIN ROY v. SHAM SOONDER NUNDEE** . 2 W. R., Act X, 43

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

to rent  
procedure in  
JER MOHUN

[4 W. R., Act X, 18

SOOPUN KHAN v. HURO PERSHAD PAUL

[4 W. R., Act X, 50

Also s. 166. SOOPUN KHAN v. HURO PERSHAD  
PAUL . . . . . 4 W. R., Act X, 50

10. ————— Failure of defendant

merits. GOPAL LAL BOSE v. KALEENATH MOO-  
KERJEE . . . . . 5 W. R., 89

RAJCHUNDER GHOSE v. KOYLASH CHUNDER  
BANERJEE . . . . . 6 W. R., Act X, 86

11. ————— Wilful default.—The  
stringent provisions of s. 170, Act VIII of 1859,  
ought to be applied only in the case of contumacious  
litigants. DATA HURBUKMAN FYNE v. OODOY  
CHAND FYNE . . . . . 6 W. R., 247

THAKOOR LALL MISSEK v. BEZOMMOYEE DABEE  
[15 W. R., 253

But not to plaintiffs on whose part there is no  
proof of cognizance of the issue of a commission for  
their examination, or no proof of wilful default.  
DATA HURBUKMAN FYNE v. OODOY CHAND FYNE  
[6 W. R., 247

KATAKAM VENKAIYA v. BHUPALAM PEDDA MUL-  
LAGAPPAH . . . . . 4 Mad., 142

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

defendant as in default. PUDIYAR VASUDAYAN  
NAMBUDRIPAD v. KAYAKA KOVILAGATHA VALIA  
RANY . . . . . 4 Mad., 231

fault or refusal with reference to the rules of evi-  
dence, and to hear what evidence the defaulting  
party adduces before imposing upon him the penalty  
of default. MAHOMED AHMEDULLA v. DUKESHI  
SHAIKH . . . . . 24 W. R., 314

favourable circumstance, but the Court will not  
always be disposed to attach to it such weight as to  
regard it as justifying a decree in the plaintiff's  
favour. ROOP NABAIN MISSEK v. KASHEE RAM  
SING TIMBIRAM . . . . . 2 N. W., 67

BHALLY MAHOMED BUKSHEE v. NOBIN CHUNDER  
ROY CHOWDHURY . . . . . 15 W. R., 269

[8 W. R., 64

Notice to attend

( 1155 )

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)**—continued.

GOVERNMENT OF INDIA  
LAW DEPARTMENT

Section contained in that notice. GOVERNMENT OF INDIA  
LAW DEPARTMENT

11 W. R., 110

Defendant to

19. — Default of defendant to give evidence.—Where a plaintiff has not given any evidence in support of his case, he is not entitled to a decree merely on the default of the defendant to give evidence. DAMOODUR BHOOSHUN v. RUGHO NATH PANJA. 12 W. R., 242.

21. Failure to produce evidence.—In a suit by the patnidar for rent due under a dar-patni, defendant was summoned to produce the dar-patni pottah and a bynamah which he had produced on a former occasion in a different suit. On his representing that they were lost, plaintiff put in a certified copy of the bynamah obtained from the office of the Registrar of Deeds. Held that, as the defendant failed to produce the bynamah or to prove that it was out of his power to do so, the Judge might have passed judgment against him at once under s. 170, Act VIII of 1859. TARA CHAND BANERJEE v. BOISTUB CHURN BHUDRO [16 W. R., 1906]

22. Defendant not appearing when summoned by plaintiff.—Where the plaintiff gave no evidence at all in support of her case, it was held not just to put in force against the defendant, who, when summoned to appear and give evidence, deliberately declined to do so, the stringent provisions of s. 170, Act VIII of 1859. The exercise of the discretion conferred by that section must be reasonable and judicial. *SAJJADANUSHEEN v. NUSSEBUN*. 17 W. R., 196

23. Refusal to answer  
material questions—Dismissal of suit.—A  
judgment passed against a plaintiff, under s. 126 of  
Act VIII of 1859, was reversed by the High Court in

CASES.

CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.

**CIVIL PROCEDURE CODE**  
**OF 1882 (ACT X OF 1877)**—continued

special appeal, as there was nothing on the record to show that the party refused to answer any material question relating to the suit. **KRISHNAJI NIMKAR**  
— **VISHNU NIMKAR** **2 Bom., 380: 2nd Ed., 340**

**Discretion of Court to**  
**—** **pass.**—Where the law  
assumes the

24. **Discretion of Court to summon party as witness.**—Where the law allows a discretion to any Court, it presumes that such discretion will be soundly and properly exercised; and where it is shown that the discretion was not so exercised, the omission will be a ground for interference by the superior Court. Accordingly, the Subordinate Judge's order under s. 170 was set aside on the ground that he had not exercised his discretion at all, inasmuch as he had ignored the fact that plaintiff had given very substantial reasons for his inability to attend and give evidence when summoned to do so; and as the Subordinate Judge had held substantially that there was sufficient evidence to prove plaintiff's claim, plaintiff was entitled to a decree, his failure to give evidence notwithstanding. **ISHAN CHUNDER SEN v. ONATH NATH DEB. COWELL v. ISHAN CHUNDER SEN** 18 W. R., 18

plaintiff's failure to give evidence.  
CHUNDER SEN v. ONATH NATH. 18 W. R. 63

25. **Default of party to appear when summoned as witness.**—Will-  
*ingness to attend—Lawful excuse.*—A defendant's  
saying that he was willing to attend when he did not  
attend and showed no reason why he could not, is no  
lawful excuse for his non-attendance when summoned  
to attend. What is or is not a lawful excuse must  
depend on the circumstances of each case. DOORGA  
DUTTA SINGH v. JHEENGOOR JHA. 18 W. R. 63

**Refusal of applicant for**  
—The appellant, having ap-  
peared to collect the  
—to be

to attend. What is to depend on the circumstances of the case.

**DUTT SINGH v. JHENGOOR JHA** . 18 W. R., 1900.

**26.** — **Refusal of applicant for certificate to attend.** — The appellant, having applied to the Judge for a certificate to collect the debts of one R, whose adopted son, he claimed to be, referred in evidence to an ikramnamah of adoption, of which he filed a copy procured from the kazi's books, alleging that the original had been made away with by an agent who had been bought over by his opponent. In the course of re-trial of the case on remand, the Judge required the petitioner to attend for the purpose of examination, and, as after being warned he did not do so, and assigned no good cause for his absence, upheld his former decision, and rejected the application. *Held* that the Judge exercised the powers conferred by s. 170, Civil Procedure Code, and that it was a proper exercise of discretion to take the course which he did take at that stage of the proceedings. **SEETARAM SAHOO v. SHEO GOLAM SAHOO** . 19 W. R., 1901.

**Receipt of order to**  
**Materiality of evidence**  
s. 127 or s. 170

27. *Non-attendance*—*Materiality of evidence.*  
—A Court is not justified, under either s. 127 or s. 170 of Act VIII of 1859, in imposing penal consequences upon a party who fails to appear, by passing a verdict against him, unless it is clearly made manifest, first, that he had been ordered or directed to attend and wilfully refused to obey the order or direction; and, secondly, that the evidence which he was required to give was really material to the matter in suit. *Quære*—Whether the party must be proved by other evidence to have personally received notice of

**CIVIL PROCEDURE CODE, ACT XIV  
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the order before the penal provisions are applied.  
**RAJ CHOONUN DUEWANDI v. BUSEJIT TEWAREE**

[20 W. R., 185]

*See* **OBHOY CHURN MOOKERJEE v. PEAREE  
DOSSIA** . . . . . 23 W. R., 270

s. 179.

*See* **RIGHT TO BEGIN** 7 C. L. R., 274

[9 C. L. R., 1

I. L. R., 8 Bom., 387

I. L. R., 9 All., 61

I. L. R., 12 Bom., 454

s. 181.

*See* **JUDGE—POWER OF JUDGE.**

[I. L. R., 8 All., 35, 576]

The new Subordinate Judge took up the case from the  
point at which it had been left by his predecessor.

and that in neglecting to take this course, and in  
deciding the case upon materials which were never  
before him, his action was illegal, and the judgment  
and decree were nullities. **JAGRAM DAS v. NABAIN  
LAL** . . . . . I. L. R., 7 All., 857

s. 206.

*See* **APPEAL—ORDERS.**

[I. L. R., 6 Calc., 23

I. L. R., 7 All., 278, 411, 606

I. L. R., 11 All., 314

*See* **CASES UNDER DECREE—ALTERATION  
OR AMENDMENT OF DECREE.**

*See* **LIMITATION ACT, 1877, ART. 178.**

[I. L. R., 4 All., 23

I. L. R., 10 Mad., 51

I. L. R., 11 Bom., 284

I. L. R., 9 All., 364

I. L. R., 21 Calc., 259

I. L. R., 17 All., 39

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

*See* **SUPERINTENDENCE OF HIGH COURT—**

**CIVIL PROCEDURE CODE, s. 622.**

[I. L. R., 3 All., 278

I. L. R., 7 All., 411, 875, 876

I. L. R., 8 All., 519

I. L. R., 10 Mad., 51

I. L. R., 16 Mad., 424

s. 209 (XXIII of 1861, s. 10).

*See* **CASES UNDER INTEREST, OMISSION TO  
STIPULATE FOR, ETC.**

[I. L. R., 3 Mad., 125

I. L. R., 12 Calc., 569

s. 210 (1859, s. 194).

*See* **DECREE—ALTERATION OR AMENDMENT  
OF DECREE** . . . . . 3 Hay, 68, 95

[4 Bom., A. C., 77

I. L. R., 2 All., 129, 320, 649

I. L. R., 7 Mad., 153

I. L. R., 11 Calc., 143

I. L. R., 14 Calc., 318

*See* **INTEREST, OMISSION TO STIPULATE  
FOR, ETC.—CONTRACTS** 1 Agra, 270

[I. L. R., 3 Bom., 202

I. L. R., 4 Bom., 96

*See* **LIMITATION ACT, 1877, ART. 179—  
ORDER FOR PAYMENT AT SPECIFIED DATE.**

[I. L. R., 7 Mad., 153

I. L. R., 11 Calc., 143

I. L. R., 14 Calc., 348

reserved, the decree for possession of the land is only

**HOSSEIN v. MUJERDUNNISSA**

[I. L. R., 4 Calc., 629

*See* **KRISHNAN v. NILAKANDAN**

[I. L. R., 8 Mad., 137

s. 214.

*See* **CASES UNDER PRE-EMPTION.**

s. 215A.

*See* **APPEAL—DECREES.**

[I. L. R., 16 Mad., 73

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

ss. 219, 220, 221, 222 (1859, s. 187).  
See CASES UNDER COSTS—SPECIAL CASES.

s. 223 (1859, ss. 285, 286).  
See CASES UNDER EXECUTION OF DECREE  
—TRANSFER OF DECREE FOR EXECUTION,  
ETC.

s. 224 (1859, s. 235), cl. (c)—  
Meaning of the words "a copy of any order for the execution of the decree."—The words "a copy of any order for the execution of the decree" in s. 224, cl. (c), of the Code of Civil Procedure (Act XIV of 1882) mean a copy of any subsisting order. HATHIMIAI  
NAHANSA v. PATEL BECHAR PRAGJI  
[I. L. R., 13 Bom., 371]

s. 229 (1859, s. 284).  
See CASES UNDER EXECUTION OF DECREE  
—TRANSFER OF DECREE FOR EXECUTION,  
ETC.

Cooch Behar—Court of the  
Dewan Ahilkar—Jurisdiction.—It not being shown that the Court of Dewan Ahilkar of Cooch Behar is a Court within the British territories, or a Court established by the Governor General in a foreign State,—Held the Judge of Rajshahye had no jurisdiction under s. 284, Act VIII of 1859, to execute a decree of that Court. JADAB CHANDRA TOI PARAMANIK  
v. DINANATH DAS  
[4 B. L. R., A. C., 134; 13 W. R., 154]

ss. 229A, 229B.  
See EXECUTION OF DECREE—DECREES OF  
COURTS OF NATIVE STATES.  
[I. L. R., 15 Bom., 216]

ss. 230 and 231 (1859, s. 207).  
See EXECUTION OF DECREE—APPLICATION  
FOR EXECUTION, AND POWERS OF COURTS  
[I. L. R., 12 Bom., 400  
I. L. R., 17 Calc., 631]

See CASES UNDER EXECUTION OF DECREE  
—JOINT DECREES, EXECUTION OF AND  
LIABILITY UNDER.

See CASES UNDER LIMITATION ACT, 1877,  
ART. 179 (1871, s. 167; 1859, s. 20)—  
JOINT DECREES.

See LIMITATION ACT, 1877, ART. 180.  
[I. L. R., 6 Calc., 504  
I. L. R., 6 Bom., 258  
I. L. R., 7 Mad., 540  
I. L. R., 20 Calc., 551  
I. L. R., 22 Calc., 921  
I. L. R., 24 Calc., 244]

Application of section.  
1. s. 230 does not apply to decrees made by the High  
Courts. MAYADHAI v. TRIBHUVANDAS  
[I. L. R., 6 Bom., 258]

Effect of section—  
2. Decree of High Court—Revivor—Limitation Act,  
1877, art. 180.—S. 230 of the Code of Civil Pro-  
cedure, 1882, does not affect the period of limitation

## CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

prescribed by art. 180 of sch. II of the Limitation  
Act, 1877. GANAPATHI v. BALASUNDARA  
[I. L. R., 7 Mad., 540]

3. Date of the passing of  
the Code—Date of its coming into force.—The date  
referred to in the last paragraph of s. 230 of the Civil  
Procedure Code (Act X of 1877) as the date of "the  
passing of" that Act held to be the 30th March 1877,  
the date when that Act received the assent of the  
Governor General, and not the 1st October 1877, the  
date of the coming into force of that Act. DA-  
MODAR DAS HARI DAS v. UTTAMCHAND SAVIA-  
CHAND . I. L. R., 7 Bom., 214

Law in force immedi-  
ately before passing of the Code—Civil  
Procedure Code, 1877, as amended by Act XII of  
1879—Execution of decree—Limitation.—In the  
last paragraph of s. 230 of the Code of Civil Proce-  
dure, Act XIV of 1882, the words "the law in force  
immediately before the passing of this Code" refer  
to and include Act X of 1877, as amended by Act XII  
of 1879. *Musharraf Begum v. Ghalib Ali*, I. L. R., 6  
All., 189, dissented from. GOLUCK CHANDRA MYTEE  
v. HARAPRIAH DEBI . I. L. R., 12 Calc., 559

Limitation—  
5. Twelve years' rule prior to that Code—Civil Pro-  
cedure Code (Act X of 1877).—In s. 230 of the  
Code of Civil Procedure, 1882, the words "law in  
force" include the Civil Procedure Code, 1877, as  
well as the Limitation Act then in force. Held, there-  
fore, where an application for execution of a decree  
of 1872 had been made and granted in January 1882,  
and under s. 230 of the Code of Civil Procedure,  
1877, further execution became barred, before the  
date on which the Civil Procedure Code, 1882, came  
into force, that no application within three years from  
such date could be granted under s. 230 of that Code.  
KOLHU SHETTAJI v. MANJAYA  
[I. L. R., 9 Mad., 454]

Execution of de-  
cree—Act X of 1877 (Civil Procedure Code),  
s. 230.—The holder of a decree applied for execution  
under s. 230 of Act X of 1877, and the application  
was granted. Within three years after the passing  
of Act XIV of 1882, by which Act X of 1877 was re-  
pealed, he applied, for the first time, under s. 230 of  
the former Act, for execution of the decree. At the  
time this application was made more than twelve  
years had elapsed from the date of the decree. Held  
by STRAIGHT, BRODIURST, and TRELL, JJ., that  
the application might be granted, it being the first  
made under s. 230 of Act XIV of 1882, and the first  
made after the expiration of twelve years from the  
date of the decree, and not being barred by the last  
paragraph of s. 230 of that Act, read in conjunction  
with the third paragraph of s. 230 of Act X of 1877,  
the "law in force" mentioned in the last paragraph  
of s. 230 of Act XIV of 1882 referring to the law of  
limitation in force at the time the Act was passed,  
and not to the third paragraph of s. 230 of Act  
X of 1877. Held by STUART, C.J., and ORDFIELD,  
J., that the application should not be granted, the

CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—*continued.*CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—*continued.*7. ————— *Revival of barred*

[I. L. R., 6 All., 388]

8. ————— Former application for execution under Act VIII of 1859.—An application under Act VIII of 1859 for execution of

SIONS of s. 230 of Act X of 1877 considered. BY-  
RAJDI SUBBARAJDI v. DASSUPPA RAJU

[I. L. R., 1 Mad., 403]

9. ————— *Effect of striking off execution proceedings—Procedure.*—A decree was obtained on the 10th July 1858, and applica-

hearing. On that day no one was present on behalf of the decree-holder (whose pleader had died in the

tion of the decree was not barred by s. 230 of the Code of Civil Procedure. BISWA SONAR CHUNDER GOSWAMY v. BINANDA CHUNDER DIBINGAR ADHIKAR GOSWAMY. I. L. R., 10 Calc., 416

10. ————— The clause of s. 230 of Act X of 1877, which prohibits a subsequent application for execution, only applies where the previous application has been made under that section, and not where such previous application has been made under Act VIII of 1859. ANANTOSH DUTT v. DOORGA CHURN CHATTERJEE

[I. L. R., 6 Calc., 504; 8 C. L. R., 23]

11. ————— *Execution of de-*

12. ————— Former application for execution under Act X of 1877.—*Execution of decrees—Twelve years' old decrees—Statutes, Construction of—General words—Retrospective effect.*—The holder of a decree bearing date the 15th June 1872 applied for execution thereof on the 9th Feb-

a limited meaning can only be given to general words in a statute where the statute itself justifies such limitation, the words "any decree" in the proviso to s. 230 of the Civil Procedure Code must not be

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

construed as confined to such decrees as would be barred on the date of the Code coming into force, inasmuch as no reason for so restricting the meaning of those words can be found in the Code or is suggested by the legislative policy upon which clauses such as the proviso in question are based. This policy is to prevent a sudden disturbance of existing rights in consequence of new legislation; but it is beyond its object and scope to revive rights or remedies which have already expired before the new Act comes into operation, and although the Legislature may revive such rights or remedies, it can only do so by express words to that effect. *JOHNU RAM v. RAM DIN* . . . I. L. R., 8 All., 419

13. ————— “Decree for payment of money”—*Decree for sale of hypothecated property in a suit on a mortgage*.—A decree for sale of hypothecated property made in a suit for sale upon a mortgage bond is not a “decree for the payment of money” within the meaning of s. 230 of Act XIV of 1882. *Fateh Chand v. Muhammad Bukhsh*, I. L. R., 16 All., 259, distinguished. *RAM CHARAN BHAGAT v. SHEOBARAT RAI* [I. L. R., 16 All., 418]

14. ————— *Decree for sale of hypothecated property, which also made the defendant personally liable in case of insufficiency—Mortgage decree*.—A decree, which directs the realization of the decretal amount from the hypothecated property, and, if insufficient, makes the defendant remain personally liable, is a mortgage decree and not a “decree for the payment of money” within the meaning of s. 230 of the Code of Civil Procedure. *Ram Charan Bhagat v. Sheobarat Rai*, I. L. R., 16 All., 418, followed. *Hart v. Tara Prasanna Mukherjee*, I. L. R., 11 Calc., 718, distinguished. *Jogemaya Dasi v. Thackomoni Dasi*, I. L. R., 24 Calc., 473, referred to. *FAZIL HOWLADAR v. KRISHNA BUNDHO ROY* . I. L. R., 25 Calc., 580 [2 C. W. N., 118]

15. ————— *Decree for sale of mortgaged property making the defendant personally liable in case of insufficiency—Mortgage decree—Limitation Act (XV of 1879), sch. II, art. 179, cl. 4—Step in aid of execution—Application for time—Application to review the order striking off the execution case and to restore it to file*.—A decree which directs the realization of the decretal amount by sale, in the first instance, of the mortgaged properties, and afterwards from the persons and other properties of the defendants, is a mortgage decree, and not “a decree for the payment of money” within the meaning of s. 230 of the Civil Procedure Code. *Ram Charan Bhagat v. Sheobarat Rai*, I. L. R., 16 All., 418, and *Fazil Howladar v. Krishna Bhundoo Roy*, I. L. R., 25 Calc., 580, referred to and followed. *Kommachi Kathar v. Pakker*, I. L. R., 20 Mad., 107, dissented from. *Fakeer Buksh v. Chutterdhare Chowdhry*, 14 W. R., 209; 12 B. L. R., 315 note, and *Purmessuree Dossee v. Nabin Chunder Tarun*, 24 W. R., 305, distinguished. *KARTICK NATH PANDEY v. JUGGER-NATH RAM MARWARI* . I. L. R., 27 Calc., 285

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

16. ————— *Hypothecation decree—Construction of document*.—A decree was passed on the 5th March 1884, based on a compromise between the parties. The decree was for the payment of certain sums of money by instalments, and further went on to declare that “The property in the bond remains hypothecated as before. The defendant have no power to transfer it. If any other person brings to sale the hypothecated property in satisfaction of the debt due by the defendants, the plaintiff shall have power to take out execution of the decree without waiting for the instalments, and to cause the hypothecated property to be sold by auction.” Held that this was not a simple decree for the payment of money such as would come within the purview of s. 230 of the Code of Civil Procedure. *Janki Prasad v. Baldeo Narain*, I. L. R., 3 All., 216, distinguished. *Chandra Nath Dey v. Burroda Shoodury Ghose*, I. L. R., 22 Calc., 813, and *Lal Bahary Singh v. Habibur Rahman*, I. L. R., 26 Calc., 166, referred to. *PAHALWAN SINGH v. NARAIN DAS* . . . I. L. R., 22 All., 401

17. ————— *Due diligence in execution—Execution of decree—Limitation*.—The concluding clause of s. 230 of Act X of 1877 refers to the question of limitation, not that of due diligence. Where, therefore, the decree-holder had not on the last preceding application under s. 230 of Act X of 1877 used due diligence to procure complete satisfaction of the decree, and Act X of 1877 had not been in force three years,—Held that the provisions of the third clause of s. 230 of Act X of 1877 were applicable to a subsequent application under that section. *SOHAN LAL v. KARIM BAKHSU* [I. L. R., 2 All., 281]

18. ————— *Application for execution not made under the Civil Procedure Code, 1882—Decree—Application for execution—Limitation*.—On the 1st June 1880, several decree-holders applied to the Subordinate Civil Court of Partner for execution of their decrees. They had taken out execution several times previously, the date of their last preceding applications being 1st June 1877. The Subordinate Judge was of opinion that the applications were barred under the last clause of s. 230 of the Civil Procedure Code, Act X of 1877. On his referring the cases to the High Court,—Held that the applications were not barred, inasmuch as the previous applications for execution had not been made under s. 230 of Act X of 1877, that Act not being then in force. *ANANDRAY CHIMTUJI v. THAKAR CHAND* . . . I. L. R., 5 Bom., 245

19. ————— On the 3rd June 1879, an application was made for execution of a decree passed in 1836, and upon that application certain property was attached. On the 23rd October following, the proceedings were struck off, an order, however, being made at the same time that the attachment should continue. On the 31st December 1880, the decree-holder applied that the property under attachment should be sold. The last preceding application for execution previous to the 3rd

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June 1879 was made on the 8th August 1877. It was objected that the proceedings upon the applications of the 31st December 1880 and 3rd June 1879 were barred under s. 230 of the Code of Civil Procedure. *Held* that these proceedings were not barred.

[L. L. R., 18 All, 49]

**v. APPASANI AYYAR** . . . L. L. R., 8 Mad., 172

23. *Transfer of decree—Due diligence.*—The transferee of a decree applied, while an application by the original holder

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OF 1882 (ACT X OF 1877)—continued.**

24. *Passing of the Act—Meaning of the expression "granted" in s. 230.*—Under s. 230 of Act X of 1877, an applica-

tion for execution under s. 230 of Act X of 1877 is not "granted," a subsequent regular and formal application under the same section may be allowed if made within time. **DEWAN ALI v. SOROSIBALA DABEE** L. L. R., 8 Cal., 297; 10 C. L. R., 111

25. *Meaning of*

an arrangement had been effected, under which a certain sum had been paid by one of the said representatives in satisfaction of the claim against him, and that the other had agreed to pay the balance by

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yearly instalments. Upon this the application for execution was struck off. On the 5th March 1883, another application for execution was made, notice to appear was issued, and after this notice a petition was put in intimating that an arrangement had been come to, and praying that execution might be postponed, whereupon the application was struck off. Again, on the 31st March 1884, the decree-holder applied once more for execution of the decree. *Held* that neither the previous application of the 9th March 1881 nor that of the 5th March 1883 could properly be said to have been "granted" within the meaning of s. 230 of the Civil Procedure Code, and, under these circumstances, the decree, though twelve years old and upwards, was not barred by that section, and the application for execution should be allowed.

[L. L. R., 8 All., 301  
PARAGA KUAR v. BHAGWAN DIN]

28. — *Meaning of "granted."*—A decree passed in April 1872 was kept alive by various applications for execution up to 1883. In February and December of that year two such applications were made, but the proceedings on both occasions terminated in the applications being struck off without any money being realized under the decree. In November 1884, the decree-holder again applied for execution, the application being the first made after the decree had become twelve years old, and being made within three years from the passing of the Civil Procedure Code, 1882. *Held* that the application must be entertained in accordance with the ruling of the Full Bench in *Musharraf Begum v. Ghalib Ali*, I. L. R., 6 All., 189, *Tufail Ahmad v. Sadho Saran Singh*, Weekly Notes, All., 1895, p. 193, dissented from. *Jokhu Ram v. Ram Din*, I. L. R., 8 All., 419, referred to. *Per MAHMOOD, J.*, that the previous execution-proceedings, initiated by the applications of February and December 1883, having terminated in those applications being struck off, it could not be said that the applications were "granted" within the meaning of s. 230 of the Civil Procedure Code. *Paraga Kuar v. Bhagwan Din*, I. L. R., 8 All., 301, referred to. *RAMADHAR v. RAM DAYAL*

[I. L. R., 8 All., 536]

27. — *Application for execution of decree—Limitation—Subsequent application to execute the same decree—"Granted."*—*Meaning of—Civil Procedure Code, s. 235.*—The "subsequent application to execute the same decree" mentioned in s. 230 of the Code of Civil Procedure means a substantive application for execution in the form prescribed by s. 235 of the Code. Hence, where an application for execution in accordance with s. 235 of the Code has been made within the period of limitation prescribed by s. 230 and has been granted, that is, execution has been ordered in accordance with the prayer of the decree-holder's application, the right of the decree-holder to obtain execution will not necessarily be defeated if, by reason of objections on the part of the judgment-debtor or action taken by the Court or other cause for which the decree-holder is not responsible, final completion of the

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proceedings in execution initiated by the application under s. 235 above referred to cannot be obtained within the period limited by s. 230. Further applications of the decree-holder to the Court executing the decree to go on from the point where the execution-proceedings had been arrested and complete execution of his decree would be applications merely ancillary to the substantive application under s. 235, and would not be obnoxious to the bar of s. 230. *Delhi and London Bank v. Reilly*, Weekly Notes, All. (1893), p. 124, overruled. *RAHIM ALI KHAN v. PHUL CHAND* . . . I. L. R., 18 All., 482

28. — *Application to transfer decree for execution—"Granting" application, Meaning of—Issue of process.*—An application to the Court which passed a decree for a certificate to allow execution to be taken out in another Court is not an application for the execution of the decree within the terms of s. 230 of the Code of Civil Procedure. The "granting" of an application under that section includes the issue of process for execution of the decree. *NILMONEY SINGH DEO v. BIRESHWAR BANERJEE* . . . I. L. R., 16 Cal., 744

29. — *Limitation.*—The term "application to execute a decree" in the third paragraph of s. 230 of the Code of Civil Procedure means any application to execute a decree. It is not confined to the last application preceding the expiry of the period of twelve years from either of the points of time mentioned in cl. (a) or cl. (b) of the same paragraph of the section above mentioned. *Paraga Kuar v. Bhagwan Din*, I. L. R., 8 All., 301, distinguished. *Ramadhur v. Ram Dayal*, I. L. R., 8 All., 536, referred to. *TILSHAN RAI v. PARBATI* . . . I. L. R., 15 All., 198

30. — *Order passed more than twelve years from decree on application passed within time.*—The terms of s. 230 of the Code of Civil Procedure, which provide that no subsequent application to execute the same decree shall be granted after the expiry of twelve years from the date of the decree, do not render invalid an order passed after twelve years from the date of a decree, granting an application for execution made before the twelve years' term had expired. *SENRA DISAI VENRA JAGATH VIRARAMA DIKKER VIJAYA SETHARAYAR v. ANNASAMI AYYAR* . . . I. L. R., 6 Mad., 359

31. — *Second application for execution of decree—Failure to satisfy decree on first application.*—In execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution under s. 230 would have expired. Subsequently, after the three years had elapsed, they filed a fresh application praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was

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barred by limitation. *Per PRINSEP, J.*—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder seeking to

GOOKHO v. YUSOOF KHAN

[I. L. R., 7 Cal., 558 : 8 C. L. R., 334

32. ————— Decree—Execu-

that the decree was not barred, and allowed execution to issue. On appeal by the judgment-debtor to the High Court,—*Held* that the application for

Code (Act XIV of 1882). MOTIHAND v. KRISHNARAY GANESH . . . I. L. R., 11 Bom., 524

was time-barred under s. 230 of the Code of Civil Procedure. PATUMMA v. MUSE BEANI

[I. L. R., 11 Mad., 132

34. ————— Finality of order made in execution proceedings—Decree payable by

again applied for execution of the decree, upon the same grounds as those upon which the previous

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application was based. Notice was issued and served,

by s. 230 of the Civil Procedure Code, inasmuch as no instalments had been paid, and even if they had been paid, they could not be recognized, not having been certified. *Held* that the proper time from which to reckon the limitation of twelve years

execution. KANJI MAL v. KANHIA LAL

[I. L. R., 7 All., 373

35. ————— Interlocutory de-

[I. L. R., 17

36. ————— Order directing payment of money at a certain date—Decree pay-

certain date, which would give a fresh period of limitation under s. 230 (b) of the Civil Procedure Code. BAL CHAND v. RAGHUNATH DAS

[I. L. R., 4 All., 155

*Held* that this order did not amount to one directing payment of money to be made at a certain date within the meaning of s. 230, cl. (b), of the Civil Procedure Code. *Bal Chand v. Raghunath Das*, I. L. R., 4 All., 155, followed. JODGENDRHO DAS v. HOAI RAWOOT . . . I. L. R., 16 Cal., 16

38. ————— Obstruction to execution of decree—Fraud.—The respondent, as plaintiff in a small cause suit in 1867, obtained a decree

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

against the husband of the petitioner, since deceased. The decree was kept alive till 13th December 1876, when the decree-holder brought a suit to set aside certain alienations made by the judgment-debtor and alleged to be fictitious and fraudulent. Having succeeded in the suit and in rendering the property alienated available for attachment under his decree, the respondent again applied for execution in 1879, but not against the property fictitiously alienated. Lastly, the respondent applied on September 28th, 1880—more than twelve years after decree—for execution against certain immoveable property of the judgment-debtor, other than the property fictitiously alienated, in the petitioner's possession. *Held* that, having regard to the fraud of the judgment-debtor, the application was not barred by s. 230 of the Code of Civil Procedure. **VISALATCHI AMMAL v. SIVASANKARA TAKER . . . I. L. R., 4 Mad., 292**

**39. ——— Evading service of warrants—Staying execution—Fraud.**—A judgment-debtor, who, though able to pay his judgment-debt, dishonestly evades payment for more than twelve years by eluding service of warrants and making applications to the Court (which had the effect for the time of staying execution), is guilty of fraud within the meaning of s. 230 of the Code of Civil Procedure. **PATTAKARA ANNAMALAI GOUNDAN v. RANGASAMI CHETTI . . . I. L. R., 6 Mad., 365**

**40. ——— Decree, Prevention of execution of, by fraud.**—A judgment-debtor, on seeing the Court's bailiff approach his house to attach his property, left the verandah, went inside the house, chained the door, and refused to open it when called on to do so by the bailiff. *Held* that the conduct of the judgment-debtor amounted to a prevention, by fraud, of the execution of the decree within the meaning of s. 230 of the Civil Procedure Code, 1882. **BHAGU JETHA v. MALEK BAWASAHEB**

[I. L. R., 9 Bom., 318]

**41. ——— Execution of decree prevented by "fraud or force" of judgment-debtor—Period of limitation.**—Where a judgment-debtor, knowing that a warrant of attachment had been issued against his moveable property, locked up his house and so prevented the moveable property therein from being attached,—*Held* that his action amounted to "fraud" within the meaning of s. 230 of the Code of Civil Procedure. In order to obtain the benefit of the proviso in that section, it is not necessary that a judgment-creditor should prove that the fraud of the judgment-debtor continued so as to prevent execution of the decree at any time. "Fraud" or "force" on the part of a judgment-debtor gives a new starting point for the period of limitation, and an application for the execution of a decree may be granted at any time within twelve years after the date on which a judgment-debtor has by "fraud" or "force" prevented execution of a decree. **VENKAYYA v. RAGHAVA CHARLU**

[I. L. R., 22 Mad., 230]

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

— s. 232 (1859, s. 208).

*See* EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[I. L. R., 2 Calc., 327

I. L. R., 3 Calc., 371

20 W. R., 51

I. L. R., 15 Calc., 371]

*See* TRANSFER OF PROPERTY ACT, s. 131.

[I. L. R., 24 Bom., 502]

**1. ——— Assignment of decree.**—S. 208, Act VIII of 1859, put a party, to whom a decree is transferred, into the position of the original decree-holder, and entitled him to have the decree executed, as if application were made by the original decree-holder. **SHAMANUND SURMA v. SHUMBHOO CHUNDER DASS . . . 7 W. R., 205**

**2. ——— Certificate, Necessity of.**—Under s. 208, Act VIII of 1859, it was not essential that a certificate should in every instance be obtained by a representative before he can be allowed to apply for execution. **GOPAL SINGH DEB v. GOPALCHUNDER CHUCKERBUTTY . . . 7 W. R., 393**

**3. ——— Power of Court to which decree has been transmitted.**—The assignee of a decree should apply to the Court which passed the decree, and not to the Court to which the decree had been forwarded under s. 285, Act VIII of 1859, for execution, for the purpose of being substituted in the place of the original decree-holder. The word "Court" in s. 208, Act VIII of 1859, did not include the Court to which a decree has been transferred for execution. **SHRO NARAYAN SING v. HARBANS LAL . . . 5 B. L. R., 497: 14 W. R., 65**

**4. ——— Right of assignee.**—A person claiming to be the assignee of a decree should apply for recognition of his title to the Court which pronounced the decree, and for leave under s. 208 of the Civil Procedure Code to have his name substituted in lieu of that of the plaintiff. **ISMAIL VALAD AHMED BARUCHA v. KASSAM VALAD AZAM DUPLI . . . 9 Bom., 46**

**FRAMJI RUSTAMJI v. RATANSHA PESTANJI**  
[9 Bom., 49]

**BALKISHOON v. MAHOMED TAZAM ALLER**  
[4 N. W., 90]

**KADIR BUKSH v. ELAHI BUKSH**  
[I. L. R., 2 All., 283]

*See* **AMAR CHUNDRA BANERJEE v. GURU PROSUNNO MUKERJEE . . . I. L. R., 27 Calc., 488**

**5. ——— Appeal—Assignee of decree.**—Under s. 11, Act XXIII of 1861, no appeal lay from an order passed under s. 208, Act VIII of 1859, substituting the assignee of a decree in place of the original decree-holder. **MEGH NARAYAN SINGH v. RADHA PRASAD SINGH**  
[4 B. L. R., A. C., 200: 13 W. R., 224]

*See contra*, **FRAMJI RUSTAMJI v. RATANSHA PESTANJI . . . 9 Bom., 49**

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**8. ———— Right of assignee.—**

Where *S* obtained a decree for possession against *D P*, the person in possession, and subsequently in a suit brought by *J P* claiming the property against *S*, a decree was passed in the terms of a compromise, whereby *S* consented that *J P* should execute his decree.—*Held* that *J P* was entitled, under s. 208, Civil Procedure Code, to recover possession in execution of *S*'s decree from *D P*, although *D P* had not been made a party to the second suit. **DOORGA PERSHAD SINGH v. LALLA JUGGUNNATH PERSHAD**

[1 N. W., 34; Ed. 1873, 31]

**7. ———— Cross-decrees.—**

Where a party who assigned over a decree was liable

to assign the decree to a third party. **JODOONATH ROY v. RAM BUKSH CHOLUNGEE** . 8 W. R., 202

is given to it by s. 208, which only applies to cases where the transferee can and does come forward to claim execution for himself, instead of the original decree-holder. **BIHARUT CHUNDER ROY v. NAZIR ALY KHAN** . 10 W. R., 354

**9. ———— Recognition of transfer by Court.—**A party to a suit can enforce any decree he may get as a matter of right; but an

**PURDO DUTT v. NOBIN CHUNDER BOSE** . 15 W. R., 283

**10. ———— Right of assignee to execute it—Omission to make formal appli-**

cation, such omission being merely an error of procedure, and not an error affecting the merits of the case. **DWAR BAKSH SIBKAR v. FATIH JAH** . [1 L. R., 28 Calc., 250]

**11. ———— Purchasers of share in decree—Quare—**Can the purchasers of a share in a decree be added upon the record under Act VIII of 1859, s. 208, as co-decree-holders? **SERTAPUT ROY v. ALI HOSSEIN** . 24 W. R., 11

**12. ———— Transfer of portion of decree—Execution of decree by transferee of portion of decree.—**No legislative prohibition exists to the transfer of a portion of a decree;

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

[1 L. R., 17 Calc., 341]

**14. ———— Execution of decree by assignee of decree-holder—Execution of**

to be subject to the decree, in the event of default

bought, purchased the decree himself and proceeded

making default in paying the amount due under the decree, to proceed against the share of the mehal still in their hands; and, further, that if by reason of it

the decree, that equity must be enforced by an independent suit. **NAFER CHUNDER MUNDUL v. BAIKANTO NATH ROY** . 4 C. L. R., 156

**15. ———— Execution of mortgage decree by assignee—Separate suit.—**By a deed, dated 2nd July 1876, *Y* mortgaged properties Nos. 1 and 2 to *A*, and subsequently by separate deeds he again mortgaged the same properties respectively to *B* and *C*. *C* afterwards purchased *Y*'s equity of redemption in property No. 2, and on the 19th November 1880 *A* obtained a mortgage decree against *Y*, which he sold to *B*, who now sought to execute it. *C* was merely benamidar for *B*. *Held* that, on *B* consenting to allow property No. 2 to be first sold free of all incumbrances, it was necessary for *B* to proceed by regular suit. **YAKOUB ALI CHOWDHURY v. RAM DOOLAL** . 13 C. L. R., 272

**16. ———— Application of transferee of decree for execution disallowed—**

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

*Suit by transferee for decretal amount—Declaratory decree.*—The transferee of a decree for costs, assisting with him the transferor, made an application under s. 232 of the Civil Procedure Code to be allowed to execute the decree. The application was opposed by the judgment-debtor and was rejected, and the Court refused the transferee to a regular suit. After taking various proceedings ineffectually, he instituted a suit for the recovery of the sum to which he was entitled as costs under the decree transferred to him. *Held* that the plaintiff, as the holder of the decree by assignment, could only recover the amount under it by executing the decree, and not by a separate suit; but that he was entitled to have a decree declaring that the assignment to him of the decree-holder's rights under the decree was valid, and gave him a right to execute it, and that the Court's order under s. 232, which dismissed the execution, was an improper one, a suit for this relief being maintainable; for, there being no appeal from orders under s. 232, there would otherwise be no remedy; and that, looking at the pleadings and the issues on which the parties were divided, and the fact that the Court which refused the plaintiff's application for execution referred him to a regular suit, this relief might properly be given in the present suit. *See* *Manjoo, J.*, that the suit was maintainable, inasmuch as the present plaintiff never having been accepted on the record as holder of the decree, the questions which were disposed of by the Court executing the decree, as between the plaintiff and the judgment-debtor, could not be regarded as questions within s. 244 of the Civil Procedure Code. *RAM BAHADUR v. PANDA LAL*. . . I. L. R., 7 All., 457

17. — *Application for execution by beneficial holder of decree—Application dismissed—Suit for declaration of applicant's right to execute the decree.*—*Held* that, where an application under s. 232 of the Code of Civil Procedure by a person alleging himself to be beneficially entitled under a decree to execute such decree has been rejected, it is still competent to the applicant (no appeal lying from the order under s. 232 rejecting his application) to bring a separate suit for a declaration that he is the person entitled to execute the decree. *Ravi Bishar v. Panna Lal*, I. L. R., 7 All., 457, and *Haldar Singh v. Hingorah Das Kumbhar*, I. L. R., 12 Cal., 195, referred to. *SHEO-RAJ SINGH v. AMIN-UD-DIN KHAN*

[I. L. R., 20 All., 539]

18. — *Transfer in writing—Right to execution of decree.*—The transferee of a decree is not entitled to have execution as of right like the original decree-holder; if, however, the transfer be by assignment, and in writing, s. 232 of the Code of Civil Procedure, Act XIV of 1882, enables the transferee to apply for, and the Court to proceed to, execution in the manner therein provided. *JAVERMAL HIRACHAND v. UNAJI HAYATHI*

[I. L. R., 9 Bom., 179]

19. — *Assignee of decree under oral assignment—Right to execute*

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

*decree—Plea of fraud raised in execution-proceedings.*—An assignee of a decree under an oral assignment has no *locus standi* at all to apply for execution of a decree, but, as regards one who claims to be an assignee in writing or by operation of law, the Court has a discretion under s. 232 of the Code of Civil Procedure (Act XIV of 1882), whether to recognize such assignment or not. When an assignee of a decree applied for execution, and the judgment-debtor contended that the decree sought to be executed had been obtained by fraud and was, therefore, a nullity and incapable of execution,—*Held* that it was not open to the judgment-debtor to raise the defence of fraud in the course of the execution-proceedings. *PANVATA v. DIGAMBAR*

[I. L. R., 15 Bom., 307]

20. — *Joint decree—Purchase of decree by creditor of one of several judgment-debtors—Probability of decree being executed against another judgment-debtor—Ground for refusing execution to purchaser.*—A decree for damages and costs having been obtained against P and C, A, to whom P was indebted and was about to assign property as security, in order to prevent P being adjudicated an insolvent, and with a view to execute the decree against C if possible, purchased the decree. A applied, under s. 232 of the Code of Civil Procedure, for leave to execute the decree. This application was rejected by KENNAN, J., on the ground that the decree was certain to be executed against C, and not against P, under whose orders and for whose benefit it acted when he infringed the right of, and became liable in damages to, the plaintiff in the suit. *Held* on appeal that the benefit likely to be gained by P by this transaction was no sufficient ground for refusing leave to A to execute the decree. *AGRA BANK v. CHITRA*. . . I. L. R., 8 Mad., 455

21. — *Joint decree—Transfer of a money decree to one of several judgment-debtors.*—Certain property was mortgaged by A to B. Subsequently, this property was purchased by C at a sale held in execution of a decree obtained by a third person against A; B then brought a suit on his mortgage-bond against A and C, and obtained a decree for the sale of the mortgaged properties, and also a personal decree against A; B assigned his rights under this decree to C, who applied for execution under s. 232 of the Code. A objected to execution issuing, relying on prov. (b) to s. 232. *Held* that prov. (b) to s. 232 applies only to decrees for money personally due by two or more persons; and that the decree obtained by B against A and C not being a personal decree against C (he having been made a defendant only by reason that he had purchased the mortgaged property subject to the mortgage debt), C as assignee of B was entitled to take out execution. *LALLA BHAGYU PRASAD v. HOLLOWAY*. . . I. L. R., 11 Cal., 393

22. — *Bengal Tenancy Act, s. 118 (h)—Decree for arrears of rent, Assignment of—Execution of decree by assignee.*—The fact that an assignment of a decree for arrears of rent was made before the Tenancy Act will not protect

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

from the provisions of s 143 (h) an assignee who proceeds to execution afterwards; but execution cannot be refused where, before that Act came into operation, the assignment had been recognized by a Court of execution under s. 232 of the Civil Procedure Code. **KOLASH CHUNDER ROY v. JODO NATH ROY** . . . **I L R., 14 Cal., 380**

23. ———— *Execution of a decree of the Agent for Sardars—Rights of transferee of a decree.*—A in 1839 obtained a decree against B, a sardar, in the Court of the Agent for Sardars. The decree was executed in the Agent's Court until B's death in 1868. B's status as a sardar under the exclusive jurisdiction of the Agent did not descend to his sons, and the decree was transferred to the Court of the First Class Subordinate Judge at

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

27. ———— *Transfer of decree by operation of law—Representative of original decree-holder—Civil Procedure Code (Act XIV) of*

L as manager of certain landed property belonging to the Halhi Bhatia caste, and known as Mahajan Wadi, to recover certain loans made by them as exe-

Procedure Code. *Held*, reversing the order of the

by the transfer the rights of the transferor. **VISHNU SAKHARAM NAGABKAR v. KRISHNARAO MALHAR**

**[I L R., 11 Bom., 153]**

24. ———— *Certificate of administration under Bombay Regulation VIII of 1827, s. 7—Holder of such certificate—Right to*

of the Civil Procedure Code, and is competent to apply for execution of such a decree. **KHANDERAV BAYAJIRAV v. GANESH SHASTRI**

**[I L R., 11 Bom., 368]**

25. ———— *Transfer of decree*

**ROZSHA** . . . **I L R., 11 Bom., 727**

26. ———— *Assignee of decree, Execution by—Execution by assignee—Cross-decrees—Discretionary power of Court under*

appeal against the order of the Judge in chambers refusing execution. **PURMANANDAS JIWANDAS v. VALLABDAS WALLJI** . . . **I L R., 11 Bom., 506**

28. ———— *Transfer of decree—Representatives of intermediate transferees—*

( 1179 )  
CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)---continued.

(L. L. R., O All., 48)

29. \_\_\_\_\_ Transfer of decree  
for execution by operation of law—Civil Procedure  
Code, Act XI<sup>a</sup> of 1882, s. 231—Right of procedure  
under Bengal Act VIII of 1863 and  
under British India Act VII of the full name  
of the full name of the full name of the full name

[L. L. R., 18 Calc., 847]

[I. L. R., 21 Mad., 353]

See SATHURAYAN v. SHANKAR [I. L. R., 21 Mad. 1000.]

30. — *Benami transfer.*—If a decree is transferred to one as benamidar for the actual purchaser, the latter is entitled to execute the decree, and his right course is

**CIVIL PROCEDURE**  
OF 1893 (ACT X OF 1877)—*cont.*  
to apply under Civil Procedure Code, s. 232. **MARIK-  
SAM S. TAFATTA** I. L. R., 21 Mad., 388  
Insolvency—Com-  
ment of insolvent  
effect of

to apply under Civil Procedure Code, I. L. R., 21 Mad.,  
KAM v. TATAYYA Insolvency—Com-  
mission of insolvent's  
effect of

in fact, he was  
solvent in discharge of  
ANILASH CHUNDER DUTTA

at the place  
BAGAVAPPA  
[I. L. R., 18 Mad., 325  
325)

— U. 234 (1859, U. 210).  
See CASES UNDER EXECUTION OF DECREE  
— EXECUTION BY AND AGAINST REPRE-

—EXECUTION BY REPRESENTATIVE.  
See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.  
See CASES UNDER SALE BY EXECUTION OF REPRESENTATIVE.

See CASES UNDER  
DECEASED PERSON.  
See CASES UNDER SALE IN EXECUTION OF  
DECREE—DECREES AGAINST REPR.  
GENATIVES. Execution of decrees

1. Execution of decrees against representative—Claim by personal representative of judgment-debtor.—Where it was sought to execute a decree obtained against a person who had died since the date of the decree, by attaching certain immovable property in the possession of the personal representative of the deceased judgment-debtor, and such personal representative claimed to hold the property not in her representative character, but in her own right, —*Held* that her claim was not a claim under s. 246, Act VIII of 1859, but that the

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

case came under ss. 210 and 211. **AMEERUNNISSA  
KHATOON v. MOZUFFER HOSSEIN CHOWDHRY**

[12 B. L. R., 65

**MAHOMAD MOZUFFER HOSSEIN CHOWDHRY v.  
AMEERUNNISSA KHATOON** . . . 20 W. R., 280

2. ————— Where, during proceedings in execution of a decree, the judgment-debtor dies, the transferee of his property should be

[12 B. L. R., 66 note; 10 W. R., 199

3. ————— *Execution of decrees passed against deceased person.*—When a decree has been passed against a deceased person, execution of such decree cannot be had under the Civil Procedure Code against his legal representative. IN THE MATTER OF THE PETITION OF GIRENDRONATH TAGORE . . . 14 B. L. R., 334 note

**S. C. GIRENDRONATH TAGORE v. HIRONATH ROY**  
[10 W. R., 455

4. ————— *Property of de-*

that section. **RAM CHAND CHUCKERBUTTY v.  
MADHUR NARAIN ROY** . . . 1 C. L. R., 359

**BIAR v. ALWAR AYYANGAR** . . . 1 L. R., 3 Mad., 42

6. ————— *Decree against karnavan—Transfer of property in hands of successors—Share of deceased father of joint family—Assets.*—In a suit by the trustees to remove the defendant

defendant's successor was not assets of the deceased in the hands of his successor liable to satisfy the decree under s. 231 of the Code of Civil Procedure,

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

1877. The share of a deceased father in an undivided Hindu family passes by survivorship to the sons, and is not assets in their hands to satisfy a decree against the father under s. 234 of the Code of Civil Procedure, 1877. **RAVI VARMA v. KOMAN**  
[1 L. R., 5 Mad., 223

7. ————— *Decree obtained against father executed against his sons as his representatives.*—In an undivided Hindu family, although the interests of the sons in the ancestral estate are liable to satisfy the father's debt, the holder of a money-decree against the father who has not attached

Civil Procedure, 1877. **Zamindar of Sivagiri v. Alwar Ayyangar**, 1 L. R., 3 Mad., 42, followed.  
**HANUMANTHA v. HANUMAYYA**

[1 L. R., 5 Mad., 232

8. ————— *Decree for man-*

the assets of the deceased taken by them, but such assets do not include the share of the father in the family property. **KARPAKAMBAI v. SUBBAYYAN**  
[1 L. R., 5 Mad., 234

9. ————— *Liability of son for father's debt.*—Decree against zamindars direc-

being paid in a certain way. After the death of the zamindar, execution proceedings were taken against his son to obtain a sale of the said land. Held that the decree could be executed against the son. **ZAMINDAR OF SIVAGIRI v. TIRUVENGADA**

[1 L. R., 7 Mad., 339

s. 235 (1859, s. 212).

*See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.*

[4 C. L. R., 97

1 L. R., 12 Bom., 400

1 L. R., 17 Calc., 631

*See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATIONS—IRREGULAR AND DEFECTIVE APPLICATIONS.*

[1 L. R., 6 Mad., 250

1 L. R., 18 Mad., 142

1 L. R., 23 Calc., 217

1 L. R., 25 Calc., 594

2 C. W. N., 536

1 L. R., 21 Calc., 818

1 L. R., 17 Mad., 76

1 L. R., 19 Bom., 34

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

to set aside the proceedings, on the ground that the execution was fraudulent and not warranted by the decree. *Held* that the Judge had no right to entertain such an application, or to re-open, at the instance of a third party, execution proceedings which had come to an end. The question could only be determined in a regular suit. *LICHMEEPUT SINGH v. ADOTTO CHURN MULLICK*. . . 24 W. R., 452

*See JOGENARAIN SINGH v. BHUGBANO*

[2 W. R., Mis., 13

**14. ———— Suit to set aside sale.—***Fraud—Sale under Act X of 1859—Act XXIII of 1861, s. 11.*—*B* obtained an *ex-parte* decree for arrears of rent against *S* under Act X of 1859, and in execution of that decree brought the tenure to sale. At the sale the tenure was purchased by *N*. *S* then brought a suit against *B* and *N* to set aside the sale on the ground that the rent-decree and all execution-proceedings taken thereunder were fraudulent, and alleging that *B* was the actual purchaser in the name of *N*. An objection was taken that the suit would not lie, and that the questions in the suit were such as could have been determined, and were determined, by the Court executing the decree:—*Held* that neither s. 244 of the Civil Procedure Code nor the corresponding s. 11 of Act XXIII of 1861 had any application to proceedings in execution of a decree under Act X of 1859, and that the suit, being one to set aside the sale on the ground of fraud, was maintainable. *Saroda Churn Chuckerbutty v. Mahomed Isuf Meah*, 1 L. R., 11 Cal., 376, distinguished. *BRONJO GORAI SARKAR v. BUSIRUNISSA BIBI*  
[L. R., 15 Cal., 179

**15. ———— Question as to whether purchase-money has been paid within time.** *Conditional decree.*—The plaintiff in a suit to enforce a right of pre-emption obtained a decree to the effect mentioned in s. 214 of the Civil Procedure Code. On payment by him of the purchase-money into Court, the defendants objected, in the execution department, to such payment, on the ground that it had not been made within time. The Court which made the decree disallowed the objection. The defendants appealed from the order disallowing the objection: they had previously appealed from the decree. The Appellate Court heard both appeals together, and, holding that the purchase-money had not been paid into Court within time, reversed the decree and allowed the objection. The plaintiff preferred a second appeal to the High Court from the Appellate Court's decree, which was admitted. He also preferred an appeal from the appellate order allowing the objection, but this appeal was rejected as being beyond time, and such order became final. *Held* that, inasmuch as the question whether the plaintiff had paid the purchase-money into Court within time was not one relating to the execution of the decree within the meaning of s. 244 of the Civil Procedure Code, but was one which should be decided in the suit itself, and therefore the proceedings in the execution department

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

touching that question were ill-founded, such order was not a bar to the hearing of the second appeal preferred by the plaintiff. *MURAMMAD ALI v. DEBI DIN RAI*. . . 1 L. R., 4 All., 420

**16. ———— Suit to set aside order in execution of decree.**—Where the object of the suit was to set aside orders passed in the miscellaneous department relating to execution of decree,—*Held* that such suit was untenable; s. 11, Act XXIII of 1861, having distinctly prohibited all remedy by separate suit and the remedy provided being an appeal from the order complained of. *AMRIT KOONWAR v. LICHMEE NARAIN*. . . 1 Agra, 93

**17. ———— Regular suit to set aside summary order.**—*Application in summary suit.*—A person who, in the course of executing a decree, had been turned out of possession by an order under s. 269, Act VIII of 1859, and who was compelled to pay the costs of that order, brought a regular suit for its reversal and obtained a decree, which was silent as to the costs of the summary order in consequence of the plaintiff not having demanded them; subsequently the plaintiff made an application in the summary suit that the costs of the summary order should be repaid to her. *Held* that the Court had no power to entertain it under s. 11, Act XXIII of 1861. *TORECON v. MAHOMED WAJID*. . . 2 C. L. R., 504

**18. ———— Resistance to execution as being cultivators.—Decree for limited possession.—Separate suit.**—In a suit to recover possession of land, the defendants resisted execution on the ground that they were cultivators, and that the decree only authorized the plaintiff to recover possession as proprietor. The objection was overruled, and the defendants were ejected. They then sued to set aside the order made in the execution proceedings and to recover possession. *Held* that the suit was barred under s. 244, cl. (c), of the Civil Procedure Code. *NAJHAN v. MAHOMED TAKI KHAN alias PEER BUX KHAN*  
[L. R., 9 Cal., 872; 12 C. L. R., 571

**19. ———— Liability of property for debts.—Separate suit.—Debts of father.**—Whether property seized by a judgment-creditor in the hands of his deceased judgment-creditor's son is held by the son under such circumstances as render him liable for his father's debts is a question which cannot be tried in execution proceedings, but must form the subject of an independent suit. *RAMANOOGEZO SINGH v. KISHEN KISHORE NARAIN SINGH*  
[23 W. R., 265

**20. ———— Liability of son for father's debt.—Suit against son to enforce decree against father.—Limitation.—Suit to recover money charged on land by decree.**—A suit for money having been brought against the holder of an impartible zamindari, a decree was passed in 1867 by consent to the effect that the zamindar undertook to

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

zamindar, proceedings in execution were taken against his son, who succeeded to the zamindari, but were set aside on appeal. In January 1882 a suit was brought against the son to recover the amount of the last instalment due by his father under the decree of 1867. *Held* that the suit was neither barred by the provisions of s. 244 of the Code of Civil Procedure nor by limitation. **ARUNACHALA v. ZAMINDAR OF SIVAGIRI**. I. L. R., 7 Mad., 328

**21. ————— Hindu law—**

land liable to be sold for repayment of the debt. The

to be sold. That suit was dismissed, on the ground that a suit for a declaration would not lie. *D* then

the Code of Civil Procedure. *Held* that the duty of a son under Hindu law to pay his father's debts out of his own share of ancestral estate is not a matter which can be decided under s. 244 of the Code of Civil Procedure. The questions contemplated by s. 244 are those which relate to the enforcement of the obligation created by the decree. The obligation to pay the father's debts out of the son's share of the ancestral estate is not an obligation created by a decree against the father. **ARIABUDRA v. DORASAMI**. I. L. R., 11 Mad., 413

**22. ————— Suit against sons of a deceased judgment-debtor—Decree for money against father to be discharged by instalments—Separate suit—Liability of son for father's debt.**—A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on 19th October 1877. The decree provided for payment of the secured debt in various instalments by May 1895. The mortgagor died in 1883, having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a

gagor and their infant nephews for payment out of the family property of all unpaid instalments, and objection was taken that the question whether ancestral property is liable or not for the father's debt in the present suit was one which related to the execu-

**[I. L. R., 17 Mad., 122**

**23. ————— Execution of**

immorality, he can do so under s. 244 of the Civil Procedure Code (Act XIV of 1882) **ARIABUDRA v. DORASAMI**, I. L. R., 11 Mad., 413, and **LACHMI NARAYAN v. KUNJILAL**, I. L. R., 16 All., 449, not followed. **UMED HATBISING v. GOMAN BHAIJI**

**[I. L. R., 20 Bom., 385**

**24. ————— Mode of redeeming mortgaged lands in execution of former decree.**—A mortgagee was put into possession of the mortgaged property, under a decree obtained by him against the mortgagor, to the effect that the mortgagee should remain in possession until the

gagor, the previous decree for possession having been fully executed when the mortgagee was put into possession. **RAMCHANDRA BALLAL v. BABA ESGONDA**

**[13 Bom., 193**

**25. ————— Application for further execution by taking an account.**—An application to the Court passing a decree for possession in favour of the heirs of a mortgagee, for further execution thereof, by taking an account, is

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 1. QUESTIONS IN EXECUTION OF DECREE—continued.

not the proper mode for the mortgagor to redeem the mortgaged lands and to recover possession thereof. The proper course for a mortgagor who seeks for an account and redemption, or for redemption alone, is to bring an independent suit for that purpose. *Janoji v. Vyankatesh*, 2 Bom., 371, overruled. *RAVJI SHIVRAM JOSHI v. KALURAM*

[12 Bom., 160

28. ————— Question as to amount received under mortgage—Attempt to obtain redemption of a usufructuary mortgage by means of an application in execution.—Certain mortgagees held a mortgage which, in its inception, was a simple mortgage, but which was to become a usufructuary mortgage upon non-payment of the mortgage debt by a certain date. The mortgage debt was not paid within the time limited. The mortgagees sued on the covenant in their bond and obtained a decree for possession, declaring them entitled to remain in possession until the mortgage debt was satisfied from the usufruct. Some time after the mortgagees had got possession under this decree, the mortgagors applied, ostensibly under s. 244 of the Code of Civil Procedure, for recovery of possession of the mortgaged property and for payment of a large sum of money, which they alleged the mortgagees to have collected as profits in excess of what was due under the mortgage. Held that such an application would not lie. If the allegation of the mortgagors were true, their proper remedy was by suit for redemption, and not by application in the execution department. *Ravji Shivram Joshi v. Kaluram*, 12 Bom., 160, *Ram Chandra Lal v. Baba Esgonda*, 12 Bom., 163, and *Narsinha Manohar v. Bhagvantran*, I. L. R., 14 Bom., 327, referred to. *HAR PRASAD v. SHEO RAM*

[I. L. R., 20 All., 506

27. ————— *Usufructuary mortgage*.—In a suit for possession under an usufructuary mortgage, plaintiff obtained a decree which was afterwards authoritatively interpreted to mean that he was to get possession of the property in order to repay himself out of the profits, keeping the usual accounts, and, after satisfaction of his claim, restore the property. Held that, under the terms of the decree, he was in effect required to certify, for the information both of the Court and of the judgment-debtors, the amounts received and outstanding; and that the Court executing the decree was bound to require from him, from time to time, a statement of the amount received, and could deal with the matter under Act XXIII of 1861, s. 11. *GOLAM RUSSOOL KHAN v. KISHEN MOHUN SHAHA*, 23 W. R., 156

28. ————— Property attached in execution, after satisfaction of decree from other sources—*Separate suit*.—An elephant having been attached in execution, it was released on the claim of one P, upon S standing surety. It was finally declared to be the property of the judgment-debtors; but the decree having been satisfied from

# CIVIL PROCEDURE CODE, ACT X OF 1882 (ACT X OF 1877)

## 1. QUESTIONS IN EXECUTION—continued.

other sources, it was ordered to be returned to the judgment-debtor. Mandated from the surety; but he and (P) was served with notice not having been done within 11. Munsif ordered that it should be surety, and (on his failure to price) should be realized by his property. Held that, the executed, the Munsif's subsequent the elephant were illegal, and open to a suit. *JUGGUT CHANDRA SHIB CHUNDRA BHADOOREE*

29. ————— *Execution decree-holder in favour of debtor*.—Limiting decree for possession of a certain land, subsequently to the execution in favour of his judgment-debtor's possession, and afterwards took his decree,—Held on an objection by the debtor that, under these circumstances, he was not entitled to possession; that satisfaction not having been entered up, the decree should be dealt with under s. 244 of the Code of Civil Procedure. *BABA MAHOMED v. WEBB*

[I. L. R., 6 Cal., 1

30. ————— *Execution of decree*.—The validity of which execution is sought cannot be questioned in proceedings under s. 244 of the Code of Civil Procedure (Act XIV of 1882). *v. CHINTAMAN BAJAJI DEV*

[I. L.

31. ————— *Execution of decree for sale of mortgaged property*.—Held that, when a decree for sale of mortgaged property is being executed, the persons made parties to the execution as legal representatives of the debtor to contend in those proceedings were not competent to object to the decree, which was one which had been passed. *Chintaman Vitkoba v. Dev*, I. L. R., 22 Bom., 475, *Durga Dei*, I. L. R., 12 All., 1, *Bismillah Begam*, I. L. R., 12 Cal., 1, *Lochan Singh v. Sant Chander*, I. L. R., 1899, p. 24, referred to. *CHATURBHUI*

32. ————— *Authority to consent to execution of decree*.—In proceedings for execution of a decree, one of the judgment-debtors, who had been declared to be the property of the judgment-debtors, said to have consented to the

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued

a ques-  
Sudin-  
proved

[I. L. R., 23 Calc, 639]

33. ——— Question as to whether debt was properly contracted—Execution of decree against endowed property.—B obtained a decree on a settlement of accounts made with P as

tion proceedings. *SUDINDRA v. BUDAN*  
[I. L. R., 9 Mad, 80]

Held that it is not open to a son in a joint Hindu

passed. *Bhawan Prasad v. Kallu*, I. L. R., 17 All., 637, referred to. *Sauval Dass v. Bismillah Begam*, I. L. R., 19 All., 480, and *Laladhar v. Chaturbhay*, I. L. R., 21 All., 277, approved. *Lochan Singh v. Sant Chandar Mukerji*, Weekly Notes, 1899, p. 24, not followed. *HIRA LAL SARD v. PARABHARAI BAI*. I. L. R., 21 All., 356

35. ——— Right to maintenance—Maintenance payable by instalments under decree.—Where the holder of a decree for maintenance is opposed in execution by the heirs of her judgment-debtors, the questions arising between them cannot be determined in execution, but must be tried in a regular suit. *Quare*—If the original judgment-debtor were alive, could the decree-holder enforce her claim for maintenance by execution without a fresh suit for each instalment unpaid? *PREMOO BIRI v. DASSOO DEBIA*. 10 W. R., 93

36. ——— Monthly allowance payable under decree—Cause of action—Separate suit on failure to pay.—Where by a decree the plaintiff's right to a monthly allowance was declared, —Held that any failure on the part of the person bound to pay by the terms of the decree would consti-

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

tute a good cause of action, and a fresh suit brought on the assertion of payment being withheld would not be affected by the provisions of s. 11, Act XXIII of 1861. *KAWAZISH ALY BEG v. VILAYTER KHANUM*. 2 Agra, 23

37. ——— Claim for damages for injury to goods wrongly attached—Separate

the goods are attached. *LUCHMAN DASS v. HERRA LAL*. 3 N. W., 167

mined by a separate suit, and an order adjudging such liability passed in execution of the decree will be set aside as illegal. *WRIGHT v. SEETA BAI*  
[2 Agra, 105]

[7 W. R., 45]

40. ——— Damage done by removal of crops for possession of which decree had been obtained.—By the terms of a decree passed by the District Munsif, the plaintiff was

[6 Mad, 13]

41. ——— Land wrongly given to defendant in another suit—Separate suit.—The plaintiff sued to recover certain land of which the defendant obtained possession in execution of a decree in a former suit, in which the plaintiff was a defendant, although it was not part of the land

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

mentioned in the plaint or decree in the former suit. *Held* that the plaintiff's suit could not be maintained, and that his only remedy for the wrongful dispossession was a proceeding under s. 11, Act XXIII of 1861. **MUTTUVELU PILLAI v. VITHILINGA PILLAI** . . . . . 5 Mad., 185

**42. ——— Objection to claim to portion of the land.—Decree altering possession of land.**—Where a decree directed certain land to be taken from first defendant and put into plaintiff's possession for a term, and a claim was put in by second defendant/a assignee to part of the land,—*Held* that an objection by first defendant to the claim was a matter to be determined in execution proceedings, and not by separate suit. **RAHIMAN KHAN SAMOJI SAHIB v. PATONA MIYAN**

[I. L. R., 4 Mad., 285

**43. ——— Land taken in excess of decree.—Separate suit.—Cause of action.**—Where a party who has obtained a decree for land takes possession by his own act, and not by the act of the officer of Court, of more land than the decree gives him,—*Held* that a suit will lie to recover back possession of any land taken in excess of the decree. **MUDUN MOHUN SINGH v. KANYEE DOSS CHUCKERBUTTY** . . . . . 12 B. L. R., 201

**SHURUT SOONDUREE DEBEE v. PURESII NARAIN ROY** . . . . . 12 W. R., 85

**44. ——— Cause of dispossession.**—It should be distinctly found in such a case how the dispossession occurred, whether through the Court or by the act of the defendant himself. **SUROR SOONDERY DABEE v. ONWAR NARAIN PERSHAD DEY**

[12 B. L. R., 207 note

**S. C. SHURUT SOONDUREE DEBEE v. PURESII NARAIN ROY** . . . . . 12 W. R., 85

**45. ——— Separate suit.**—In execution of a decree for the recovery of certain lands from the plaintiff within specified boundaries, the defendant took possession of land as being covered by the decree, the possession being given him by an officer of Court. Thereafter the plaintiff preferred a complaint that the defendant had taken illegal possession, as the land was not covered by the decree; but the Court rejected his application. The plaintiff then brought a suit to recover possession of the lands, which he alleged had been wrongfully taken under the defendant's decree. *Held* that the suit would not lie. The matter was a question arising between the parties relating to the execution of the decree under s. 11, Act XXIII of 1861, and should therefore have been the subject of an application to the Court which made the decree. **JOGENDRO NARAIN COOMAR v. SUBNOMOYEE**

[12 B. L. R., 203 note; 14 W. R., 39

*See KISHEN SOONDER ROY v. PRASUNNATH BRUTTACHARJEE* . . . . . W. R., 1864, 208

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

And **MAHOMED IBRAHIM v. LALLA JUSSODALAI**  
[W. R., 1864, 247

**46. ——— Suit for property wrongly taken in execution of decree.—Right of suit.—Question of jurisdiction.**—Under s. 244 of the Civil Procedure Code (Act XIV of 1882), no separate suit will lie for the recovery of lands taken by the decree-holder in excess of the terms of his decree, if the decree-holder has been put in possession of such lands by the officer of the Court executing the decree. **Mudhun Mohun Singh v. Kanyee Doss Chuckerbutty**, 12 B. L. R., 201, referred to. But where the suit has been instituted in the Court which had jurisdiction to execute the decree, the plaint may be regarded as an application to that Court for determining the question whether the lands are covered by the decree, and the suit does not, therefore, fail for want of jurisdiction. **Purmessuree Pershad Narain Singh v. Jankee Koorer**, 19 W. R., 90, and **Azizuddin Hossein v. Ramanugra Roy**, I. L. R., 14 Calc., 605, referred to and followed. *Held* also that in such a case it is incumbent upon the defendant to raise the plea of jurisdiction in the Court of first instance, the question being not a pure question of law, but a question which would depend upon facts. **BIRU MAHATA v. SHYAMA CHURN KHAWAS** . . . . . I. L. R., 22 Calc., 483

**47. ——— Question whether lands were included in decree.—Act VIII of 1859, s. 357.—Act XXIII of 1861, s. 11.**—The father of the defendant in 1853 obtained a decree against the father of the plaintiff and other persons for partition of village lands. The decree directed that in effecting the partition certain dhara lands then occupied by the plaintiff's father were not to be included. Application for execution of that decree was made in 1861, but the execution-proceedings remained pending until 1882. On the 12th December 1882, the decree was executed, and the defendant (his father being then dead) was put into possession of the lands now in dispute as being part of the lands to which he was entitled under the decree. The plaintiff objected that these lands were not subject to partition under the decree, and he applied for an order that they should be delivered back to him. His application was rejected, and he thereupon brought the present suit to recover the lands from the defendant. The Court of first instance was of opinion that the question raised in the suit related to the execution of the decree made in 1853, and under s. 244 of the Civil Procedure Code (Act XIV of 1882) could not be raised again by a separate suit. The plaintiff appealed to the Assistant Judge, who reversed the lower Court's decree. On appeal by the defendant to the High Court,—*Held*, reversing the decree of the lower Appellate Court, that the plaintiff's suit should be dismissed. The question whether the dhara lands received by the defendant in execution of the decree

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE—continued.**

of 1853 were included in that decree was a question relating to the execution of the decree within the meaning of s. 244 of the Civil Procedure Code, Act XIV of 1882, which barred a separate suit. **RAGHUNATH GANESH v. MULNA AMAD**

[I. L. R., 12 Bom., 449]

48. ————— Decree wrongly exe-

of the bond, a suit will lie for trespass committed thereby. It is not a question arising in execution of a decree under s. 13, Act XXIII of 1861. **RASHI BEHARY LALL v. WAJAN**

[12 B. L. R., 208 note; 11 W. R., 516]

See also **SUBJAN BIRI v. SARIATULLA**

[3 B. L. R., A. C., 413; 12 W. R., 329]

that the suit was therefore barred by the provisions of s. 244 of the Civil Procedure Code. **JANKI SINGH v. ABLAK SINGH** . I. L. R., 6 All., 393

50. ————— *Retention by the Court of property not the subject-matter of a decree in the course of its execution—Dismissal of petition for delivery of possession—Appeal from order of dismissal.*—A decree having been passed awarding to a plaintiff in a suit a moiety of certain jewels which were stored in family boxes in the possession

and were not dealt with by the decree. The petition was dismissed, whereupon the petitioner ap-

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued**

**1. QUESTIONS IN EXECUTION OF DECREE—continued.**

the Code of Civil Procedure.—*Held* that the question as to what should be done with the boxes and

*Pythilinga Pillai, 5 Mad., 185, and Madhan Mohan Singh v. Kangu Doss Chuckerbutty, 12 B. L. R., 201, referred to.* **APPA RAO v. VENKATARAMANAYANMA** . I. L. R., 23 Mad., 55

51. ————— Crops misappropriated

crops carried away by the defendant, while in possession under his decree, was not barred by s. 11 of Act XXIII of 1861. **SHURNOMOTEE v. PATARNI SIKKAR** [I. L. R., 4 Calc., 625]

took delivery of possession. The Appellate Court remanded the case for retrial on the merits, and a

cause it did not arise at all until that decree had ceased to exist, and such a suit was not barred by the provisions of that section. *Int. Koer v. Sobhadro Koer, I. L. R., 3 Calc., 720, Mookond Lal Pal Chowdhry v. Mahomed Sami Meah, I. L. R., 14 Calc., 454, Hameeda v. Bhudhan, 20 W. R., 233,*

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## I. QUESTIONS IN EXECUTION OF DECREE—continued.

*Bhagvatsundar Daler v. Tarinze Kant Lalwore*, 20 W. R., 415. *Duljeet Gurmia v. Reval Gurmia*, 22 W. R., 435. *Ram Rong Singh v. Niro Golden Singh*, 25 W. R., 327. *Ram Ghulam v. Dewaka Rai*, 1. L. R., 7 All., 170, referred to. *McNoyr Peckah Singh v. Shambhu Geer*, 19 W. R., 413, distinguished. *CORBIN v. KAMHAI BAWAR*

[1. L. R., 23 Cal., 501]

53. ————— Suit for restoration of property where decree is reversed.—Where a person obtains possession of property under a decree which is subsequently reversed, a claim for the restoration of the property need not, under Act XXIII of 1861, s. 11, be the subject of a separate suit, but may be raised in a miscellaneous proceeding. *NAGINDAS DEYCHAND v. NATHA PITAMBAH*

[10 Bom., 207]

54. ————— Failure to execute decree.—*Suit after execution to execute decree.*—Plaintiff's father purchased a house on the 11th June 1854 at a sale made under a decree against G. D. but was not put into possession of it; accordingly in 1866 he obtained a decree for possession, which, however, was never executed. The defendant in 1870 obtained possession of the house by another sale made in execution of another decree against G. D. The present suit was instituted by plaintiff in 1871. *Held* that not only was the remedy on the cause of action, which accrued in 1854, and the decree of 1866, barred, but also that Act XXIII of 1861, s. 11, prevented the plaintiff from bringing a new suit on the fresh cause of action accruing to him under the decree of 1866, as that section "took away from the parties to the suit the right to raise by a fresh suit any question as to their rights and liabilities under the decree." *RUNOENSARY v. SHAPPANI*, 5 Mad., 375, followed. *KISAN NANDRAM v. ANANDARAM BACHARI*

[10 Bom., 433]

55. ————— Suit for possession after failure of attempt to execute decree giving possession.—*Separate suit.*—The ancestors of the plaintiff brought a suit in 1821 before the Registrar of the Adawlut Court to eject the defendant's grand-father from a piece of ground. The Registrar found that the defendant was a tenant under the plaintiff at a monthly rent, and the Court decreed that defendant should remain in possession so long as he should continue to pay the rent regularly, and that in default of payment the plaintiff should be placed in possession. An attempt to obtain possession in execution of that decree in 1861 failed, and the plaintiff brought a suit to recover possession with arrears of rent. *Held* that s. 11 of Act XXIII of 1861 precluded the plaintiff from maintaining the suit. *RUNOENSARY v. SHAPPANI ASARY*

[5 Mad., 375]

56. ————— Execution of decree raising question of mismanagement of property after rejection of application to be put into possession.—*Declaratory decree.*—In a

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## I. QUESTIONS IN EXECUTION OF DECREE—continued.

partition suit brought by the plaintiff a decree was passed in 1882, which provided (*inter alia*) that the defendant should manage certain devasthan lands and apply the income thereof to devasthan purposes, and that, if he failed to manage the lands properly, or alienated them by sale or mortgage, the plaintiff and his younger brother should enjoy the lands and apply the proceeds towards the maintenance of the devasthan. In execution of this decree, plaintiff presented an application on the 28th November 1891, praying that he should be put in management of the devasthan lands on the ground that the defendant was guilty of mismanagement and misapplication of the devasthan property. This application was rejected by the Court of first instance on the ground that the question of mismanagement did not fall within s. 244, cl. (c), of the Code of Civil Procedure. This order was affirmed on appeal on the ground that the decree was a declaratory decree, and therefore incapable of execution. *Held* on second appeal that the decree was not declaratory only, and that it could be enforced in execution under s. 244 of the Code of Civil Procedure. *MADHARAO v. RAMRAO*

[1. L. R., 23 Bom., 267]

57. ————— Suit for possession which might have been had under decree.—*Separate suit.*—A suit will not lie for possession of land of which the plaintiff should have been, but was not, put in substantial possession in execution of decree. His remedy is to further execute his decree. *KISTO GOBIND KUR v. GUNGA PERSHAD SURMAH*

[25 W. R., 372]

*LOLIT COMAR ROSE v. ISHAN CHUNDER CHUCK-CHERTY*

[10 C. L. R., 258]

58. ————— *Separate suit.*—*New cause of action.*—A plaintiff who has obtained a decree declaring him entitled to the possession of immovable property must, under s. 11 of Act XXIII of 1861, proceed by execution of the said decree, and not otherwise; if he neglect to do so till he is time-barred, he cannot, any the more on that account, bring another suit for possession of the same property, whether founded on the old decree in his favour or on the continued occupation of the said property by the defendant. *NASRUDDIN v. VENKATESH PRABHU*

[1. L. R., 5 Bom., 382]

59. ————— Formal possession under decree.—*Separate suit for actual possession.*—*Cause of action.*—*Execution of decree.*—*Civil Procedure Code, Act XIV of 1882, ss. 244, cl. (c), 263, 264.*—In 1877 the plaintiff sued the defendant for possession of certain properties and obtained a decree; in execution of this decree, the plaintiff, on 12th of July 1879, obtained formal possession of the properties sued for. The defendant continued to remain in actual possession and occupation of a portion of the premises, and refused to give up possession of the same to the plaintiff, who served him with a two months' notice to quit in June 1881.

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

The plaintiff did not evict the defendant in execution of the decree obtained by him against the defendant.

**MOOKERJEE . . . I. L. R., 11 Calc., 93**

**60. ————— Order absolute for**

*Lal, I. L. R., 13 All., 278, dissented from. ANIKUN-  
NISBA BIBER v. ROOP LAL DAS*

**[I. L. R., 25 Calc., 133**

**61. ————— Question as to title**

of 1882), and having been, as a fact, raised and decided against the plaintiff, he could not bring a separate suit *NIMBA HARISET v. SITARAM PARI*

**[I. L. R., 9 Bom., 458**

**[25 W. R., 156**

**63. ————— Claim to have sale set  
aside as fraudulent—Suit by judgment-debtor**

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

**64. ————— Application to  
set aside sale—Civil Procedure Code, 1882, s. 294.**  
—An application under s. 294 of the Civil Procedure

*s. 244 of the Code—Viraraghava Ayyangar v.  
Venkata Charyar, I. L. R., 5 Mad., 217, followed.*  
*CHINTAMARRAY NATU v. VITHABAI*

**[I. L. R., 11 Bom., 588**

**GENU v. SAKHARAM . I. L. R., 22 Bom., 271**

**65. ————— Sale in execution,  
the judgment-debtor being ignorant of the execution  
proceedings through the fraud of the decree-holder—  
Setting aside proceedings in execution—Separate**

belonging to S. of which K became the purchaser.

**DAMODAR ANHARAM . I. L. R., 9 Bom., 468**

**66. ————— Sale in execution  
of decree for arrears of rent—Fraud—Suit to set  
aside a sale on the ground of fraud—Decree—Ques-  
tions arising between the parties or their represen-  
tatives—Right of suit—Code of Civil Procedure  
(Act XIV of 1882). ss. 311, 312, 314-316.—Held  
by the Full Bench—PETHEBAM, C.J., PRINSEP,**

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 1. QUESTIONS IN EXECUTION OF DECREE—continued.

had not got their names registered in the landlord's sherists, they might not be able to question the decree obtained for arrears of rent, they were not thereby precluded from contesting a sale on the ground that it had been fraudulently obtained under colour of such a decree, and that it was competent to them, at any rate, to sue for a declaration that the sale in question did not in any way affect their rights. *JAGAN NATH GORAI v. WATSON & Co.*

[I. L. R., 19 Calc., 341]

70. — *Suit to have an execution-sale of land set aside—Purchaser at sale sought to be set aside—Fraud, allegation of—*

tion is in question, is interested and concerned in the result, has never been held to prevent the application of s. 244 of the Civil Procedure Code, limiting the disposal of these matters to the Court executing the decree. The plaintiffs, in a suit to have the judicial sale of a zamindari set aside, alleged that the decree-holder, in part satisfaction of his decree, had received, from them and other co-sharers, in the zamindari, their proportionate amounts of the debt decreed, and had agreed that their shares should be exempt from the execution sale about to take place; that the sale took place, subject to that exemption; that the decree-holder, however, with whom some of the co-sharers and the purchasers

virtue of s. 244 of the Code of Civil Procedure, only by order of the Court executing the decree.

*PROSUNNO KUMAR SANTAL v. KALI DAS SANTAL*  
[I. L. R., 19 Calc., 683  
I. L. R., 19 I. A., 168]

71. — *Question "arising between the parties to the suit"—Sale of property by the Collector as ancestral property—Suit to set aside sale on the ground that property was not ancestral.—*Certain property of a judgment-debtor having been sold by the Collector under s. 320 of the Code of Civil Procedure as being ancestral property, the judgment-debtor sued the decree-holder

both of the Collector, and that the real purchaser at the auction sale was the decree-holder himself who

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 1. QUESTIONS IN EXECUTION OF DECREE—continued.

*Das Sanjal, I. L. R., 19 Calc., 683, referred to. DAULAT SINGH v. JUGAL KISHORE*

[I. L. R., 22 All., 108]

*See DHANY RAM v. CHATURBHUJ*

[I. L. R., 22 All., 88]

72. — *Application to set aside sale on the ground of fraud in a case*

*Council in the case of Prosunno Kumar Sanjal v. Das Sanjal, I. L. R., 19 Calc., 683, referred to.*

*See HIRA LAL GHOSH v. CHANDRA KANTA GHOSH*  
[I. L. R., 28 Calc., 539  
3 C. W. N., 403]

73. — *Suit to set aside*

Procedure Code, even in a case where the real or nominal auction-purchaser is a person who was not a party to the original suit. *Prosunno Kumar Sanjal v. Kali Das Sanjal, I. L. R., 19 Calc., 683; I. L. R., 19 I. A., 168, followed. MOTI LAL CHAKRABORTY v. RUSSICK CHANDRA BAIKRAI*

[I. L. R., 28 Calc., 328 note  
3 C. W. N., 395]

*RAM NARAIN TEWARI v. SREW BHUNJAN ROY*  
[I. L. R., 27 Calc., 187]

and *NEMAI CHAND KANJI v. DEVO NATH KANJI*  
[3 C. W. N., 691]

74. — *Question as to transfer of decree—Purchaser of the decree from the*

ment in writing. *Ishan Chunder Sircar v. Beni*

question of the transfer of the decree under the

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# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 1. QUESTIONS IN EXECUTION OF DECREE —continued.

provisions of s. 214 of the Civil Procedure Code as amended by Act VII of 1888. DWAR BUKSH SIKHAR v. FATIK JALI. I. L. R., 28 Calc., 250 [3 C. W. N., 222]

GANGA DAS SEAL v. YAKUB ALI DORASHI [I. L. R., 27 Calc., 670]

75. ——— Order refusing to confirm a sale in execution of ex-parte decree set aside.—An order refusing to confirm a sale on the ground that there was no subsisting decree at the date when the confirmation of the sale is applied for is one under s. 244 of the Civil Procedure Code, the question raised being one relating to the meaning of the question raised being one relating to the meaning of that section. *Prosunno Kumar Sanyal v. Kali Das Sanyal*, I. L. R., 19 Calc., 683, referred to. DORA MOYI DASI v. SARAT CHUNDER MAJUMDAR [I. L. R., 25 Calc., 175 1 C. W. N., 656]

76. ——— Effect of satisfaction of decree.—Where a decree has been satisfied, it prevents an application under s. 244 of the Code of Civil Procedure, there being no decree then existing. RASH BEHARY MONDAL v. RAKHIAL CHARAN MANDAL 1 C. W. N., 708

77. ——— Application to set aside sale in execution of an ex-parte decree subsequently set aside under s. 108, Civil Procedure Code.—Where a property was sold in execution of an ex-parte decree and purchased by the decree-holder and the decree was subsequently set aside under s. 108, Civil Procedure Code,—Held that it is competent to a Court under s. 244, Civil Procedure Code, to go into the question and to set aside the sale as bad. *Prosunno Kumar Sanyal v. Kali Das Sanyal*, I. L. R., 19 Calc., 683, and *Mohendro Narain Chaturaj v. Gopal Mondal*, I. L. R., 17 Calc., 769, relied on. BENI PERSHAD KOERI v. LAKHI RAI 3 C. W. N., 6

78. ——— Claim to have sale set aside as being under barred decree—*Separate suit*.—A separate suit will not lie to have set aside a sale made in execution of decree barred at the time of execution; the invalidity should be declared in proceedings in execution as provided in s. 11, Act XXIII of 1861. NOJABUT ALI CHOWDHRY v. MOHA BUSSEEROOLAH CHOWDHRY [1 B. L. R., 42: 20 W. R., 5]

See GOLAM ASGAR v. LAKHMAN DEBI [5 B. L. R., 68: 13 W. R., 273]

and ZAMEER SIRDAR v. ASSEEMOODDEEN SIRDAR [23 W. R., 257]

URDUB CHURN DEBTA v. SOOKDEB DEBTA [24 W. R., 45]

79. ——— Claim to set aside sale as wrongly made—Decree for sale of land—Objections by representative of deceased judg-

( 1208 )

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 1. QUESTIONS IN EXECUTION OF DECREE —continued.

ment-debtor in his own right disallowed—Order reversed on appeal—Claim under s. 278 rejected.—S mortgaged four parcels of land to M. M obtained a decree against S directing the sale of the lands mortgaged. S died, and K was brought in as his representative under s. 234 of the Code of Civil Procedure. M applied for execution against the lands mortgaged as assets of S. K objected to the sale of three parcels on the ground that one parcel belonged to himself (K) and two to the family to which S belonged, and of which K was the manager. The District Munsif investigated these questions under s. 241 of the Code of Civil Procedure, and directed that execution should proceed against all four parcels. The District Court on appeal reversed the order of the Munsif, on the ground that he had no power to decide these questions under s. 241, and that the proper course was for M to attach the properties and for K to make a claim. This course was adopted and K's claim was rejected, and the four parcels were sold and bought by P. K thereupon brought a suit against M and P to cancel the sales to P. Held that, by virtue of s. 244 of the Code of Civil Procedure, the suit would not lie. KURIYALI v. MAYAN [I. L. R., 7 Mad., 255]

80. ——— Sale in execution of an ex-parte decree and purchase by the decree-holder.—Confirmation of the sale—Subsequent setting aside of the ex-parte decree—Application by a subsequent purchaser in execution of another decree to set aside the sale on the ground that the ex-parte decree had been set aside.—Certain immovable properties were sold in execution of an ex-parte decree, and were purchased by the decree-holder himself. After the confirmation of the sale, the decree was set aside under s. 108 of the Civil Procedure Code at the instance of some of the defendants in the original suit. On an application under s. 244 of the Civil Procedure Code having been made by a prior purchaser of the said properties in execution of another decree, to set aside the sale held in execution of the ex-parte decree, the defence was that the application could not come under s. 244 of the Civil Procedure Code, and that the sale could not be set aside, as it had been confirmed. Held that the case was one under s. 241 of the Civil Procedure Code, and that, the ex-parte decree having been set aside, the sale could not stand, inasmuch as the decree-holder himself was the purchaser. *Doyamoyi Dasi v. Sarat Chunder Mozoomdar*, I. L. R., 25 Calc., 175, *Beni Persad Koeri v. Lakhi Rai*, 3 C. W. N., 6, *Durga Charan Mandal v. Kali Prasanno Sarkar*, I. L. R., 26 Calc., 727, *Zainal-ud-din Khan v. Mohammed Asghar Ali*, I. L. R., 15 I. A., 12: I. L. R., 10 All., 166, and *Minal Kumari Bibee v. Jagat Sattani Bibee*, I. L. R., 10 Calc., 220, referred to. SET UMEDMAL v. SRINATH ROY. I. L. R., 27 Calc., 810 [4 C. W. N., 692]

81. ——— Restitution of amount paid under decree—Reversal of decree—Interest

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

into that Court for the original, who took the same

allowed by the Appellate Court's decree, and that the question was clearly one for determination by the

5 P. C., 465 referred to. *Ram Ghulam v. Dwarka Rai*, I. L. R., 7 All., 170, distinguished by MAHMOOD, J. *JASWANT SINGH v. DIL SINGH*  
(I L. R., 7 All., 492)

82. ————— Question arising after

decree-holder's decree. *RAMCHHAIBAR MISR v. BECHU BHAGAT*  
I. L. R., 7 All., 641

83. ————— Refund of purchase-money—*Separate suit—Adjudication of judgment-debtor as bankrupt and order not to deal with property.*—A sale, on the 4th March 1871, of certain property sold in execution of a decree obtained by A

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

A, of his purchase-money, and on the 19th of the same month an order was made for such refund. The amount was refunded without protest by the plain-

Civil Procedure Code by the Court executing the decree. *SOLANO v. AHMEDA*. 10 C. L. R., 573

84. ————— Compromise as to possession after decree—*Procedure.*—B sued his brother C for possession of certain lands. B and C came to an amicable settlement, one of the terms of which was that C, during his life, should retain possession of certain of the lands, and that, after his death, they should pass to B. A decree was given in accordance with the terms of the compromise. On

*RADHA JIBAN MUSTAFI*  
(6 B. L. R., Ap., 142; 14 W. R., 495)

agreement. *CHAMPAT RAI v. PITAMBAR DAS*  
(I L. R., 8 All., 19)

86. ————— Compromise of decrees—*Effect of compromise—Mode of enforcing agreement of compromise—Right of suit.*—A decree for partition having been compromised by an agreement made by the parties, and communicated to the Court

*RAGHUNATH JOSHI v. KRISHNAJI ANANT JOSHI*  
(I L. R., 19 Bom., 546)

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**  
**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

mitted a portion of the decree; that the balance should be paid by a certain date; and that a certain banker had given a note of hand for the payment of interest on the balance at a certain rate. The judgment-debtor then stated as follows: "So long as the petitioner does not pay the money to the decree-holder, i.e., during the term fixed above, the banker shall pay interest to the decree-holder; the decree-holder shall not have power to take out execution within the said term, but after the expiry thereof he shall be at liberty to realize his money together with interest from the petitioner and his property by executing the decree; excepting the property sold, all the property mortgaged and attached under the decree shall continue so mortgaged and attached; the decree-holder's pleader has affixed his signature at the foot of this petition therefore praying that the case may be struck off as partially executed." The decree-holder subsequently sued the judgment-debtor to recover the balance of the decree, claiming under the arrangement set forth in the petition of April 1877, as a contract superseding the decree. Held, having regard to the terms of that petition, that no new contract superseding the decree was either intended or effected, and the suit was consequently not maintainable. *Billings v. Unrotenanted Ganga v. Bank, I. L. R., 3 All., 781, distinguished. Ganga v. Meerli Dhar, I. L. R., 4 All., 240; S. A. No. 25 of 1882, Weekly Notes, All., 1883, p. 93, and Champat Rai v. Pitambar Das, I. L. R., 6 All., 16, followed. MAHTYD RAM v. MAHTYD RAM*  
[I. L. R., 6 All., 228]

**88. — Separate suit—Practice—Power of Court to vacate any judgment or order procured by fraud.**—The plaintiff held two decrees against the defendant, by misrepresentation, induced the plaintiff to receive Rs. 2,000 only in full satisfaction of these decrees and to withdraw the application, brought this suit to recover the difference. Held, that the suit was barred by s. 11 of Act XXIII of 1861 (which corresponds with s. 244 of Act X of 1877), the question between the parties being a question relating to the execution of a decree. It is always competent to any Court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud; and in the case of orders made in execution, s. 11 of Act XXIII of 1861 excludes all other remedy.  
*PARANJPE v. KANADE* . I. L. R., 6 Bom., 148

**89. — Refund of proceeds of sale on ground of compromise.**—When a refund is claimed of the proceeds of an execution sale on the ground that the decree has been satisfied by compromise, the matter ought to be tried under Act XXIII of 1861, s. 11, and not by regular suit. *VELAYET HOSSEIN v. WULEE AHMED*  
23 W. R., 207

**90. — Compromise for larger amount than that claimed—Refusal of execu-**

( 1212 )  
**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**  
**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

*Suit for amount of compromise.*—The parties to a suit agreed upon a compromise, the result of which was that the plaintiff obtained by the decree a greater quantity of land than he had originally claimed, and a decree was drawn up in accordance with the compromise. In the execution proceedings, the defendant raised an objection that the plaintiff could not have execution for a greater quantity of land than he had claimed originally, and the Court executing the decree allowed the objection. No appeal from the Court's order was made, but the plaintiff brought a suit to recover possession of the larger amount of land mentioned in the compromise. Held, that the order of the Court executing the decree was erroneous in law, and might properly be reconsidered upon an application for review; but that the present suit came within s. 244 of the Civil Procedure Code, and therefore could not be maintained. *MONTAGUEAN v. IMAM* . I. L. R., 9 All., 229

**91. — Refund of money wrongly realized under decree—Execution of decree—Separate suit.**—Moneys realized as due under a decree, if unduly realized, are recoverable by application to the Court executing the decree, and not by separate suit. The opinion of *STUART, C.J.*, in *Agra Savings Bank v. Sri Ram Mitter, I. L. R., 1 All., 388*, differed from. *Harcumohini Choudhrai v. Dhanmani Choudhrai, 1 B. L. R., A. C., 188*, and *Ekorri Singh v. Bijayanath Chattapadhyay, 1 B. L. R., A. C., 111*, distinguished. *PARTAP SINGH v. BENI RAM* . I. L. R., 2 All., 61  
*TARU v. GUNGATERSHAD* . 2 Agra, 45

**92. — Decree subsequently reversed or modified.**—When money has been taken in execution of a decree which is subsequently reversed or modified, no fresh suit will lie for its recovery; the matter must be enquired into by the Court which passed the decree as a question arising between the parties relating to the execution of such decree. *SALIGRAM SINGH v. GONIND SAHAI*  
[4 B. L. R., Ap., 64]  
*NURSING CHUNDER SEIN v. BIDYA DHUREE* . 2 W. R., 275  
*JADOO NATH GOSSAIN v. NOBO KISHEN CHATTERJEE* . 4 W. R., 66

**93. — Suit for money paid under decree afterwards reversed.**—In a suit of 1867 the present defendant obtained a decree for possession of a certain village and mesne profits for one year. Pending an appeal against that decree, execution was stayed on the present plaintiff depositing a note for Rs. 15,000 as security. The decree was affirmed on appeal, and the present defendant had the note sold in execution, and drew out of the proceeds a sum for mesne profits for subsequent years; but an appeal was preferred in the execution proceedings to the High Court, which set aside the execution so far as concerned the mesne profits for the years subsequent to that to which the original decree

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

related. The present plaintiff thereupon attached and sold the village to recover the balance before that amount was paid to the present plaintiff, the present defendant brought a suit against him in the District Court, and there obtained a decree for mesne

related. *Held* that the suit was not barred by the provisions of Civil Procedure Code, s. 244. **NARAYANA v. NARAYANA** . . . **I L. R., 13 Mad., 437**

**94. ————— Excess sum retained**

to satisfy the decree. Instead of paying the purchase-

claim was not a matter determinable under s. 11 of Act XXIII of 1861. **RAMANADAN CHETTI v. KUNNAPPU CHETTI** . . . **6 Mad., 804**

**KRISTO CHUNDER GOOPTO v. RAMSODHUR SEIN**  
**[17 W. R., 14]**

**95. ————— Suit to recover sum paid  
in excess under decree—Separate suit—Sum  
paid in execution in excess of what was due under the  
decree can only be recovered by application to the  
Court which executed the decree, not by a separate  
suit. KASHER KISHORE ROY CHOWDHURY v. KISHOR  
CHUNDER SANDYAL** . . . **15 W. R., 160**

**96. ————— Money paid in excess  
under decree—Decree reduced on appeal—  
Separate suit.—A judgment-creditor having caused  
certain property of his judgment-debtor to be sold in  
execution, the proceeds realized did not amount to**

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

the full judgment-debt. Afterwards the judgment-

charged with the execution of the decree had full jurisdiction to determine the question and order a refund. **MOTHOORA PERSHAD SINGH v. SHAMBHOO GEER** . . . **19 W. R., 413**

**97. ————— Separate suit—**

**98. ————— Application by**

**99. ————— Money paid in excess  
by mistake—Satisfaction of decree of Small  
Cause Court—Damages, Suit for—Where the**

( 1215 )

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 1. QUESTIONS IN EXECUTION OF DECREE —continued.

100. — Value of elephant accepted in satisfaction of decree, but not delivered—*Separate suit*.—The plaintiff held a decree against the defendants, and agreed to take an elephant in satisfaction, the defendants promising, if satisfaction were entered up, to be responsible for the value of the elephant, should it be claimed and recovered by any other person. It was so claimed and recovered, and the plaintiff sued for its value. *Held* that the suit was not barred by s. 11 of Act XXIII of 1861. *MUTHRA CHOWDERY v. SNEORUTTUN MULL* [6 N. W., 128]

101. — Part satisfaction of decree not certified to the Court—*Suit to recover money so paid after execution of entire decree*—*Civil Procedure Code, 1859, s. 206*.—A, a judgment-debtor, paid to B, the decree-holder, a sum of money by way of compromise, in full satisfaction of the decree. B failed to certify this payment to the Court, and afterwards executed her decree for the full amount. In a suit by A against B for recovery of the amount previously paid out of Court in satisfaction of the decree, *Held* that, notwithstanding s. 11 of Act XXIII of 1861, the suit was maintainable. *GUNAMANI DAST v. PRANKISHORI DAST* [5 B. L. R., 223: 13 W. R., F. B., 69]

Overruling *ALUNGA BEEDEE v. GOOROO CHURN ROY* 3 W. R., S. C. C. Ref., 3

102. — Money paid in satisfaction of decree out of Court—*Civil Procedure Code (VIII of 1859), s. 206*.—N, having obtained a decree in a suit against K, requested him to discharge certain sums due on outstanding bonds to which N had given to third parties, promising that N took credit the sums so paid to the amount due under the aforesaid decree. K paid as requested, and the Court refused to recognize the payments made by K out of execution in full of the decree; and the Court said, *Held* that the payments not having been made directly in adjustment of a decree, the suit was not barred within the rule laid down in *Arunachella Pillai v. Apparu Pillai*, 3 Mad., 188. *KUNHI MOIDIN KUTTI v. RAMEN UNNI* [I. L. R., 1 Mad., 203]

103. — Satisfaction or part satisfaction out of Court, but not certified—*Subsequent execution of decree for full amount—Suit for money previously paid—Civil Procedure Code (X of 1877), s. 258—Limitation Act (XV of 1877), sch. II, art. 161*.—A suit for the recovery of money paid to a judgment-creditor out of Court in satisfaction of a decree, but not certified, is barred by s. 244 (c) of Act X of 1877, and by the last paragraph of s. 258 as amended by Act XII of 1879. *PATANKAR v. DEVJI* [I. L. R., 6 Bom., 146]

104. — Part satisfaction of decree out of Court—*Separate suit*.—Questions as to part satisfaction of a decree cannot, according

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 1. QUESTIONS IN EXECUTION OF DECREE —continued.

to s. 244, cl. (c), of Act X of 1877, be raised in a separate suit. That section alludes to parties to the decree or their representatives, but it is not on that account open to a plaintiff to evade the section by adding an unnecessary party to the suit. *KRISTO MOHINTE DOSSEE v. KALIPROSONKO GHOSSE* [I. L. R., 8 Calc., 402]

105. — Satisfaction of decree out of Court—*Suit for damages against decree-holder for execution of decree after satisfaction—Civil Procedure Code, 1877, s. 258*.—A decree-holder who, although he has settled with his judgment-debtor out of Court, yet nevertheless sues out execution against him, will be liable to an action for damages at the hands of the judgment-debtor. Ss. 244 and 258 of Act X of 1877 have made no change in the law in this respect. *GUNI KHAN v. KOONJO BEHARY SEIN* [3 C. L. R., 414]

106. — Remedy of judgment-debtor, on creditor failing to certify—*Civil Procedure Code, 1877, s. 258*.—In 1878 a decree-holder, having received certain grain from the judgment-debtor in satisfaction of the decree, failed to certify satisfaction of the decree to the Court in accordance with the provisions of s. 258 of the Code of Civil Procedure, 1877, and executed the decree nevertheless. In a suit for damages against the decree-holder, *Held* that the judgment-debtor's remedy for the wrong suffered was not taken away by the provisions of ss. 244 and 258 of the Code. *VIRARAGHAVA v. SUBBAKKA* [I. L. R., 5 Mad., 397]

107. — Agreement not to execute decree—*Breach of contract—Suit to recover damages*.—The provisions of s. 244 of the Civil Procedure Code are no bar to a suit to recover damages for breach of a contract not to execute a decree. *HANMANT SANTAYA PRABHU v. SUBBABHAT* [I. L. R., 23 Bom., 394]

108. — Suit to recover money paid—*Civil Procedure Code, 1877, s. 258*.—In 1879 a judgment-debtor paid Rs. 100 to S, who promised to pay the same to the judgment-creditor and to get the latter to certify satisfaction of the decree to the Court. The money was paid to the judgment-creditor, who not only did not certify satisfaction of the decree, but executed it and again collected the amount from the judgment-debtor. *Held*, following *Firaraghava v. Subbakka*, I. L. R., 5 Mad., 397, that the provisions of the Code of Civil Procedure, 1877 (prior to amendment), did not debar the judgment-debtor from suing either S on his express promise or the judgment-creditor to recover the amount paid by S to the latter. *MUSUTTI v. SHEKHARAN* [I. L. R., 6 Mad., 41]

109. — Separate suit—*Adjustment of decree—Assignment of decree—Civil Procedure Code, 1882, s. 258*.—M, who held a decree against S for possession of certain immoveable property and costs, assigned such decree to S by way of

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

**110. ————— Separate suit—**

and that *M* had, notwithstanding such adjustment, applied for execution of such decree and recovered the amount thereof, as the Court executing such

or of s. 258 of that Act. The last paragraph of

returned, but had misappropriated by taking out execution of the decree a second time and securing the amount in full through the Court. **SHADI + GANGA SAHAI** I. L. R., 3 All., 538

**111. ————— Question as to adjustment between decree-holder and third party.**— Certain immoveable property having been attached in execution of a decree for money, dated in 1879, directing the sale of such property, *M* and *J* had

removal of the attachment. He claimed on the

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

**112. ————— Fraud—Setting aside sale in execution of decree—Cause of action**

execution of the decree had certain immoveable property belonging to *B* put up for sale, and this property he purchased himself. Held that a suit would lie by *B* to set aside the sale and to recover the property from *A* **ISHAN CHUNDER BAN- DOPADHYA v. INDRO NARAIN GOSWAMI**

[I. L. R., 9 Calc., 788; 12 C. L. R., 391]

**113. ————— Fraud—Cause of action—Regular suit—Code of Civil Procedure (Act XIV of 1882), s. 258.**—The holder of a money-decree agreed to accept, in satisfaction of the amount thereof, a part payment in cash and a lease of certain lands for five years rent-free. The judgment-debtor made the payment, and gave the lease agreed on. Afterwards the decree holder executed

certified under the provisions of the last-mentioned section can be recognized by any Court, and a se-

**PESTANJI DHUNJIBHOY**

[I. L. R., 10 Bom., 155]

**115. ————— Suit to set aside a sale on the ground of an adjustment of the decree out of Court—Adjustment not certified—Civil Procedure Code (1882), s. 258.**—Held that no separate suit would lie to set aside a sale held in execution of a decree on the ground that the decree had

act, no such  
said in the  
de of Code  
R. 541m

**CIVIL PROCEDURE CODE, ACT XIV  
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**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

538, and *Kalyan Singh v. Kamta Prasad*, I. L. R., 13 All., 339, distinguished. *Isban Chunder Bando-padhya v. Indro Narain Gossami*, I. L. R., 9 Calc., 788, and *Pat Dasi v. Sharup Chund Mala*, I. L. R., 14 Calc., 376, not followed. *Prosunno Kumar Sanyal v. Kali Das Sanyal*, I. L. R., 19 Calc., 683, *Azizan v. Matuk Lal Sahu*, I. L. R., 21 Calc., 437, and *Bairagulu v. Bapanna*, I. L. R., 15 Mad., 302, referred to. *JAIKARAN BHARTI v. RAGHUNATH SINGH* . . . I. L. R., 20 All., 254

**116.** ————— *Adjustment of decree—Suit to recover instalments due under a mortgage made in adjustment of a decree.*—A suit will not lie to enforce an uncertified agreement of adjustment of a decree against a judgment-debtor the consideration for which is that it shall operate in satisfaction of the decree, as there is, in that case, no consideration which the Court can recognize, and therefore no valid consideration for the judgment-debtor's agreement. The plaintiff was the assignee of a decree obtained by one O K against the defendants on the 5th May 1883. By that decree O K was declared entitled to recover R9,961-5-6, with interest at nine per cent. from the defendants; and payment was ordered to be made to him of the said sum by weekly instalments of R200. In order to secure the payment of the said instalments, the defendants were required to execute a mortgage to O K of certain property with power to him to sell the same, and to execute the decree for the whole amount, in case of default for six months. O K assigned the decree to the plaintiff in the present suit, and subsequently to the assignment (*viz.*, on the 21st July 1883) the defendants executed to the plaintiff the mortgage on which the present suit was brought. The mortgage-deed, after reciting the above facts, stated that the defendants had agreed to satisfy the amount of the decree, and it contained a covenant by the defendants that they would pay R9,961-5-6 with interest at six per cent. by monthly instalments of R400 from the 21st August 1883. The mortgage, therefore, differed from the decree both with regard to the instalments and the rate of interest. The plaintiff sued to recover the sum of R4,207, being the amount of instalments due to him under the said mortgage. *Held* that the suit would not lie, as the mortgage was an adjustment of the decree, and had not been certified to the Court, as required by s. 258 of the Civil Procedure Code. *ABDUL RAHMAN v. KHOJA KHAKI ARUTH*

[I. L. R., 11 Bom., 6

**117.** ————— *Civil Procedure Code, 1882, ss. 257 A and 258—Adjustment of decrees more than three years old—Reference to High Court under s. 617 of a question arising under these sections.*—On the 22nd March 1866, the appellant presented an application to a Subordinate Judge, praying that the adjustment of certain decrees, dated the 28th March 1867 and 11th July 1871, might be certified, and a sanction granted to a *saukhat*, dated

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

18th March 1880, passed to him by the defendant in satisfaction of the said decrees and in substitution of two bonds, dated February 1879. The Subordinate Judge, being of opinion that the application could not be granted, inasmuch as the execution of the decrees was then barred by limitation, referred the case to the High Court under s. 617 of the Civil Procedure Code. *Held* that the question could not be referred under s. 617 of the Civil Procedure Code, as the order applied for to the Subordinate Judge was appealable under s. 2 of the Code. The question raised by the application related to the satisfaction of the decree within the meaning of s. 244 of the Code. *RANGJI v. BHAIJI HARJIVAN* . I. L. R., 11 Bom., 57

**118.** ————— *Judgment-debtor as part-purchaser of a decree, Suit by.*—H D and R D owned a 6-anna share in certain decrees. The other decree-holders subsequently sold their 10-anna share to H S and S M, two of the judgment-debtors. H D and R D then proceeded to execute the decrees, and in satisfaction thereof were allowed to receive, upon giving security under s. 231 of the Code, the full 16-anna share of the decretal amount from H S and S M, notwithstanding the objection of the latter on the ground of their purchase. Thereupon H S and S M brought a suit for declaration of their right of purchase and the recovery of a 10-anna share of the money in the hands of H D and R D. *Held* that the plaintiffs were entitled to the relief sought for. *Held*, also, that the provisions of s. 258 of the Civil Procedure Code did not affect the suit, which was brought, not upon the allegation that the decrees were satisfied by the plaintiffs' purchase, but, on the contrary, was founded upon the proposition that the decrees were not so satisfied. *ABDUL RAHMAN v. KHOJA KHAKI ARUTH*, I. L. R., 11 Bom., 6, referred to. *Held*, further, that the claim was not within the words "relating to the execution of the decree" in s. 244 of the Civil Procedure Code, inasmuch as it did not raise any question in respect to the furtherance of, or hinderance to, or the manner of carrying out, the execution of the decrees. *HARAGOBIND DAS KORBURTO v. ISSURI DAS* . I. L. R., 15 Calc., 187

**119.** ————— *Suit for declaration of satisfaction of a decree—Satisfaction of decree out of Court—Civil Procedure Code, s. 258.*—A judgment-debtor, alleging that he had entered into an agreement with the decree-holder in satisfaction of his decree, and that the latter had, in breach of such agreement, procured the issue of a warrant of attachment, now sued for a declaration that the decree had been satisfied, and prayed also for the cancellation of the warrant of attachment. *Held*, with regard to the provisions of s. 244 of the Civil Procedure Code, that the suit was not maintainable. *BAIRAGULU v. BAPANNA*

[I. L. R., 15 Mad., 302

**120.** ————— *Agreement not to execute a decree—Suit to restrain execution—*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

*Agreement not to execute regarded as satisfaction of decree—Civil Procedure Code (Act XIV of 1882), ss. 257 (a), 258.—M and A were partners, and as such were indebted to H. A died, and subsequently the debt was settled between H on one side and M*

*H and R, praying for an injunction against the execution of the said decree and for damages against H. He alleged that during the pendency of the*

*Court, it having been urged that the question was one which could be decided in execution, and that,*

*“relating to the decree, it has been held that the Court, in executing the decree, is not bound to take into consideration the fact that the decree is not maintainable.”*

*Held that the decree is not maintainable.*

**121.** *Adjustment of decree out of Court—Instalment bond.—A husband and instalment bond was executed by way of adjustment of a decree, but this was not certified to the Court in accordance with the provisions of ss 257A and 258 of the Code of Civil Procedure. Held that a Court executing the decree was not competent to adjust the instalment bond under s 244*

**HARI PAL** *J. L. R. v. O. S. v. O. S.*

**122.** *Separate suit—*

*against the plaintiff, which was dismissed.*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

*thereupon an adjustment of account took place between the parties.*

*Civil Procedure Code (Act XIV of 1882), ss. 244*

*“that an agreement not to execute a decree is not binding on the parties, and that the Court is not bound to take into consideration the fact that the decree is not maintainable.”*

*agreement was maintainable. Held that the decree is not maintainable.*

**124.** *Question as to*

*entered up under s 244, Civil Procedure Code. Held that there must be an inquiry into the truth of the judgment-debtor's allegations, and, if proved, the petition for execution must be dismissed, and*

**CIVIL PROCEDURE CODE, ACT XIV  
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**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

further, that s. 258, Civil Procedure Code, was inapplicable to the present case, since that section applies only to the case of parties who stand in the relation of judgment-debtor and judgment-creditor at the date of the transaction. *RAMA AYYAN v. SREENIVASA PATTAR* . . . **I. L. R., 19 Mad., 230**

**125.** ————— *Uncertified adjustment of decree—Separate suit—Suit by judgment-debtors to recover back their property, which the decree-holder obtained possession of, in execution of his decree, whether maintainable.*—One *M* obtained a decree for possession of a jote and for mesne profits against the plaintiffs. Subsequently, by a registered ekramamah, the decree-holder having received from the judgment-debtors (the plaintiffs) the amount due on account of mesne profits, and also a further consideration of R166, relinquished an 8-anna share of the jote in favour of them. The remaining 8-anna share of the jote was also sold by the decree-holder by a registered kobala to the judgment-debtor. The heirs of the decree-holder on his death applied for execution of the decree, but, notwithstanding the judgment-debtor's objection that the decree could not be executed, it having been satisfied by virtue of the aforesaid ekramamah and kobala, they obtained possession of the jote; the adjustment, not having been certified, was not taken into account by the Court executing the decree. On a regular suit by the judgment-debtors for a declaration of title to, as well as for the recovery of, possession of the jote, the defence mainly was that, under s. 244 of the Code of Civil Procedure, no separate suit would lie. *Held* that such a suit was maintainable, and that s. 244 of the Code of Civil Procedure was no bar to it. *Azizan v. Majeed Lall Sahu*, **I. L. R., 21 Calc., 437**, distinguished. *ISWAR CHANDRA DUTT v. HARIS CHANDRA DUTT*  
**[I. L. R., 25 Calc., 718  
2 C. W. N., 247]**

**126.** ————— *Adjustment out of Court—Subsequent execution by decree-holder—Suit to recover money paid on adjustment.*—It was agreed between a decree-holder and the judgment-debtors that the former should accept R200 which was paid in full satisfaction of the decree, and should certify the adjustment to the Court, and that an attachment already placed on the judgment-debtor's property should be raised. The decree-holder accepted the money, but did not carry out his part of the agreement, and more than two years later applied for execution which was ordered to issue, the judgment-debtor's objections being dismissed as out of time. The judgment-debtors now sued in a Small Cause Court to recover the money paid to satisfy the decree. *Held* that the plaintiffs were entitled to recover. *PERIATAMBI UDAYAN v. VELLAYA GOUNDAN*  
**[I. L. R., 21 Mad., 409]**

**127.** ————— *Agreement before decree by the decree-holder not to recover costs*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

*which the decree might award—Question to be determined in execution and not by a separate suit.*—*D* and *H* obtained a decree on an award with costs against *S* and *L*. When they applied for its execution against *L* in order to recover his half share of the costs, he pleaded that before the proceedings had commenced, the plaintiffs had entered into an agreement with him that none of the costs which might be awarded by the Court should be recovered from him. *Held* that the existence and validity of such an agreement ought to be determined in execution under the provisions of s. 244 of the Civil Procedure Code, and not in a separate suit. *LALDAS NARANDAS v. KISHORIDAS DEVIDAS* . **I. L. R., 22 Bom., 463**

**128.** ————— *Question as to amount of security on stay of execution pending appeal.*—The question as to the amount of security to be given by a defendant against whom a decree has been passed, when a stay of execution is granted pending appeal, is a question relating to the execution of the decree as contemplated by s. 244 of the Civil Procedure Code. *ISHWAGAR v. CHUDASAMA MANABHAI* . **I. L. R., 12 Bom., 30**

**129.** ————— *Claim to attached property—Question to be decided in execution—Liability of property to be sold in execution.*—The question whether property is liable to be sold in execution of a decree is one to be determined under s. 244 of the Code of Civil Procedure. *Choudhry Wahid Ali v. Jumtee*, **11 B. L. R., 140, 18 W. R., 185**, followed in principle. *MUNGESHUR KUAR v. JUMMOONA PRASAD* . **I. L. R., 16 Calc., 603**

**130.** ————— *Question as to legality of purchase by judgment-debtors of right of some of decree-holders.*—Disputes as to the legality of the purchase by judgment-debtors of the rights of some of the decree-holders in the property to which the decree relates, and the extent of the share acquired under the purchase, are questions falling within the purview of cl. (c) of s. 244 of the Code of Civil Procedure, and must be determined by order of the Court executing the decree. *KHUDAI v. SHEO DYAL*  
**[I. L. R., 10 All., 570]**

**131.** ————— *Separate suit—Auction-purchaser not a representative of either party to a suit—Sale in execution of property belonging to a person other than the judgment-debtor.*—In execution of a decree on a mortgage, certain property was sold, which the plaintiff in this suit claimed as his own under sale to himself by the sons of the judgment-debtor. He applied to the Court to have the sale set aside, but, failing in his application, he sued both the decree-holder and the auction-purchaser for a declaration of his title to the property in question. The Assistant Judge held on appeal that the suit was not maintainable, on the ground that, the greater part of the property being included in the decree, the question of

**CIVIL PROCEDURE CODE, ACT XIV  
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**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

title ought to have been settled in execution-proceedings under s. 244 of the Code of Civil Procedure, and not by a separate suit. *Held*, reversing the decision of the Assistant Judge, that s. 244 did not bar the present suit. It could not apply, except as regards property affected by the decree, and a part of the property claimed by the plaintiff was not included in the decree. Moreover, the question in the present suit did not arise between the parties to the former suit, or their representatives. **SHIVRAM CHINTAMAN v. JIVU** . . . **I. L. R., 13 Bom., 34**

**132.** ——— *Separate suit on disallowance of objection to execution.*—In execution of a decree, the defendant, who was sued as the representative of her deceased brother, objected under s. 244 of the Code of Civil Procedure to the attachment of certain lands to which she set up independent title. The objection was refused. *Held*, that the objection was not barred by s. 244.

withstanding the order under s. 244. **KETILAMMA v. KULAPPAN** . . . **I. L. R., 13 Mad., 228**

**133.** ——— *Objection raising question of title between party added as*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

and applied to have the sale set aside on payment being made by him under Civil Procedure Code, s. 310A. The purchaser was the decree-holder. The application having been refused by the Courts of first instance and first appeal, the applicant

**135.** ——— *Claims to attached property—Questions arising between the*

petitioner the record of the suit in regard to the execution, discharge, or satisfaction of a decree. The

**136.** ——— *Claim by legal representative to property as his own independently of deceased judgment-debtor—Jus tertii—Civil Procedure Code, ss. 234, 278, [283]—Held by the Full Bench (TIRRELL, J., dissenting).—Where a judgment-debtor dies after the passing of the*

**v. JUGUT CHANDRA AUDRIKARI**

**[I. L. R., 17 Calc., 57]**

**134.** ——— *Right of a mortgagee to the benefit of s. 310A—Appeal against order adverse to mortgagee.*—A mortgagee, being a party to a suit, objected that the mortgaged premises had been attached and sold in execution of the decree

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to sale in execution, and giving the auction-purchaser a good title under the sale; and the Court's order is subject to appeal, but not to a separate suit under s. 283. Where the legal representative asserts that the property is his own, and has not come to him from the deceased judgment-debtor, he cannot set up a *jus tertii*, so as to come in under s. 278 and the following sections of the Code. He can only do so where he opposes execution against any particular property on the ground that, although it is vested in him, it is vested in him not beneficially by reason of his being the representative of the judgment-debtor, but as trustee or executor of someone else. In that case either party may have the question of *jus tertii* determined in a separate suit. *Rajrup Singh v. Ramgolan Roy*, I. L. R., 16 Cal., 1, approved. *Abdul Rahman v. Muhammad Yar*, I. L. R., 4 All., 190, and *Awadh Kuari v. Raktu Tiwari*, I. L. R., 6 All., 109, overruled. *Bahori Lal v. Gauri Sahai*, I. L. R., 8 All., 626, distinguished. Held by TRELL, J., *contra*, that where the legal representative of a deceased party to the decree appears, not in his capacity of legal representative contesting a question arising between the parties and relating to the execution, discharge, or satisfaction of the decree, but in his personal character independent of the suit and decree, and prefers a claim under s. 278 on the ground that the decree has no operation against certain property attached, for reasons personal to the debtor and antagonistic to all the parties and their representatives as such the objector is not debarred from bringing a separate suit by the mere accident that he is a legal representative in the execution proceedings. *SETH CHAND MAL v. DURGA DEVI* [I. L. R., 12 All., 313]

137. — *Application to execute decree against alleged representative of deceased judgment-debtor*—Civil Procedure Code, s. 234.—In the case of an application under s. 234 of the Code of Civil Procedure to execute a decree against a person alleged to be the representative of a deceased judgment-debtor, it is for the Court which passed the decree to decide whether the person against whom the execution is sought is or is not such representative, but it is for the Court executing the decree to decide to what extent such person is liable as such representative. *Srihari Mundul v. Murari Chowdhry*, I. L. R., 13 Cal., 257. *SETH SHAPURJI NANABHI v. SHANKER DAT DUBE* I. L. R., 17 All., 431

138. — *Decree for sale on a mortgage—Mode of intervention of third party claiming an interest by succession in the property decreed to be sold*—Civil Procedure Code (1882), s. 278—*Right of suit*.—Two heirs of a Mahomedan woman took possession on her death of certain immoveable property left by her to the exclusion of the third heir, their sister. They mortgaged that property. The mortgagee brought a suit, and obtained a decree for sale. After decree, one of the mortgagors died, and his sister was brought upon the record as his

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—continued.

representative. The property was sold, and subsequently the sister brought a suit against the auction-purchaser for recovery of her share in the mortgaged property. Held that s. 244 of the Code of Civil Procedure did not apply, and that the suit was maintainable. *Deefholts v. Peters*, I. L. R., 14 Cal., 631, and *Seth Chand Mal v. Durga Dei*, I. L. R., 12 All., 313, referred to. *SANWAL DAS v. BISMILLAH BEGAM* I. L. R., 19 All., 480

139. — *Question as to whether property belongs to judgment-debtor or not*—*Grounds of objection to attachment of property*—Civil Procedure Code, ss. 278 to 283.—Where the question is whether the property in dispute belongs to the judgment-debtor or to his estate or not, and the question is raised in a proceeding in execution between parties to the suit or their representatives, it matters not on what grounds the objection is taken to the property being made the subject of execution, and the question is one to be determined in execution, and s. 244 of the Code of Civil Procedure bars a separate suit. *Abidunissa Khatoon v. Amirunissa Khatoon*, I. L. R., 2 Cal., 327; I. L. R., 4 I. A., 66, followed. *UPENDRA BHATTA v. RANGA NATHA BHATTA* I. L. R., 17 Mad., 399

140. — *Claim to attached property—Order in execution proceedings—Separate suit to declare property not liable to attachment*.—In execution of a decree passed against the plaintiff, certain property in his possession was attached. Thereupon he laid claim to the property on the ground that it was service vatan. This claim was rejected. The plaintiff then filed a regular suit for a declaration that the property was not liable to attachment and sale. Held that the suit was barred under s. 244 of the Code of Civil Procedure. The Court which originally rejected the plaintiff's claim in the execution proceedings had jurisdiction to investigate the claim under cl. (c) of s. 244 of the Code. *TRIMBAK RAMRAO DESHPANDE v. GOVINDA* [I. L. R., 19 Bom., 323]

141. — *Claim to attached property—Scope of s. 244 and questions with which it deals*.—S. 244 presupposes that the questions with which it deals are such as can be finally determined in the execution proceedings. If they cannot, it has no application. The Court should look to the substance of the objection, and not to the accident that it is put forward by one person rather than another. *Upendra Bhatta v. Ranganatha Bhatta*, I. L. R., 17 Mad., 399, considered. *Panchann Bundopadhya v. Rabi Bibi*, I. L. R., 17 Cal., 711, and *Murigeya v. Hayat Sahab*, I. L. R., 23 Bom., 237, referred to. *RAMANATHAN CHETTIAR v. LEVVAI MARAKAYAR* [I. L. R., 23 Mad., 195]

142. — *Questions arising between the decree-holder and the representatives*

**CIVIL PROCEDURE CODE, ACT XIV  
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**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

*of the judgment-debtor—Claims to attached pro-*

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143. ————— Possession in

session to the auction-purchaser, and the  
tion of a decree, are proceedings in execution of the

**CIVIL PROCEDURE CODE, ACT XIV  
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**1. QUESTIONS IN EXECUTION OF DECREE**  
—continued.

and not by a separate suit. MADHUSUDAN DAS v.  
GOBINDA PRIA CHOWDHURANI

[I. L. R., 27 Cal., 34  
4 C. W. N., 417

144. ————— Claim to prop-  
erty attached in execution of decree—"Parties to  
the suit"—Subsequent suit by a defendant who had  
been exonerated in a former suit—Maintainability

At the death of the deceased, subsequently, the said lands would have vested  
in the plaintiff who now brought this suit claiming

Sectayya, I. L. R., 21 Mad., 381  
SWAMI SASTRULU v. KAMESWARAMMA

[I. L. R., 23 Mad., 381

See GADICHERLA CHINA SSETATTA v. GADICHERLA  
SSETATTA I. L. R., 21 Mad., 45

145. ————— Parties to  
suit—Alteration of decree by Court executing  
decree.—The plaintiff purchased a one-gunda share  
in estate No 831 and obtained a decree for possession  
against the defendants. While the plaintiff's suit  
was pending, and before he took out execution under  
the said decree, partition proceedings took place.  
The partition-proceedings the defendant's interest

**CIVIL PROCEDURE CODE, ACT XIV  
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**1. QUESTIONS IN EXECUTION OF DECREE  
—continued.**

Procedure Code. The required transformation of the defendants' interest could not be effected without altering the decree which was given in the former suit. The question that arose in the suit, although it was one between the same parties as those in the former suit, could not be regarded as a question relating to the execution of the decree in the former suit, and therefore the Court in execution proceedings had no authority to make the necessary alteration in the decree. *KRISHNA ROY v. JAWAHIR SINGH*

[I. L. R., 20 Cal., 260]

**146. — Order cancelling an execution-sale of land—Subsequent suit for possession brought by judgment-debtor.**—A decree-holder attached land of his judgment-debtor and brought it to sale and himself became the purchaser in execution of his decree. The purchase having been made without the permission of the Court, the sale was set aside on the application of the judgment-debtor, who now sued to recover possession of the land. *Held* that the suit was not maintainable under Civil Procedure Code, s. 244. *VIRARAGHAVA v. VENKATA*

[I. L. R., 16 Mad., 287]

**147. — Purchaser of land sold in execution—Confirmation of sale—Objection of unsaleability.**—A judgment-debtor having died before the decree was executed, his sons were brought on to the record. Ancestral property of the brought to sale in execution and purchased by the decree-holder, and the sale to him was confirmed. Subsequently the judgment-debtor's sons objected, under Civil Procedure Code, s. 244, that the property which had been brought to sale was not liable to be sold in execution. *Held* that the objection was rightly made under s. 244, and a separate suit was not necessary for the purpose of an adjudication on it. *KRISHNAN v. ARUNACHALAM*

[I. L. R., 16 Mad., 447]

**148. — Question of validity of sale of an occupancy holding not transferable by custom in execution of a decree for arrears of rent obtained by a co-sharer landlord—Bengal Tenancy Act (VIII of 1885), ss. 22, 65, 73, and 188.**—An occupancy holding which is not transferable by custom, as also the interest of the judgment-debtor in the said holding, are not saleable in execution of a decree for rent obtained by only some of several co-sharer landlords. *Bhiram Ali Shaik Shikdar v. Gopi Kanth Shaha*, I. L. R., 24 Cal., 355, referred to. A judgment-debtor, whose occupancy holding, which was not transferable by custom, had been sold in execution of a decree for rent obtained by some of the co-sharer landlords, objected to the application made by the auction-purchaser after the confirmation of the sale for delivery of possession of the said holding, on the ground that the sale was illegal. *Held* that the confirmation of sale was no bar to the application that was made by the judgment-debtor to

**CIVIL PROCEDURE CODE, ACT XIV  
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**1. QUESTIONS IN EXECUTION OF DECREE  
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have it declared that in execution of such a decree the holding could not be sold, the question being one which related to the execution, discharge, and satisfaction of the decree. *Basti Ram v. Fattu*, I. L. R., 8 All., 146, referred to. *DURGA CHARAN MANDAL v. KALI PRASANNA SARKAR*

[I. L. R., 26 Cal., 727  
3 C. W. N., 588]

**149. — Sale by mortgagee in execution of decree—Sale contrary to provisions of s. 99, Transfer of Property Act.**—Property subject to a mortgage having been sold by the mortgagee as holder of a decree against the mortgagors, a separate suit was brought by the mortgagors to set aside the sale as being in contravention of s. 99 of the Transfer of Property Act. On objection being taken that the suit was not maintainable, the matter being one for determination in execution proceeding under s. 244 of the Code of Civil Procedure, —*Held* (1) that, although the sale was contrary to the provisions of s. 99 of the Transfer of Property Act, that section being for the benefit only of a particular class of persons, namely, those concerned with a right to redeem mortgaged property, such a sale was not void, but voidable; (2) that the question, being one arising between the parties to the suit wherein the sale was made and relating to execution, could not be raised and decided in a suit, but should be raised and tried only in execution proceedings taken under s. 244 of the Code of Civil Procedure, and the sale set aside if such relief were not, for any reason, barred; (3) that the sale having been confirmed, such confirmation was final, and precluded the mortgagors from seeking the relief to which they would otherwise have been entitled; and (4) that, notwithstanding such sale and confirmation, the mortgagors might not be precluded from suing to redeem the mortgaged property on payment of the amount given credit for by the mortgagee in respect of the sale. *MAYAN PATHUTI v. PAKURAN*

I. L. R., 22 Mad., 347

**150. — Question of saleability of occupancy holding in execution of decree—Transferability of occupancy holding according to custom or usage.**—When an application is made to execute a decree for money by the attachment and sale of an occupancy holding, the judgment-debtor is entitled, under s. 244 of the Civil Procedure Code, to raise the question as to whether the holding is saleable according to custom or usage, and to have that question determined by the Court executing the decree. *MAJED HOSSEN v. RAGHUBUR CHOWDHRY*

[I. L. R., 27 Cal., 187]

**151. — Question for Court executing decree—Question between decree-holder and judgment-debtor as to saleability or otherwise of an occupancy holding.**—Under s. 244 of the Civil Procedure Code, the question as to the saleability or otherwise of an occupancy holding between the decree-holder and judgment-debtor can be

**CIVIL PROCEDURE CODE, ACT XIV  
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**1. QUESTIONS IN EXECUTION OF DECREE**  
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determined in the execution proceeding. *Durga Charan Mandal v. Kali Prasanna Sarkar*, I. L. R., 26 Calc., 727, and *Bhiram Ali Shaik Shikdar v. Gopi Kanth Shaha*, I. L. R., 24 Calc., 355, referred to *GAHAR KHALIFA BIPARI v. KASHI MUDDI JAMADAR*. I. L. R., 27 Calc., 415 [4 C. W. N., 557]

152. ———— *Suit for administration in respect of barred decree—Mortgage-decree—Transfer to High Court for execution—*

a separate suit. *JOSEMAYA DASSI v. THACKOMONT DASSI*. I. L. R., 24 Calc., 473

153. ———— *Question as to*

institution, was appointed to fill the then vacant office of Tambiran, managing certain maths. The decree directed that the Pandara should name a

own selection. In execution the Pandara named a Tambiran for the office, but died before the inquiry as to his fitness. His successor, as head of the admi-

**CIVIL PROCEDURE CODE, ACT XIV  
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**1. QUESTIONS IN EXECUTION OF DECREE**  
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nam, petitioned to withdraw the nomination, naming another Tambiran. The subordinate Court made an order disallowing the withdrawal, and, after inquiry as to the fitness of the first-named Tambiran, appointed him to the office. The High Court, on the Pandara's appeal, decided the first nomination had been competently withdrawn, and directed an inquiry as to the fitness of the person secondly named, finding on the evidence that the first-named was not fit. *Held*, on the appeal of the Tambiran first-named, that the question as to his right was one that had arisen between the parties to the suit,

SAMBANDHA PANDARA SANNADHI

[I. L. R., 17 Mad., 343  
I. R., 21 I. A., 71]

154. ———— *Second suit for restitution of conjugal rights—Decree in former suit not executed—Subsequent voluntary cohabitation—*

house, and stayed with him for two months. She afterwards deserted him again. Thereupon the plaintiff filed a second suit for restitution of conjugal rights. *Held* that the suit was not barred either under s. 13 or s. 244 of the Code of Civil Procedure. A second withdrawal from cohabitation constitutes a fresh cause of action. *KESHAYLAL GIRDHARLAL v. BAI PARVATI*. I. L. R., 18 Bom., 327

155. ———— *Objection by representative of party to the suit to the jurisdiction of the Court which passed the decree.—S. 244 of the Code of Civil Procedure applies as well to a dispute arising between the parties contemplated by that*

156. ———— *Suit for mesne profits subsequent to partition—Right of suit—Decree in suit for partition not giving mesne profits.—Where a decree for partition is silent about mesne profits subsequent to the institution of the suit, a party is at liberty to assert his right to such profits by a separate suit. S. 244, para. 2, of the*

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE—continued.**

Code of Civil Procedure, expressly reserves such a right of suit. BHIVRAY v. SITARAM

[I. L. R., 19 Bom., 532]

157. ———— *Suit for contribution against joint judgment-debtor.*—S. 244 of the Code of Civil Procedure does not apply to a suit brought by one of two joint judgment-debtors who has been compelled to satisfy the decree in full against the other joint judgment-debtor for contribution, the liability being one which could not have been decided in execution of decree. RAM SARAN PANDE v. JANKI PANDE

[I. L. R., 18 All., 108]

158. ———— *Decree incapable of execution by reason of events subsequent to decree—Decree giving an option to the parties.*—A partition suit brought by a son against his father was referred to arbitration. On the 9th January 1890, the award was published, and, on the 27th March 1890, the defendants moved for and obtained a decree in terms of the award. By this decree it was ordered that, in satisfaction of the plaintiff's claim, the defendant should pay to him Rs. 1,05,000 in the manner therein stated, viz., Rs. 40,000 to be paid forthwith, and the balance of Rs. 65,000 to be paid "upon the plaintiff delivering to the defendant certain specified property, which included two vessels or buglows, called respectively the *Nasri* and *Sambuk*." In no event was defendant to be required to pay the Rs. 65,000 before the 15th November 1890. At the date of the decree the vessel *Sambuk* was at sea on a voyage, and, on the 18th June 1890, while still on the voyage, she was lost. On the 15th November 1890, the plaintiff's attorneys demanded payment of the balance of Rs. 65,000. They offered to deliver the other properties specified in the decree, but stated that the vessel *Sambuk* had been lost. They offered to pay its value, which they estimated at Rs. 1,000. The defendants, however, demanded the delivery of the buglow, which they stated to be worth a very large sum. The defendant having, under the circumstances, refused to pay the Rs. 65,000, the plaintiff applied for execution of the decree, which was refused. He then obtained a rule calling on the defendant to show cause why the decree of the 27th March should not be amended or rectified by stating therein the amount of money to be paid to the defendant as an alternative, if delivery of the vessel *Sambuk* could not be made, such delivery having become impossible. That rule was discharged. The plaintiffs then took out a summons calling on the defendant to show cause why an order should be made, under s. 244 of the Civil Procedure Code, directing the plaintiffs to pay to the first defendant, in lieu of the delivery of the vessel *Sambuk*, such sum of money as might be fixed by the Court as the value of or compensation for the loss of the vessel *Sambuk* in the decree mentioned, and why an order should not be made that on payment of such sum and delivery of the other properties mentioned in

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

**1. QUESTIONS IN EXECUTION OF DECREE—concluded.**

the decree which the plaintiffs were to deliver under the decree to the first defendant on payment by the latter to them of Rs. 65,000 the first defendant should pay to the plaintiffs Rs. 65,000 and interest thereon from the 15th day of November 1890, mentioned in the said decree, and, in the event on its being held that the first defendant was not bound to pay the said sum of Rs. 65,000, then why an order should not be made that the property mentioned in the decree which the plaintiffs were to hand over to the first defendant on payment of Rs. 65,000 should not be retained, used, and appropriated, absolutely by the plaintiffs for their own use and benefit, freed and discharged of all claims on the part of the first defendant, and why the first defendant should not be directed to withdraw the claim made by him to a debt of Rs. 22,000, or thereabouts, mentioned in an affidavit of one Ahmed bin Essa Khaliffa, and why such further or other order as to the Court might seem fit and the justice of the case may require should not be made in the premises and in relation to the properties mentioned in the decree which were to be delivered over by the plaintiffs to the first defendant on receiving from him Rs. 65,000, and why in the alternative this suit should not be restored and placed on the board for trial. It was contended by the plaintiff that the questions raised in the summons were questions arising in execution to be dealt with by a Judge in chambers under s. 244 of the Civil Procedure Code, and that a fresh suit was not necessary. *Held*, dismissing the summons, that the application was not one in execution of a decree, nor was the question one arising in the course of execution, but that the decree having become incapable of execution, the summons asked the Judge to decide what were the rights of the parties in consequence of its non-execution. *Held*, also (as to the part of the summons asking for restoration of the suit), that the matters in issue in the suit had been fully heard and determined, and the rights of all parties had been settled by the decree, and consequently there was nothing further to be tried. The Court could not in this suit, after passing a decree, proceed to ascertain the rights of the parties under a state of facts quite different from those which appeared in the pleadings and arising subsequently to the decree. AHMED BIN SHAIK ESSA KHALIFFA v. ESSA BIN KHALIFFA

[I. L. R., 18 Bom., 495]

**2. PARTIES TO SUIT.**

159. ———— *Representative of decree-holder—"Parties to suit," Meaning of.*—The words in s. 11, Act XXIII of 1861, "questions arising between the parties to the suit" cannot be limited to questions arising between those who were parties to the suit at the date of the decree, but after decree the representative of a decree-holder, or the representative of a defendant against whom an execution is sought under ss. 210 and 216 of the Code,

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

become parties to the suit for the purpose of execution, and questions arising between the parties to the suit within the meaning of s. 11 of the amending Act **BUDDU RAMAIA v. VENKAIA 3 Mad., 263**

**180. — Separate suit.**

—E having obtained a decree for money against K, the karnavan of the defendants, K died, and the

Civil Procedure. **RAYUNNI MEKON v. KUNJU NAYAR I. L. R., 10 Mad., 117**

**181. — Transfer of decree by operation of law—Representative of original decree-holder—Right to appeal against order refusing execution.**—E died in May 1859, leaving his property to his executrix in trust for the

this suit against L as manager of certain landed property belonging to the Hallai Bhattia caste, and known as Mahajan Wadi to recover certain loans made by them as executors to him as manager of the said wadi. On the 11th May 1870, while this suit

proceeded without amendment. On the 23rd Janu-

to make any payment to the appellant, whereupon the appellant applied for execution of the decree the His the the decree within the meaning of s. 242 of the Civil Procedure Code. The decree had been transferred to him "by operation of law." As such, he was

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

entitled to sue out execution, and was to be regarded as the representative of the original decree-holder within the meaning of cl. (c) of s. 244 of the Civil Procedure Code, and had a right of appeal against the order of the Judge in chambers refusing execution. **PURMANANDAS JIWANDAS v. VALLABDAS WALJI [I. L. R., 11 Bom., 506]**

the transfers to M were inoperative, as the instruments of transfer had not been registered at the place where the substantial portion of the mortgaged property was situate, in accordance with s. 20 of the Registration Act of 1877. It appeared that no notice had been issued to M under s. 232 of the Civil Procedure Code, that he was dead, and that his legal representatives had not been cited as required by law. The application was allowed by the Courts below. Held that the matter involved questions arising between the parties to the decree, or their representatives, within the meaning of s. 244 (c) of the Code, and that the order allowing the application was therefore a decree within the definition of s. 2, and was appealable as such **GULZARI LAL v. DAYA RAM [I. L. R., 9 All., 48]**

**183. — Representative of decree-holder—Attachment of decree—Civil**

**184. — Question relating to execution of decree—Representatives.**—K and M were brothers alleged to be joint in food,

# CIVIL PROCEDURE CODE, ACT XIV OF 1892 (ACT X OF 1877) *continued.*

## 1. QUESTIONS IN EXECUTION OF DECREE

*continued.*  
Code of Civil Procedure, especially sections such as  
field of suit. *PRINCE v. SHAMIM*

[I. L. R., 10 Bom., 532]

157. *—* *Suit for a decree against joint judgment-debtors.* s. 244 of the Code of Civil Procedure does not apply to a suit brought by one of two joint judgment-debtors who has been compelled to satisfy the decree in full against the other joint judgment-debtor for contribution, the liability being one which could not have been divided by execution of decree. *RAM SARKI PANDIT v. JANKI PANDIT*

[I. L. R., 18 All., 109]

158. *—* *Decree impossible of execution by reason of events subsequent to decree.*—*Decree giving an option to the plaintiff.*—A plaintiff sued for and by a decree the father was referred to arbitration. On the 20th January 1890, the award was published, and on the 27th March 1890, the defendants moved for and obtained a decree in terms of the award. By this decree it was ordered that, in satisfaction of the plaintiff's claim, the defendant should pay to him Rs. 105,000 in the manner therein stated, viz., Rs. 100,000 to be paid forthwith, and the balance of Rs. 5,000 to be paid upon the plaintiff delivering to the defendant certain specified property, which included two vessels of business, called respectively the *Nouri* and *Sambuk*. In no event was defendant to be required to pay the Rs. 5,000 before the 15th November 1890. At the date of the decree the vessel *Sambuk* was at sea on a voyage, and, on the 15th June 1890, while still on the voyage, she was lost. On the 15th November 1890, the plaintiff's attorneys demanded payment of the balance of Rs. 5,000. They offered to deliver the other properties specified in the decree, but stated that the vessel *Sambuk* had been lost. They offered to pay its value, which they estimated at Rs. 10,000. The defendants, however, demanded the delivery of the *Nouri*, which they stated to be worth a very large sum. The defendant having, under the circumstances, refused to pay the Rs. 5,000, the plaintiff applied for execution of the decree, which was refused. He then obtained a rule calling on the defendant to show cause why the decree of the 27th March should not be amended or rectified by stating therein the amount of money to be paid to the defendant as an alternative, if delivery of the vessel *Sambuk* could not be made, such delivery having become impossible. That rule was discharged. The plaintiff then took out a summons calling on the defendant to show cause why an order should be made, under s. 244 of the Civil Procedure Code, directing the plaintiff to pay to the first defendant, in lieu of the delivery of the vessel *Sambuk*, such sum of money as might be fixed by the Court as the value of or compensation for the loss of the vessel *Sambuk* in the decree mentioned, and why an order should not be made that on payment of such sum and delivery of the other properties mentioned in

# CIVIL PROCEDURE CODE, ACT XIV OF 1892 (ACT X OF 1877) *continued.*

## 1. QUESTIONS IN EXECUTION OF DECREE

*continued.*  
the decree which the plaintiff were to deliver under the decree to the first defendant on payment by the latter to them of Rs. 5,000 the first defendant should pay to the plaintiff Rs. 5,000 and interest thereon from the 15th day of November 1890, mentioned in the said decree, and, in the event of its being held that the first defendant was not bound to pay the said sum of Rs. 5,000, then why an order should not be made that the property mentioned in the decree which the plaintiff were to hand over to the first defendant on payment of Rs. 5,000 should not be retained, used, and appropriated, absolutely by the plaintiff for their own use and benefit, freed and discharged of all claims on the part of the first defendant, and why the first defendant should not be directed to withdraw the claim made by him to a debt of Rs. 22,000, or thereabouts, mentioned in an affidavit of one Ahmed bin Hussa Khaliffa, and why such further or other orders as to the Court might seem fit and the justice of the case may require should not be made in the premises and in relation to the properties mentioned in the decree which were to be delivered over by the plaintiff to the first defendant on receiving from him Rs. 5,000, and why in the alternative this suit should not be restored and placed on the board for trial. It was contended by the plaintiff that the questions raised in the summons were questions arising in execution to be dealt with by a Judge in chambers under s. 244 of the Civil Procedure Code, and that a fresh suit was not necessary. *Held*, dismissing the summons, that the application was not one in execution of a decree, nor was the question arising in the course of execution, but that the decree having become incapable of execution, the summons asked the Judge to decide what were the rights of the parties in consequence of its non-execution. *Held*, also (as to the part of the summons asking for restoration of the suit), that the matters in issue in the suit had been fully heard and determined, and the rights of all parties had been established by the decree, and consequently there was nothing further to be tried. The Court could not in this suit, after passing a decree, proceed to ascertain the rights of the parties under a state of facts quite different from those which appeared in the pleadings and arising subsequently to the decree. *AHMED BIN SHAIK BINA KHALIFFA v. ESSA BIN KHALIFFA*

[I. L. R., 18 Bom., 495]

## 2. PARTIES TO SUIT.

159. *—* *Representative of decree-holder.*—*"Parties to suit."* *Meaning of.*—The words in s. 11, Act XXIII of 1861, "questions arising between the parties to the suit" cannot be limited to questions arising between those who were parties to the suit at the date of the decree, but after decree the representative of a decree-holder, or the representative of a defendant against whom an execution is sought under ss. 210 and 216 of the Code,

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

become parties to the suit for the purpose of execution, and questions arising between the parties to the suit within the meaning of s. 11 of the amending Act **BUDDU RAMAIA v. VENKAIA** 3 Mad., 263

160.

*Separate suit.*

—R having obtained a decree for money against K, —R died and the

that the suit was pending at the death of R  
Civil Procedure. **RAVENNA MENON v. KUNJU NAYAR** I. L. R., 10 Mad., 117

161.

*Transfer of*

*decree by operation of law—Representative of original decree-holder—Right to appeal against order refusing execution.*—R died in May 1859, leaving his property to his executors in trust for the appellant P, and he directed that the property should be assigned by them to the appellant as soon as he came of age. In August 1868, the executors filed this suit against L as manager of certain landed property belonging to the Hallai Bhattia caste, and known as Mahajan Wadi to recover certain loans

their testator to the appellant P, by the will of R, and the same was assigned to him before his death "all

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

entitled to sue out execution, and was to be regarded as the representative of the original decree-holder within the meaning of cl. (c) of s. 244 of the Civil Procedure Code, and had a right of appeal against the order of the Judge in chambers refusing execution. **PURMANANDAS JIWANDAS v. VALLABDAS WALLJI**

[I. L. R., 11 Bom., 508]

property was situated, in accordance with s. 20 of the Registration Act of 1877. It appeared that no notice

held that the decree was not binding on the parties to the decree, or their representa-

163.

*Representative*

*of decree-holder—Attachment of decree—Civil*

decree which he has attached. When the decree attached has been passed by the same Court as the

164.

*Question relating*

*to execution of decree—Representatives.*—F and M were brothers alleged to be joint in land, dwelling, and business. In a suit which was brought against K, and which was unsuccessfully defended by him on behalf of himself and the joint family, a decree for costs was passed against him. F died after the decree, and the decree-holder in execution had F's

decree within the meaning of s. 232 of the Civil Procedure Code. The decree had been transferred to him "by operation of law." As such, he was

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

sons put on the record as his representatives. Certain property was attached in execution, and the sons objected that the property in question had come to them as the self-acquired property of their uncle *M*, who had died after *K*, and that they had inherited no property from their father *K*. Their objection was followed by the Court executing the decree, and the property was ordered to be released from attachment. In a suit brought by the assignee of the decree-holder against the sons of *K* to establish his right to proceed against the property in question in execution of the decree against *K*,—*Held* that the question of the liability of the property to be taken in execution in the hands of the defendant was a "question arising between the parties to the suit in which the decree was passed or their representatives, and relating to the execution, etc., of the decree" within the meaning of s. 244 of the Civil Procedure Code, and that the suit was consequently not maintainable. The cases as to the position of representatives added to the suit either before or after decree referred to and discussed. *RAJRUP SINGH v. RAMGOLAM ROY*

[I. L. R., 16 Calc., 1

**165.** ——— *Representatives of judgment-debtors—Question of liability of property to be sold.*—*Held* that the question whether a person alleged to be a representative of a deceased party to a suit is such representative, and also the question whether property against which execution is sought in the hands of the representative of a deceased party was in fact the property of such deceased party and not the separate property of the representative, are questions to be decided under s. 244 of the Code of Civil Procedure and not by separate suit. *Rajrup Singh v. Ramgolam Roy*, I. L. R., 16 Calc., 1, *Choudry Wahed Ali v. Jumae*, 11 B. L. R., 149, and *Seth Chand Mal v. Durga Dei*, I. L. R., 12 All., 313, referred to. *BENI PRASAD KUNWAR v. LUKHNA KUNWAR*. I. L. R., 21 All., 323

**166.** ——— "*Party*" — "*Representative of a party*" — *Auction-purchaser—Order in summary inquiry.*—A purchaser at a Court-sale is not a party, or the representative of a party, within the meaning of s. 244 of the Code of Civil Procedure (Act XIV of 1882). He is, therefore, not bound by any order in the miscellaneous inquiry under s. 280, 281, or 282 of the Code. Nor is he bound by the specifications contained in the proclamation of sale of the claims of intervenors. Certain property was attached in execution of a decree. The defendants intervened, and objected to the attachment, on the ground that they held the property on permanent tenancy. Their objection was allowed, and the Court made an order, directing the property to be sold, subject to the defendants' rights. In the proclamation of sale, however, it was stated that the Court did not guarantee the title of the intervenors. The plaintiff purchased the property at the Court-sale. He then sued to eject the defendants. The defendants pleaded that the plaintiff had purchased, subject to their rights as permanent tenants. Both the lower Courts rejected

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

the plaintiff's claim on the ground that he was bound by the order in the miscellaneous inquiry, which had become conclusive by reason of his having omitted to sue within one year from the date of the order. *Held*, reversing the lower Court's decision, that the order in the miscellaneous inquiry was not binding on the plaintiff as an auction-purchaser. *VISHVANATH CHAUDH NAIK v. SUBRAYA SHIVAPA SHETTI*

[I. L. R., 15 Bom., 290

**167.** ——— *Purchaser of rights of Hindu widow—Representative.*—After the death of a childless Hindu widow, a lessee from her of property which had belonged to her husband obtained against her vendees of part of the same property a decree for damages for wrongfully keeping him out of possession. The effect of the decision was to decree the claim against the estate of the widow, and to exempt from liability the judgment-debtors personally and the property which they had purchased. In execution of the decree, the said property was sold, and was purchased by the decree-holder; one of the judgment-debtors had died during the execution-proceedings, and her son was duly impleaded as her representative, and he raised no objection to the attachment and sale. Subsequently this son sold his rights and interests in the property; and his vendee sued the decree-holder to recover possession on the ground that, the decree being limited to the estate of the childless Hindu widow, the defendant as purchaser could not acquire by the sale any rights superior to those of the widow; that those rights had expired upon her death, and left nothing to be sold, and that on her death the property devolved upon the plaintiff's vendor, and had thence passed to the plaintiff. *Held* that the plaintiff's vendor was a party to the suit within the meaning of s. 244 (c) of the Civil Procedure Code, and that he not having objected to the sale in execution of the decree, neither he nor the plaintiff could go behind that sale or claim the property upon any title which he might have asserted in the execution-proceedings; and that the suit was barred by s. 244. *Ram Ghulam v. Hazaru Kuar*, I. L. R., 7 All., 547, followed. *Bahori Lal v. Gauri Sahai*, I. L. R., 8 All., 626, distinguished. *Mulmantri v. Ashfaq Ahmad*, I. L. R., 9 All., 605, *Roop Lal Dass v. Bekani Meah*, I. L. R., 15 Calc., 437, and *Ravunni Menon v. Kunju Nayar*, I. L. R., 10 Mad., 117, referred to. *RAGHUBAR DIAL v. HAMD JAN*

[I. L. R., 12 All., 73

**168.** ——— *Execution of decree—Transferee of decree—Representative of party to suit—Appeal—Civil Procedure Code (1882), ss. 232, 540, and 588.*—A person who, within the meaning of s. 232 of the Code of Civil Procedure, is a transferee of a decree is a representative within the meaning of s. 244, *quid* the decree, of the party to the suit under whom he, immediately or by mesne assignment in writing, or by operation of law, has derived title to the decree in the suit. It is the assignment in writing from the decree-holder, and

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

not the recognition by a Court of him as a represen-

*Gulzari Lal v. Dagaram, I. L. R., 9 All., 48,*  
[I. L. R., 9 All., 48]

169. ———— "Representa-  
tive" of party—Purchaser of the decree from the

DWAR BUKSH SIKKAR v. FATIK JALI  
[I. L. R., 28 Cal., 250  
3 C. W. N., 232]

170. ———— Civil Proce-  
dure Code (Act XIV of 1882), ss. 232, 244, cl. (c)  
—Civil Procedure Code Amendment Act (VII  
of 1900)

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

*Jas. Kishen Das, I. L. R., 16 All., 483,* followed.  
GANGA DAS SEAL v. YAKUB ALI DOBASHI

[I. L. R., 27 Cal., 670]

171. ———— Party unnecessarily  
added to suit—*Separate suit*.—S. 244 of the Civil  
Procedure Code alludes to parties to the decree or  
their representatives, but it is not on that account  
open to a plaintiff to evade the section by adding an  
unnecessary party to the suit. KRISTO MOHINEE  
DASSEE v. KALIPROSONNO GHOSE

[I. L. R., 8 Cal., 402]

172. ———— Purchaser of decree  
—*Rights of purchaser*.—The words "party to a  
decree" include the purchaser of the decree.

TARA CHAND HAJRAH v. DOORGA CHURN HAJRAH  
[10 W. R., 205]

173. ———— Petitioner, Position  
of, when petition struck off—*Stranger*.—In a  
suit brought by M against K and others, certain lands  
belonging to G were included, and G was made a  
defendant, though he had no interest in the subject-matter.

[10 W. R., 191]

174. ———— Party on record,  
though wrongly—*Rights of appeal*.—A party

175. ———— Applicability

176. ———— Person obstruct-  
ing the decree-holder at the instigation of the

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

not barred. HALODHAR SHAKA v. HARODHAR  
DAS KOLBERTO . I. L. R., 12 Cal., 105

[I. L. R., 25 Cal., 49  
2 C. W. N., 76

184. ———— Application  
for execution by beneficial holder of decree—Ap-

decree  
All,  
Das  
SHEODHAR

[I. L. R., 20 All., 539

185. ———— Execution of

NAYAB . I. L. R., 14 Mad., 478

only appealed, and the decree was reversed as regards

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

IN HER ATTEMPTS TO OBTAIN  
them for partition of the three-quarters share pur-  
chased by her. Held that the suit was not pre-  
cluded by Civil Procedure Code, s. 244. NA-  
GAMUTHU v. SAVARIMUTHU

[I. L. R., 15 Mad., 226

197

"Judgment.

share in the land was allotted to a member of the

Nagamuthu v. Savarimuthu, I. L. R., 15 Mad., 226,  
followed. VASUDEVA UPADHYAYA v. VISVARAJA  
THIRTHASAMI . I. L. R., 19 Mad., 331

See VIDHUPATRAYA THIRTHASAMI v. VIDIA-  
NIDHI THIRTHASAMI

[I. L. R., 22 Mad., 131

where these two last-mentioned cases were distin-  
guished.

188. ———— Rival decree-holders

[I. L. R., Sup. Vol., 1022:9 W. R., 515

See GOKOOL DASS v. GURGESH SINGH  
[3 N. W., 164

189. ———— Claim for rateable  
distribution by creditor rejected—Sum  
detained in Court, pending application of High  
Court—Application rejected—Interest on sum

Court under s. 622 of the Code of Civil Procedure  
to set aside this order, the share claimed by S

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued

this kind, and that *B* had been rightly substituted. *Harv. Saran Moudra v. Bhubaneswari Devi*, *I. L. R.*, 16 Calc., 40 *L. R.*, 15 *I. A.*, 195, referred to. *Held*, also, that *B* was precluded by the previous proceedings from questioning the order of substitution. *Mungul Pershad Dicht v. Girja Kant Lahari*, *I. L. R.*, 8 Calc., 51 *L. R.*, 8 *I. A.*, 123, and *Ram Kirpal v. Rwp Kuari*, *I. L. R.*, 6 All., 269 *L. R.*, 11 *I. A.*, 37, referred to. *Dhuronidhar Sen v. Agra Bank*, *I. L. R.*, 4 Calc., 380 *I. L. R.*, 5 Calc., 86, distinguished. NOBENDRA NATH PAHARI

1. BHUPENDEA NARAIN ROY

[*I. L. R.*, 23 Calc., 374

195. ——— Party refusing to compromise—Decree on compromise—Execution against party to suit, not party to compromise—Resistance to execution—Procedure.—In a suit for partition a compromise was entered into by all the parties except *S*, and a decree obtained on the terms thereof. In execution *S* was dispossessed and presented a petition to the Court, objecting that

VADIVANMAL v. KUMARASANYA

[*I. L. R.*, 8 Mad., 473

196. ——— Plaintiff suing in a character separate from that in which decree was passed against him—Separate suit not barred.—A judgment-debtor, upon the

*Hasid v. Amir Hasid*, *I. L. R.*, 2 All., 752, referred to. NATH MAL DAS v. TAJAMUL HUSSAIN

[*I. L. R.*, 7 All., 36

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# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

the suit was reversed on appeal, and the defendants in that suit were ordered to pay a certain sum to *G* with costs. *G* then applied for restitution of her house which had been sold under the decree reversed, and eventually obtained an unconditional order for

execution proceedings, and for the purpose of the suit was to be treated as a third person. HIRA LAL CHATTERJEE v. GOURMONEY DEBI

[*I. L. R.*, 13 Calc., 326

198. ——— Representative of party to suit—Auction-purchaser who was also

and obtained possession. A usufructuary mortgagee

in his favour. Thereupon the assignee, auction-purchaser, applied in revision to have the order restoring the usufructuary mortgagee to possession

199. ——— Purchaser at auction sale.—Where a decree-holder, who had obtained a decree and order under ss. 88, 89 of the Transfer of Property Act over certain property, proceeded to attach it in execution of his decree,—*Held* that a third party who had bought the rights and interests of the judgment-debtors at an auction-sale held in consequence of a money-decree was not a legal representative of the judgment-debtors so as to entitle him to be heard under s. 214 of the Code of Civil Procedure at the execution proceedings. *Sabbajit v. Sri Gopal*, *I. L. R.*, 17 All., 222, followed. *Prosonno Kumar Sanyal v. Kali Das Sanyal*, *I. L. R.*, 19 Calc., 683, distinguished. MAHABIR PRASAD v. PARTAB CHAND

[*I. L. R.*, 22 All., 450

200. ——— Decree—Fraud

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

conducting the sale, as also on the ground of fraud. The Court of first instance rejected the application, and refused to set aside the sale. On appeal to the Subordinate Judge, he reversed the decision of the first Court. On a second appeal to the High Court by the auction-purchaser an objection was taken that no second appeal lay at his instance. *Held* that, inasmuch as the application was under s. 244 of the Civil Procedure Code, a second appeal would lie. The question of a right to a second appeal does not turn upon who may happen to be the appellant, but upon whether or not the case is one within s. 244 of the Code. *HIRA LAL GHOSE v. CHANDRA KANTO GHOSE*. I. L. R., 26 Calc., 539 [3 C. W. N., 403]

*See BHUBON MOHUN PAL v. NANDA LAL DEY* [I. L. R., 26 Calc., 324] 3 C. W. N., 399

*MOTI LAL CHAKRABUTTY v. RUSSIK CHANDRA and IRAGI*. I. L. R., 26 Calc., 328 note [3 C. W. N., 395]

**201.** — *Application to set aside sale on the ground of fraud.*—Where a judgment-debtor applies to have an execution sale set aside and alleges circumstances which, if found in his favour, would amount to fraud on the part of the decree-holder or auction-purchaser, the application comes under s. 244, Civil Procedure Code, although the question is one between the judgment-debtor and the auction-purchaser, who was not the decree-holder. *Prosonno Kumar Sanyal v. Kali Das Sanyal*, I. L. R., 19 Calc., 683, referred to. *NEMAI CHAND KANJI v. DENONATH KANJI* [2 C. W. N., 691]

*ROJONI KANT BAGCHI v. HOSSANI UDDIN AHMED* [4 C. W. N., 538]

**202.** — *Purchaser from some of the judgment-debtors of property not affected by decree—Representative of judgment-debtor.*—Certain persons, claiming by right of inheritance to C, sued B, N, A, K, and others for possession of certain immovable property, and obtained a decree dated in August 1876 for possession of the same. In the course of the litigation which ended in that decree, Z purchased certain immovable property from B, N, A, and K. Z was subsequently dispossessed of such property in execution of the decree of August 1876. He thereupon sued the holders of that decree for possession of the same, alleging that his vendors had inherited the same from D, that it was not affected by that decree, and that he had been improperly dispossessed of it in execution of that decree. *Held* by the Court that the plaintiff not being the representative of any of the parties to the suit in which that decree was passed in the sense of s. 244 of the Civil Procedure Code, but being, if his allegations were true, a purchaser from certain of the judgment-debtors of property not affected by that decree, the suit was not barred by the provisions of that section. *Partab Singh v. Beni*

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

*Ram*, I. L. R., 2 All., 61, distinguished. Observations by STUART, C.J., on his judgment in *Agra Savings Bank v. Sri Ram Mitter*, I. L. R., 1 All., 388, and on the judgment of the Full Bench in *Partab Singh v. Beni Ram* referring to that judgment. *ZANKI LALL v. JAWAHIR SINGH* [I. L. R., 5 All., 94]

**203.** — *Party to suit in representative character.*—In 1875 a decree was passed against N as representative of L, who died pending the suit, declaring N liable to the extent of the assets of L which might have come to the hands of N. In 1879 the decree-holder applied for execution of the decree, and, without proof that any of the assets of L had come to the hands of N, obtained an order and attached lands belonging to N. N objected to the attachment, but the Munsif, without investigation, rejected his claim and directed N to bring a regular suit. The land was sold and purchased by A B. N, after an abortive attempt to obtain a review of the Munsif's order from his successor, brought a suit in 1880 against the decree-holder and A B to recover the land. *Held* that, as N was a party to the former suit of 1875 within the meaning of s. 244 of the Civil Procedure Code, 1877, the suit would not lie. *ARUNDADHI v. NATESHA* [I. L. R., 5 Mad., 391]

**204.** — *Sale of property in execution of decree obtained by second mortgagee for sale of property—Holder of prior decree enforcing first mortgage—Execution of decree—Fresh suit—Meaning of "representative" of judgment-debtor.*—A decree enforcing a first mortgage of certain property not being satisfied, the property was sold in execution of a decree of a later date enforcing a second mortgage of the property. *Per* STUART, C.J., that the decree enforcing the first mortgage could not be executed against the property, but the holder of such decree was bound to bring a fresh suit against the purchaser of the property to enforce his decree. *Per* STRAIGHT, BRODHURST, and TYRRELL, JJ., that a fresh suit was the most convenient and expeditious remedy. *Per* OLDFIELD, J., that the purchaser not being the "representative" of the judgment-debtor, within the meaning of s. 244 (c) of the Civil Procedure Code, the holder of such decree must bring a fresh suit to enforce it. *JAGAT NARAIN v. JAGRUP*. I. L. R., 5 All., 452

**205.** — *Transfer of interest pending suit—Lis pendens—Application to bring transferee upon the record.*—A decree of the High Court, giving possession of certain shares in a bank to the plaintiff, R, was reversed on appeal by the Privy Council. The defendant then applied to the Court of first instance to order restitution of the shares, which had been realized by the plaintiff. Upon being ordered to produce the shares, R made an application to the Court, proffessedly under s. 244 of the Civil Procedure Code, in which he alleged that,

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

pending the appeal to the Privy Council, he had transferred the shares to G, his counsel in the case, who had failed to restore them, and he prayed "that the said person might be brought upon the record, and that execution for recovery of the said shares might be given against him." The Court passed an order upon

[I. L. R., 7 All., 681]

Code, and was therefore to be determined in the execution department, and not by regular suit. *Chondry Wahed Ali v. Jumatt*, 11 B. L. R., 149, *Shankar Dial v. Amir Haidar*, I. L. R., 2 All., 752, and *Nath Mal Dass v. Tajammul Husain*, I. L. R., 7 All., 36, referred to. *Per MAHMOOD*,

207. \_\_\_\_\_ Party to suit—

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

which must be decided in the execution department, under s. 244 of the Civil Procedure Code. *Ram Ghulam v. Hazaru Koor*, I. L. R., 7 All., 547, referred to. *SITA RAM v. BHAGWAN DAS*

[I. L. R., 7 All., 733]

208. \_\_\_\_\_ Official As-

c. 21, inasmuch as that section refers to cases

section, and that the District Judge had no jurisdiction to entertain the appeal. *KASHI PRASAD v. MILLER* I. L. R., 7 All., 752

209. \_\_\_\_\_ Execution of decree—"Representative" of judgment-debtor.—The word "representative" as used in cl. (c), s. 244 of the Code of Civil Procedure, means any person

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

Council, and pending the hearing of that appeal, the widow died, and *B* was brought on the record as her legal representative. The decree of the High Court was ultimately confirmed by the Privy Council. In execution of the decree, it was sought to make *B* liable to satisfy the amount out of the properties which he had obtained under the *ikrarnamah*, the mortgagee not having been aware of the conditions of that document before the decree of the High Court. *Held* that, so far as these properties were concerned, he was not the legal representative of the widow, as he inherited them as heir-at-law of her husband, and that his title to them under the *ikrarnamah* was not that of a "representative" within the meaning of cl. (c) of s. 244. *Held*, further, that the question of *B*'s liability under the *ikrarnamah* did not fall within the scope of the provisions of cl. (c) of s. 244, as being a question to be decided between the "parties" to the suit, as, although *B* was a party to the suit, the only claim against him was that the property in his hands was liable as having been previously hypothecated; and as the suit was dismissed, so far as that claim was concerned, it was not a question relating to the execution of the decree. *KAMESHWAR PERSHAD v. RUN BAHADUR SINGH*

[I. L. R., 12 Calc., 458]

**210.** ———— *Representative of a party to the suit—Second mortgagee taking a mortgage during the pendency of a suit on the first mortgage.—Held* that a second mortgagee who takes his mortgage during the pendency of a suit on the first mortgage is a representative of the mortgagor within the meaning of s. 244 of the Code of Civil Procedure. *Madho Das v. Ramji Patak, I. L. R., 16 All., 286*, referred to. *SHEO NARAIN v. CHUNNI LAL*  
[I. L. R., 22 All., 243]

**211.** ———— *Person who had acquired interest in property sold before the judgment-debtor became liable under the decree—Application to set aside sale—Civil Procedure Code, s. 310.*—Where an application to have a sale set aside under s. 310A of the Civil Procedure Code is made by a person who has acquired an interest in the property sold before the judgment-debtor became liable under the decree, such person is not a representative of the judgment-debtor within the meaning of s. 244 of the Code. *BUNGSHI DHAR HALDAR v. KEDARNATH MONDAL* . . . 1 C. W. N., 114

**212.** ———— *Civil Procedure Code, ss. 278-283—Question for Court execut ing decree—Separate suit—"Representative" of judgment-debtor.*—The decree-holder under a decree for enforcement of lien against the zamindari rights and interests of *K* applied for execution by attachment and sale of certain shares, one of which was recorded in the *khevat* in the name of *K*, and two others in the name of *B*, his brother's widow. The shares having been attached, the judgment-debtor died, and *J*, his brother, and *L*, his son, were

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

substituted as his representatives. In execution of the decree, only the share which had stood recorded in the name of the deceased judgment-debtor, and which was in possession of *J* and *L* as his representatives, was sold; and the decree-holder then applied for sale of the other shares which had been attached. To this *B* objected under s. 281 of the Civil Procedure Code, claiming to be the owner of the shares in question. Before the hearing of her objection she died, and *L* applied to have his name brought upon the record in her place for the purpose of supporting the objections. An order having been passed disallowing the objections which had been filed by *B*, *L* applied to the High Court. A preliminary objection was taken on behalf of the decree-holder to the hearing of the appeal on the ground that, as the first Court's order related to *L*'s claim as the heir of *B* to have the shares entered in her name released from attachment, it must be regarded as passed under s. 281 of the Civil Procedure Code, and as conclusive, subject to *L*'s bringing a suit to establish his right. On the other side it was contended that, *L* being the representative of the deceased judgment-debtor *K*, the first Court's order must be regarded as passed under s. 244 of the Code, and the appeal would therefore lie. *Held* that the preliminary objection must prevail, and the first Court's order must be regarded as passed under s. 281, and not under s. 244 of the Code, inasmuch as *L*'s claim, which was rejected by it, was nothing more than to come in as *B*'s representative for the purpose of supporting her objections; and it was in right of a third person, whose interest he asserted to have passed to him, that he prayed admission to the proceedings, and his character was wholly distinct from that he filled as the legal representative of his deceased father. Because *L* happened, for the purpose of the execution proceeding, to be his father's legal representative, and to be liable to satisfy the decree to the extent of any assets which might have come to his hands, it did not follow that any rights claimed by him through a third person must be dealt with, and could only be dealt with, between him and the decree-holder in the execution-proceedings. *Wahed Ali v. Jumae, 11 B. L. R., 149, Ram Ghulam v. Hazaru Kuar, I. L. R., 7 All., 547, Sita Ram v. Bhagwan Das, I. L. R., 7 All., 733, Shankar Dial v. Amir Haidar, I. L. R., 2 All., 752, Nath Mal Das v. Tajammul Husain, I. L. R., 7 All., 36, and Kanai Lal Khan v. Sashi Bhuson Biswas, I. L. R., 6 Calc., 777*, referred to. *BAHORI LAL v. GAURI SAHAI*

[I. L. R., 8 All., 626]

**213.** ———— *Suit by representative against purchaser—Separate suit—Civil Procedure Code, ss. 266, 316.*—The provisions of s. 244 (c) of the Civil Procedure Code prohibit not only a suit between parties and their representatives, but also a suit by a party or his representatives, against a purchaser at a sale in execution of the decree, the object of which is to determine a question which properly arises between the parties or their

**CIVIL PROCEDURE CODE, ACT XIV  
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**2. PARTIES TO SUIT—continued.**

representatives, and relates to the execution, discharge, or satisfaction of the decree. A judgment-debtor, whose occupancy tenure had been sold in execution of a decree for money, sued the purchaser

that the question involved in the suit was one of law

*All.*, 1883, p. 218, referred to. **BASTI RAM v. FATTU** I. L. R., 8 All. 146

See **DURGA CHARAN MANDAL v. KALI PRASANNA SARKAR** I. L. R., 28 Calc., 727

**214.** ————— *Representa-*

**215.** ————— *Decree passed against representative of debtor—Attachment of property as belonging to debtor—Objection to attachment by judgment-debtor setting up an independent title—Appeal from order disallowing objection—Civil Procedure Code, ss. 2, 233.—The*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—continued.**

brought for the determination of certain questions specified therein, but does not bar the trial of any issue involved in these questions if the issue is raised at the instance of a defendant in a suit brought against him **BASTI RAM v. FATTU**, I. L. R., 8 All. 146, distinguished. **BHIRAM ALI SHAIK SHIKDAR v. GORI KANTH SHAHA** I. L. R., 24 Calc., 355 [I. C. W. N., 398]

**217.** ————— *Question for Court executing decree—Plea taken by defendant in separate suit—Civil Procedure Code (Act XIV of 1882), s. 13—Res judicata.—When an issue*

*ram Ali Shaiik Shikdar v. Gori Kanta Shaha*, I. L. R., 24 Calc., 355, followed. **NIL KANAL MUKERJEE v. JAHNABI CHOWDHURANI**

[I. L. R., 23 Calc., 946]

**218.** ————— *Party to suit—Question in execution of decree—Right of suit—Minor defendant objecting to sale in mortgage suit, but withdrawing his defence.—In a suit brought upon a mortgage bond after the death of the executant, who was the widow of the last full owner of the properties mortgaged, the present plaintiff, who was a minor at that time, appeared, represented by the manager under the Court of Wards and denied the*

**219.** ————— *Suit by decree-holder and judgment-debtor against auction-purchaser to set aside sale alleging an uncertified adjustment of the decree prior to sale.—The pro-*

**216.** ————— *Issue raised in form of objection by defendant in separate suit.—S. 244 of the Civil Procedure Code bars a suit*

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

determine a question between the parties or their . . . to the execution, discharge, . . . decree. *Basti Ram v. Fattu, I. L. R., 8 All., 146, and Prosonno Kumar Sanyal v. Kabi Das Sanyal, I. L. R., 19 Calc., 688, referred to. DHANI RAM v. CHATURBHUI I. L. R., 22 All., 86*

See DAULAT SINGH v. JUGAL KISHORE

[I. L. R., 22 All., 108]

**220.** ———— *Deceased judgment-debtor—Execution against a person not the legal representative.*—The defendants, along with one N and C, had brought a suit against one A in the Civil Court at Peshawar in the Punjab, and obtained a decree, on the 23rd July 1878 for Rs. 3,05,545-12-0. In 1881 application for transfer of the decree to the Court at Moradabad for execution was made, and it was granted, but no steps were taken thereupon. On the 12th June 1883 A died. On the 30th April 1884, the defendants again applied to the Court at Peshawar, treating their judgment-debtor as being then alive, for a fresh certificate to execute their decree in the Moradabad district, and obtained it. On the 20th August 1885, they made an application to the District Judge of Moradabad for execution of their decree, and in it it was stated that the application was "for execution against Ajudhia Prasad and after his death against Angan Lal, the own brother, and Durga Kuar, widow, and Lachman Prasad and others, sons of Ajudhia Prasad, residents of Kundarki, and the said Angan Lal, at present residing at Umballa and employed in the Commissariat-Transport Department, judgment-debtors." It was further stated that "the judgment-debtor was dead, and his heirs are living and in possession of his estate, and Angan Lal himself has realized Rs. 637-4-9 due to the deceased judgment-debtor from the Commissariat Department of Calcutta and appropriated the same; therefore to that extent the person of the said Angan Lal was liable." Notification of this application was issued to Angan Lal as also to the other persons named therein. Angan Lal objected to the application as against him, stating that, although he was the brother of A, deceased, yet he always lived separate and carried on business separately; and that there was no connection or partnership between him and the deceased judgment-debtor, and that he had no property of the deceased in his possession. Further, that as A left issue, it was wrong to call him an heir to A, and take out execution process against him. In reply to these objections, the judgment-creditors (defendants) did not contend that Angan Lal was a representative of the deceased . . . him as a person in possession of a sum of money belonging to the deceased, and, therefore, liable to the extent of the sum so received by him. The Subordinate Judge, holding that Angan Lal was the brother of the deceased and had realized the amount of the Commissariat Office, which he failed to prove that he paid to the deceased, ordered execution to proceed against him. Angan Lal then instituted

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

this suit to set aside the order of the Subordinate Judge. It was contended that the proceedings of the Subordinate Judge were held under s. 244 of the Code, and, therefore, no separate suit would lie. Held that the contention must fail, as the Subordinate Judge never treated the proceedings in execution against Angan Lal upon the footing that he was the legal representative of the deceased judgment-debtor. *Mahomed Aga Ali Khan v. Balmukund, L. R., 3 I. A., 241, and Nadir Hossain v. Bipen Chand Bassarat, 3 C. L. R., 437, were referred to. ANGAN LAL v. GUDAR MAL I. L. R., 10 All., 479*

**221.** ———— *Representative of party to suit—Mortgagee under a conditional sale-deed who has become owner in pursuance thereof.*—A person who becomes owner, by process of law, of property mortgaged to him by a deed of conditional sale must be considered as the representative of his mortgagor within the meaning of s. 244 of the Code of Civil Procedure. *JANKI PRASAD v. ULFAT ALI [I. L. R., 16 All., 284]*

**222.** ———— *Representatives of judgment-debtor—Death of party to suit before final decree in appeal—Subsequent proceedings in execution taken against representatives of such party.*—A decree was given to the defendant (then plaintiff) in 1856 for possession of land and mesne profits against numerous defendants, including one Dawan Rai. Some of the judgment-debtors, including Dawan Rai, appealed to the Sadr Diwani Adalat, but before the decree of the Sadr Diwani Adalat was passed, Dawan Singh died. No application was made to put any representative of Dawan Rai on the record; but in 1881 (the amount of the mesne profits payable under the decree having been finally determined in 1877), certain persons were made parties, as representatives of Dawan Rai, to various proceedings in execution of the decree for mesne profits, which ended in the sale of certain property which had been of Dawan Rai in his lifetime. Subsequently the said representatives of Dawan Rai brought a suit to recover the property sold as above described on the ground that they were no parties to the decree under execution. Held that the plaintiffs were entitled to bring such a suit, and it was not barred by the provisions of s. 244 of the Code of Civil Procedure. *BENI PRASAD KUNWAR v. MUKHTESAR RAI [I. L. R., 21 All., 316]*

**223.** ———— *Representative of judgment-debtor—Purchaser at execution-sale—Private purchase—Purchase pendente lite.*—The defendants Nos. 2, 3, and 4 were, together with one M, the owners of certain immovable property, including two mehals, Olipore and Ekdhala, subject to a mortgage, on which the mortgagee obtained a decree on 30th July 1875. Whilst that suit was pending, one K D took out execution of a money-decree which he had obtained in 1871 against defendant No. 3, and put up for sale the mahal Olipore, which was

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

purchased by the father of the plaintiff *A*, who eventually obtained possession of it through the Court. The plaintiff *B* purchased privately the mehal Ekdhala from the mortgagors and from *M*, some time after the date of the decree on the mortgage. That decree was in course of execution when the mortgagee died, and his estate came into the hands of the Administrator-General, who, on 13th August 1878, sold the decree to *G*, defendant No. 1. After this sale, several applications were made to have the name of *G* substituted for that of the original decree-holder, but a copy of the

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

his interest, who, so far as such interest is concerned, is bound by the decree. There is no reason for excluding from its signification an execution-purchaser of the judgment-debtor's interest. *Held*, therefore, by the Full Bench that the cases of *Gour Sundar Lahiri v. Hem Chunder Chowdhury*, *I. L. R.*, 16 Cal., 355, and *Narain Acharyee v. Gregory*, 8

representative of the judgment-debtor under s. 244 of the Code are not rightly decided. *ISHAN CHUNDER SIKKAR v. BENI MADHUP SIKKAR*

[*I. L. R.*, 24 Cal., 62  
1 C. W. N., 36]

226. — Representative of a party to the suit—Purchaser of property under attachment in execution of a decree—Objection to execution under Civil Procedure Code, s. 278.—The purchaser of property which is under

*Co.*, *I. L. R.*, 17 All., 240, and *Imad Ali v. Jagan Lal*, *I. L. R.*, 17 All., 478, referred to. *LALJI MAL v. NAND KISHORE* [*I. L. R.*, 19 All., 332]

227. — Representative of a party to the suit—Purchaser of property under attachment in execution of a decree

*DAR LAHIRI v. HAFIZ MOHAMED ALI KHAN*  
[*I. L. R.*, 16 Cal., 355]

224. — Representative of party to suit—Representative of judgment-debtor—Purchaser of property attached under a simple money-decree.—A purchaser by private sale of immovable property

*I. L. R.*, 16 All., 286, explained. *GUR PRASAD v. RAM LAL* [*I. L. R.*, 21 All., 20]

228. — Order in execution of decree—Surplus of sale-proceeds—One

225. — Representative

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

title to the surplus sale-proceeds and gave him a decree. On appeal by defendant No. 2,—*Held* that the order under s. 295 in favour of defendant No. 2 was one coming under s. 244, cl. (c), and that the present suit was not maintainable. *Ishan Chunder Sirkar v. Beni Madhub Sirkar, I. L. R., 24 Calc., 62*, referred to. *Held*, further, that the fact of the sale-proceeds being realized in execution of the decree, not of the third, but of first mortgagee, made no difference, inasmuch as the two execution cases were amalgamated and disposed of simultaneously. *HURDWAR SINGH v. BHAWANI PERSHAD*

[2 C. W. N., 429]

**229.** *Application by Collector in pauper suit—Civil Procedure Code, s. 411—Recovery of Court-fees by Government.—Held* that a Collector applying on behalf of Government, under s. 411 of the Civil Procedure Code, for recovery of Court-fees by attachment of a sum of money payable under a decree to a plaintiff suing *in forma pauperis*, might be deemed to have been a party to the suit in which the decree was passed, within the meaning of s. 244 (c) of the Code, and that an appeal would, therefore, lie from an order granting such application. *JANKI v. COLLECTOR OF ALLAHABAD*

I. L. R., 9 All., 64

**230.** *Civil Procedure Code, s. 291—Sale in execution of decree—Tender of debt by transferee of property—Separate suit.—Held* that the assignees of a purchaser from a judgment-debtor of property the subject-matter of a decree for enforcement of hypothecation were entitled to come in and protect the property from sale in execution of the decree by tendering the debt and costs under s. 291 of the Civil Procedure Code, and that the executing Court was bound to accept the money and stop the sale. *Held*, also, where the executing Court had refused to accept the money, and the sale had taken place, that a suit by the assignees to set aside the sale and for a declaration of their right to come in under s. 291, was not barred by s. 244 of the Code. *BEHARI LAL v. GANPAT RAI*

[I. L. R., 10 All., 1]

**231.** *Money paid into Court by pre-emptor—Suit for pre-emption dismissed on appeal—Suit for refund of money paid into Court.—A suit for pre-emption was decreed conditionally on the plaintiff paying Rs. 1,595, which the Court determined was the amount of the sale-consideration. He paid the amount to the vendees, and the payment was certified under s. 258 of the Civil Procedure Code. Subsequently the decree was modified on appeal by increasing the amount of sale-consideration to Rs. 1,995, which the plaintiff was required to pay as the condition of pre-emption. He never paid the difference between the amount fixed by the first Court and the sum fixed as the true price by the Appellate Court, and the suit consequently stood dismissed. He then assigned to the plaintiff in the suit his right to recover*

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

the amount, Rs. 1,595, from the vendees, who, after unsuccessful application made to the Court of first instance, under s. 244 of the Civil Procedure Code, to recover the amount, instituted this suit. *Held* that the assignee was a representative of the plaintiff in the pre-emption suit within the meaning of s. 244 of the Civil Procedure Code, and the suit was therefore barred under the provisions of that section. *ISHUR DAS v. KOJI RAM*

[I. L. R., 10 All., 354]

**232.** *Civil Procedure Code, 1882, ss. 293, 306—Liability of defaulting purchaser—Appeal from order under s. 293—Re-sale.—At a sale in execution of a decree a decree-holder, who had obtained leave to bid, was alleged to have made a bid through his agent of Rs. 90,000, but he shortly afterwards repudiated the bid and did not pay the deposit. The property was put up for sale again on the following day under s. 306 of the Code of Civil Procedure, and was in due course knocked down for a smaller sum. The judgment-debtor filed a petition under s. 293 to recover from the decree-holder the loss by re-sale; the petition was rejected. On appeal,—*Held* that the question at issue was one arising between the parties to the suit, and that an appeal lay against the order rejecting the petition. *VALLABHAN v. PANUNNI**

I. L. R., 12 Mad., 454

**233.** *Application by purchaser to set aside sale or for compensation for deficiency in area of land—Purchaser adverse in interest to judgment-debtor.—A purchaser at an execution sale of immoveable property held by the Sheriff applied to set aside the sale or for compensation on the ground of deficiency in the area of the land sold. *Held* that, as the interest of the purchaser was adverse to the interest of the judgment-debtor, the former was not the representative in interest of the latter, and therefore, even if the Civil Procedure Code was applicable at all, s. 244 of that Code did not apply. *Ishan Chunder Sirkar v. Beni Madhub Sirkar, I. L. R., 24 Calc., 62*, applied. *RAM NABAIN v. DWARAKA NATH KHETTRY**

[I. L. R., 27 Calc., 264]

4 C. W. N., 13

**234.** *Decree against mortgagor for mortgage-money, and directing sale of mortgaged property as against him and a third party—Attachment of other property in possession of third party as that of the mortgagor—Claim by third party to ownership of such property—Suit by decree-holder to establish mortgagor's right to property.—In a suit upon a hypothecation bond a third party was made defendant, as she claimed the hypothecated property. The mortgagee obtained a decree for recovery of the amount of the bond, and for enforcement of the mortgage. In execution of the decree, the debt not being satisfied by sale of the mortgaged property, the decree-holder caused certain other immoveable property in the possession of the third*

**CIVIL PROCEDURE CODE, ACT XIV  
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**2. PARTIES TO SUIT—continued.**

party to be attached. She objected to the attachment on the ground that this property was her own, and was not liable to sale in execution of the decree. The objection was allowed, and the decree-holder then sued for a declaration that the property belonged to the mortgagor, judgment-debtor, and was liable to attachment and sale in execution of the decree.

**235.** *Persons made parties to suit but exempted from operation of decree—Civil Procedure Code (1882), s. 278—Objection to attachment.—Held that persons who had cri-*

**236.** *Defendant exonerated from a suit.—A defendant, who had been exonerated from a suit, is not a party within the meaning of Civil Procedure Code, s. 244 (c), and a suit by the plaintiff for contribution for his share of the costs of execution is not barred under that section. GADICHERLA CHINA SEETAYYA v. GADICHERLA SEETAYYA . I. L. R., 21 Mad., 45*

*See RAMASAMI SASTRALU v. KAMESWARANNA (I. L. R., 23 Mad., 361 where the above case is explained.*

**237.** *Parties to the suit in which the decree was passed—Dismissal of application for sale of property of next friend*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**2. PARTIES TO SUIT—concluded.**

proceedings. COLLECTOR OF TRICHINGOPOLY v. SIVA-  
RAMAKRISHNA SASTRIGAL . I. L. R., 23 Mad., 73

*s. 245 (Act XXIII of 1861, s. 15).*

*See EXECUTION OF DECREE—APPLICATION*

*See LIMITATION ACT, 1877, ART. 179—  
NATURE OF APPLICATION—IRREGULAR*

**1.** *Investigation of title—Execution of decree—Act VIII of 1859, s. 214—Neither s. 214, Act VIII of 1859, nor s. 15, Act*

**2.** *Filing decree—Civil Procedure Code, 1859, s. 215.—S. 15, Act XXIII of 1861 (Act VIII of 1859, s. 215), did not make it essential that the decree itself should be filed, but only required certain particulars specified in s. 215, Act VIII of 1859, on which the Judge is empowered to pass orders for execution. SUTER ALI v. MOHESH CHUNDER KAUG . 4 W. R., Mys., 18*

**3.** *Irregularity in application for execution—Procedure.—S. 15, Act XXIII of 1861, did not authorize a Judge to reject an application for the execution of a decree on the ground of an irregularity in form. Where the application is irregular, the Judge should either return it immediately to the applicant for correction, or with his consent cause the necessary correction to be made. CHOWDHRY PIRLADH MAHAPATTAIR v. CHOWDHRY JONARDON MAHAPATTAIR*

*[8 W. R., Mys., 15*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

4. ——— Application in terms of decree—*Decree needing correction.*—Under s. 15, Act XXIII of 1861, if an application for execution corresponds with the terms of a decree, it should be admitted. If the decree needs correction, the Court executing cannot correct it; but it is for the defendant to apply to the Court which made the decree. *BISHESHUR ROY CHOWDHRY v. BISHESHUR BOSE* . . . . . 8 W. R., 277

s. 245B.

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES.

[I. L. R., 15 Bom., 216

s. 246 (1859, ss. 209, 247).

See CASES UNDER SET-OFF—CROSS-DECREES.

s. 248 (1859, s. 216).

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[I. L. R., 16 Bom., 636

I. L. R., 18 Bom., 224

I. L. R., 22 Calc., 558

I. L. R., 21 Bom., 314

See CASES UNDER EXECUTION OF DECREE—NOTICE OF EXECUTION.

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, s. 20)

—NOTICE OF EXECUTION.

See LIMITATION ACT, 1877, ART. 180.

[I. L. R., 6 Calc., 504

I. L. R., 20 Calc., 551

I. L. R., 22 Calc., 921

I. L. R., 24 Calc., 244

1. ——— s. 249 (1859, s. 217)—*Dismissal for non-appearance when no day was fixed for hearing.*—Against an application for execution of a decree after notice under s. 216, Act VIII of 1859, the judgment-debtor presented by his pleader certain grounds of objection, and the petition was ordered to be placed on the record. No day for hearing was fixed, but the case was called on, and, on account of the absence of his pleader, the objections of the judgment-debtor were disallowed. *Held* that, notwithstanding the absence of the pleader, the Judge should have taken the objections into consideration and passed an order under s. 217. *RAJBALLAB SHAHA v. RAMSADAY GHOSE*

[5 B. L. R., Ap., 65; 14 W. R., 155

2. ——— *Petition under section, Requisites of.*—A petition under s. 217, Act VIII of 1859, is not required to be verified. *GOPAL CHUNDER v. JUGUT INDUR BUNWAREE GOBIND*

[8 W. R., 200

s. 251 (1859, s. 22).

See PENAL CODE, s. 186.

[I. L. R., 22 Calc., 596

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

See WARRANT OF EXECUTION.

[I. L. R., 7 All., 506

I. L. R., 10 Calc., 18

s. 252 (1859, s. 203).

See REPRESENTATIVE OF DECEASED PERSON . . . . . 6 B. L. R., Ap., 100

[14 W. R., 431

2 Mad., 336

2 C. L. R., 189

I. L. R., 22 Calc., 259

I. L. R., 20 Mad., 446

I. L. R., 8 Bom., 309

I. L. R., 4 Calc., 142

s. 253 (1859, s. 204).

See CASES UNDER SURETY.

s. 254 (1859, ss. 201, 204).

See ATTACHMENT—ATTACHMENT OF PERSON . . . . . I. L. R., 4 Calc., 583

[8 W. R., 282

s. 257—*Practice—Order for payment of costs of day—Payment into Court or to party.*—Where a party to a suit was directed by the High Court to pay the costs of the day, and his solicitor paid the money into Court under s. 257 of the Code of Civil Procedure—*Held* that section was not applicable, as the order was not a decree. *SHANKS v. SECRETARY OF STATE FOR INDIA*

[I. L. R., 12 Mad., 120

s. 257 A.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[I. L. R., 11 All., 228

1. ——— Agreement modifying decree—*Agreement to pay by instalments—Guarantee to indemnify surety who pays judgment-debt.*—The provisions of s. 257A of the Code of Civil Procedure, 1877, apply only as between parties to the decree. *YELLA v. MUNISAMI*

[I. L. R., 6 Mad., 101

2. ——— Arrangement to pay decree by instalments.—The decree-holder and judgment-debtor of a decree filed a petition (*sulchnama*) in the Court executing the decree, praying that the Court would sanction an arrangement providing for the payment of the decree by instalments, and enhancing the rate of interest made payable by the decree. The Court sanctioned the arrangement. *Held* that the "*sulchnama*" was within s. 257A of the Civil Procedure Code, and the decree might be executed in accordance with its provisions. *SITA RAM v. DASH RATH DAS* . . . . . I. L. R., 5 All., 492

3. ——— Bond for satisfaction of judgment-debt without sanction of Court.—G, the father of the plaintiff, obtained two decrees: one against the defendant A and his father, and the other against A's father alone, and in satisfaction of

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**c. ABDULA BEG . . . I L. R., 8 Bom., 538**

**4. ———— Transfer of Pro-**

extend in any way the liability of the judgment-debtor or his property under the decree. *Sita Ram v. Dasrath Das, I. L. R., 6 All., 492*, distinguished. **KASHI PRASAD v. SHRO SAHAI**

**[I. L. R., 19 All., 186]**

**5. ———— Agreement or adjusting satisfying decree—Mortgage-bond in satisfaction of decree—Sanction of mortgage by Court—Sufficiency of sanction.—Where mortgage-bonds**

reason of such adjustment became incapable of execution.—*Held* that sufficient had been done by the Court to satisfy the requirements of s. 257A of the Civil Procedure Code (Act XIV of 1882), although no formal sanction had been recorded. **KRISHNA RAMAYA NAIK v. VASUDEV VENKATESH PAI, VASUDEV VENKATESH PAI v. MHASTI**

**[I. L. R., 21 Bom., 808]**

**6. ———— Judgment-debt—Sanction of Court—Contract void—Principal—**

**sued. DAYLATSING v. PANDU**

**[I. L. R., 9 Bom., 176]**

**7. ———— Adjustment of decree out of Court—Instalment-bond—Consideration—Execution of decree.—The provisions of**

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

without the sanction of the Court, and are not

**8. ———— Compromise—Civil Procedure Code, s. 210.—The parties to a decree**

instalments, and, in case of default in the payment of any instalment, it was agreed that the entire amount should become immediately realizable by

**585, followed. RAMLAKHAN RAI v. BAKHTAUB RAI**  
**[I. L. R., 8 All., 623]**

**9. ———— Adjustment of decree out of Court—Instalment-bond—Consideration—Execution of decree—Right of suit—An**

**10. ———— Settlement of**

interest at 3 per cent. per mensem. *Held* that the

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

certified to the Court, and the decree was executed at the instance of the surviving plaintiff who subsequently refused to give effect to the arrangement. The then defendant now sued in the alternative for possession of the land awarded to him or for damages. *Held* (1) that the plaintiff's claim for the land was not maintainable; (2) that the claim for damages for breach of the agreement was maintainable. **KRISHNASAMI AYYANGAR v. RANGA AYYANGAR**

[I. L. R., 20 Mad., 369]

**23. Agreement for satisfaction of judgment-debt.**—A money-decree was passed against a zamindar by the High Court in 1883, and it was transferred to the District Court for execution. The decree-holder attached and prepared to bring to sale certain villages of the judgment-debtor. These villages were included in a mortgage subsequently executed by the judgment-debtor in favour of third parties. Both before and after the mortgage the decree-holder received from the zamindar certain sums in consideration of his agreeing to postponements of the sale; also it was agreed between them at a date subsequent to the mortgage that interest should be computed at a higher rate than that provided by the decree. Subsequently the decree-holder sought to bring the land to sale, and in computing the amount then due gave credit for none of the sums so received and calculated interest at the enhanced rate. The mortgagee objected that the computation was erroneous in both these respects, and the District Judge upheld his objection. The judgment-debtor took no part in the contest. *Held* that the District Court, not being the Court which passed the decree, had no power to sanction the agreements under s. 257A, and that the decision was right. **PARAMANANDA DAS v. MAHADEER DOSSJI**

[I. L. R., 20 Mad., 378]

**24. Agreement to give time to the judgment-debtor.**—*Agreement not sanctioned by the Court.*—A judgment-debtor asked for time to pay the decretal amount. The decree-holders agreed to give time on condition that the judgment-debtor gave them a hundi for Rs. 500, that sum representing a portion of the decree-holder's claim which had been dismissed as barred by limitation. The judgment-debtor gave the hundi, but the sanction of the Court was not obtained to the transaction. In a suit by the decree-holders to recover the money secured by the hundi given under the circumstances mentioned above, it was *held* that the transaction was one contemplated by s. 257A of the Code of Civil Procedure, and that, as it had not been made with the sanction of the Court, it could not be enforced, and the suit should be dismissed. **Hukum Chand Oswal v. Taharunnessa Bibi, I. L. R., 16 Calc., 504**, dissented from. **DAN BAHADUR SINGH v. ANANDI PRASAD** . . . I. L. R., 18 All., 435

**25. Agreement as to payment of decretal money.**—*Void agreement.*—An agreement between the decree-holder and the judgment-debtor for the satisfaction of a decree by which

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

any sum in excess of the decretal amount is payable, and which has not been sanctioned by the Court which passed the decree, cannot be made the basis of a subsequent suit. **Dan Bahadur Singh v. Anandi Prasad, I. L. R., 18 All., 435**, **Ganesh Shikram v. Abdulla Beg, I. L. R., 8 Bom., 539**, **Davlat Singh v. Pandu, I. L. R., 9 Bom., 176**, **Vishnu Vishwanath v. Hur Patel, I. L. R., 17 Bom., 499**, and **Narayan Deshpande v. Kashinath Krishna Mutalik Desai, I. L. R., 15 Bom., 419**, referred to. **DALU MALWANI v. PALAKDHARI SINGH**

[I. L. R., 18 All., 479]

**26. Want of sanction of Court to agreements for satisfaction of decree.**—Agreements for the satisfaction of a judgment-debt not sanctioned under s. 257A of the Civil Procedure Code are void; but, if sanctioned, they may be carried out in execution. **DURGA PRASAD BANERJEE v. LALIT MOHUN SINGH ROY**

[I. L. R., 25 Calc., 86]

s. 258 (1859, s. 208).

See CASES UNDER s. 244 (ACT XXIII OF 1861, s. 11)—QUESTIONS IN EXECUTION DECREE.

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—ORDER FOR PAYMENT AT SPECIFIED DATES.

[I. L. R., 2 All., 291]

I. L. R., 4 All., 316

I. L. R., 7 All., 327

I. L. R., 12 All., 569

I. L. R., 21 Calc., 542

I. L. R., 19 Mad., 162

See PENAL CODE, s. 210.

[I. L. R., 16 Calc., 126]

I. L. R., 10 Bom., 288

**1. Adjustment of decree.**—*Beng. Reg. VII of 1799, Decrees under.*—S. 206 of Act VIII of 1859 did not apply to decrees under Regulation VII of 1799. **GOPAL CHANDRA DEY v. PEMU BIBI** . . . 1 B. L. R., A. C., 76

**2. Enquiry by Court as to satisfaction out of Court.**—*Proceedings in execution of decree.*—Act VIII of 1859, s. 206, applied only to proceedings which were taken while the decree was in execution, and did not preclude the Court, before putting the decree in execution, from enquiring if it has been satisfied out of Court. **OBHOY CHURN MOOKERJEE v. PEAREE DOSSIA**

[22 W. R., 270]

**3. Inquiry as to satisfaction of decree between judgment-debtor and transferee of decree.**—On an application for execution of a decree being presented by a transferee decree-holder, the judgment-debtor opposed, alleging in his petition that he had transferred certain immoveable property to the petitioner in consideration of his paying the judgment-debt to the original decree-holder, and that the petitioner had discharged the debt,

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

4. ————— “Decree-holder”  
—Execution of decree—General Clauses Consolida-  
tion Act—Regard being had to the General  
Clauses Consolidation Act (I of 1868), the word  
“decree-holder” in s 258 of the Civil Procedure  
Code, 1882, should be read in the plural. TARRUCK  
CRUNDER BHUTTACHARJEE v. DIMENDRO NATH  
SANYAL . . . . . I L. R., 9 Calc., 831  
[12 C. L. R., 568]

5. ————— Money decree.—

6. ————— Civil Procedure  
Code Amendment Act (VII of 1883), s. 27—

cutting the decree, applies to adjustments previous to  
the amending Act. Changes of law relating to proce-  
dure have retrospective effect. BALKRISHNA PAN-  
DHARINATH v. BAFU YESAJI

[I L. R., 19 Bom., 204]

7. ————— Execution of de-  
crees—Money decree—Limitation Act (XV of  
1877), sch. II, art. 173A.—S. 258, Civil Procedure

8. ————— Adjustment out of  
Court.—According to s. 206, Act VIII of 1859,  
no adjustments made out of Court were admissible by  
the Court in execution. MOTEE LALL c. RAM DASS  
[W. R., 1864, Mis., 38]

BHAYA BROODNATH SARKI c. KUNWAN  
[7 W. R., 134]

GUNGA GOBIND GOOPTOO c. MAHRUN LALL  
HATTEE . . . . . 9 W. R., 362

9. ————— Letter from de-  
cree-holder to caukeel.—A letter from a decree-holder  
to his vakeel to put in an acknowledgment into Court  
is not a settlement out of Court certified to the Court

**CIVIL PROCEDURE CODE, ACT XIV  
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in the manner required by s. 206, Act VIII of 1859,  
to warrant further investigation in the matter.  
THAKOOR LALL MISSBEE v. KANTH LALL TEWARRE  
[7 W. R., 510]

10. ————— Voluntary ad-

VIII of 1859, relating not to such payments, but to  
voluntary adjustment. BIDHOO BEEBEE v. KRISHUR  
CRUNDER . . . . . 9 W. R., 462

11. ————— Adjustment out  
of Court.—Where several of the acts required to be  
done in execution of a decree are such as can be done

the decree was made. DWARAKANATH DASS BISWAS  
v. UNNODACHURN DASS . . . . . 8 W. R., 319

12. ————— Adjustment out

13. ————— Adjustment out  
of Court—Sufficiency of certificate of payment.—

14. ————— Adjustment out  
of Court—Duty of execution-creditor—Presump-  
tion—K, an execution-creditor of C, applied to the  
Court by which the decree was passed, and caused C  
to be imprisoned under it. C then entered into a

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

taken place between him and K. The Judge, however, refused to enter into the question of the adjustment, as the terms of it had not been certified to the Court under s. 206 of the Civil Procedure Code. *Held* that the Judge was in error; that it was the duty of K, on applying for the release of C, to certify the adjustment to the Court; that it would be unjust to allow him to take advantage of his own omission to do so; and that, not having done so, the presumption against him was that the decree had been satisfied in full; but that, under the circumstances, it would be the most equitable course to direct the Judge to enquire into the terms of the adjustment. Case remanded for that purpose. **CHANGO VALAD DUYHA MAHAJAN v. KALURAM NARAYANDAS**

[4 Bom., A. C., 120

15. ————— *Adjustment out of Court—Compromise.*—H sued B to recover possession of a certain house. B answered that the house was his own; that H having fraudulently got possession of it, he (B) had filed a suit to recover possession; that a decree was passed in his favour in the lower Court, which, however, was reversed on appeal; that, pending a special appeal, a compromise had been entered into between him and H, in pursuance of which he (B) was put in possession of the house. The terms of this compromise were not certified to the Court under s. 206 of the Civil Procedure Code. *Held* that this compromise, having been effected after the decree in favour of B had been reversed, did not come within the meaning of s. 206, and was, therefore, a good defence to the suit of H. **HARI SADASHIV DIKSHIT v. BAPU BULVANT** . 5 Bom., A. C., 78

18. ————— *Adjustment made out of Court—Payment into Court.*—Under the Civil Procedure Code, s. 206, a debtor under a money-decree can at any time bring the amount of his debt into Court to be paid to the judgment-creditor; and by analogy any other person against whom a decree is made for the delivery of moveable or immovable property has an equal right to relieve himself from further vexation by making satisfaction with the knowledge of the Court in such mode as the circumstances of the special case admit of. By the same section all adjustments of decrees, whatever be the nature of the subject of those decrees, must be made with the knowledge of the Court. *Quere* (by MARKBY, J.)—Where a party simply acts in obedience to a decree, is he debarred from showing that he has done so by the words “no adjustment of a decree, in part or in whole, shall be recognized by the Court, unless such adjustment be made through the Court, or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred?” **RAJ LUCKHEE CHOWDHRAIN v. TEWABEE CHOWDHRY** . 18 W. R., 520

17. ————— *Splitting decree into shares—Payments by judgment-debtor.*—Payments by a judgment-debtor in satisfaction of a decree which is afterwards split up into shares, if made

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

through the Court, and while the decree is entire, ought to be taken into account and set off as in satisfaction of the whole decree. **BHUPUR NATH SHAIJA v. KUNHYA LAL ROY** . 20 W. R., 131

18. ————— *Suit on kistbundi—Adjustment through Court.*—The suing on a kistbundi in Court does not necessarily make it the instrument of a public adjustment through the Court, within the meaning of s. 206, Act VIII of 1859. **MUDDON MOHUN MITTER v. PLEER BUKSHUN** 7 W. R., 485

19. ————— *Part payments not certified to Court.*—*Quere*—Whether part payments under a decree may not be proved, although they have not been made through the Court, or certified to the Court under s. 206 of Act VIII of 1859. **BHUDONESWARI DEBI v. DINANATH SANDYAL** [2 B. L. R., A. C., 320 : 11 W. R., 232

20. ————— *Bond payable by instalments—Execution of decree—Limitation.*— . . . . . is entitled to prove payments . . . . . the terms of a kistbundi, for the purpose of showing that his right to sue out execution under the kistbundi was not barred by limitation. **BHUDONESWARI DEBI v. DINANATH SANDYAL** [2 B. L. R., A. C., 320 : 11 W. R., 232

**BISHTO CHUNDER CHUCKERBUTTY v. WOOMANATH ROY CHOWDHRY** . 15 W. R., 459

21. ————— *Decree payable by instalments—Execution of decree—Limitation.*—Where a creditor has obtained a decree for money payable by instalments, the whole amount to become due on failure by the debtor to pay one of the instalments, he is upon failure entitled, notwithstanding s. 206 of Act VIII of 1859, to come into Court and certify to the Court and prove payment of the earlier instalments, to show that execution of his decree is not barred. **FAKIR CHAND BOSE v. MADAN MOHUN GHOSE** [4 B. L. R., F. B., 130 : 13 W. R., F. B., 40

**JUGGUT MOHINEE DOSSEE v. MADHUB CHUNDER KUR** . 15 W. R., 66

22. ————— *Payment not certified to Court—Civil Procedure Code (Act VIII of 1859), s. 206—Decree payable by instalments.*—A decree dated 22nd Cheyt 1295 (18th April 1882) provided “that the defendants do pay the decretal money as per instalments given below, otherwise the plaintiff will have the power to cancel the instalments and realize the entire amount.” The first instalment was made payable on 30th Cheyt 1295 (26th April 1888), and the other six instalments on the 30th of the months of Magh and Bysack in the three following years. In an application made on 9th February 1892, for execution of the decree, the decree-holder stated that only the first instalment had been paid, and asked for execution for the amount remaining due under the decree, and the judgment-debtors denied having paid any of the instalments. Payment, even if made, had not been certified to the

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**23. ———— Limitation.—The**

KISTO KOMUL SINGH v. HUREN SIEDAR  
[13 W. R., F. B., 44

MEHEROONISSA v. ROUSHAN JEHAN  
[17 W. R., 398

RAM RUNJUN CHUCKERBUTTY v. JOWHURUJUMAH  
KHAN 23 W. R., 129

**24. ———— Civil Procedure  
Code (1882), s. 302—Limitation Act (XV of  
1877), ss. 19 and 20—Execution transferred to  
Collector—Acknowledgment in the Court of the Col-**

Limitation Act, 1877, to save limitation in respect of  
the execution of the decree, MUHAMMAD SAID  
KHAN v. PAYAG SAHU I. L. R., 16 ALL., 228

**25. ———— Uncertified pay-  
ment of part of decretal amount—Plea of limita-**

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

Ghose, 4 B. L. R., F. B., 130, Purmananddas  
Jewandas v. Vallabdas Wallj, I. L. R., 11 Bom.,  
506, Sham Lal v. Kanahia Lal, I. L. R., 4 All.,  
218

**26. ———— Civil Procedure  
Code, s. 302—Limitation Act (XV of 1877), ss. 19 and 20**

**27. ———— Kistbundi—Exe-**

amount of the decree should be paid by instalments  
with interest on the balance due

JANKER v. SREENATH ROY CHOWDHURY  
[5 W. R., Mis., 19

**28. ———— Kistbundi.—**  
There is no procedure under Act VIII of 1850 under

**29. ———— Kistbundi.—**

the terms of the arrangement and a balance remained  
due, it was held that the decree-holder could not  
recover in execution of the decree any sum beyond

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

what was stated in the decree. **KANHAI LAL PUNDIT  
v. COLLECTOR OF CUTTACK**

[14 B. L. R., 291 note: 16 W. R., 275

**DWARKNATH SADHOO KHAN v. DOORGA CHURN  
SAHA** . . . 6 W. R., S. C. C. Ref., 1

**30. ———— Bond given in  
satisfaction—Default in paying.**—Where a judgment-debtor executed a kistbundi or instalment bond, providing for the satisfaction of the decree which had been obtained against him, and subsequently failed to pay according to the terms of the kistbundi,—*Held* that the decree-holder could enforce his claim under the terms of the kistbundi by proceeding in execution, and need not file a fresh suit. **TARIF  
BISWAS v. KALIDASS BANERJEE**

[2 B. L. R., A. C., 223: 11 W. R., 86

**31. ———— Release without  
consideration—Adjustment otherwise than through  
the Court.**—*A* had obtained a decree against *B, C,* and *D* in execution of which the sheriff attached certain property belonging to *B, C,* and *D,* who were carrying on business in partnership. The property was sold, and the proceeds paid into Court, and by order of Court *A* received a sum in part satisfaction of his decree. Subsequently *A,* at the request of *B,* and without receiving any consideration, gave him a letter in Bengali, purporting to be a release to him of the remainder of his decree, but such adjustment was not made through the Court. *A* afterwards applied for execution of his decree against *B, C,* and *D,* but his application was refused, the Court treating the letter as a release. *A* appealed. *Held,* on appeal, that the letter was not a release; there was no consideration for it. The adjustment of the decree should have been made through the Court or certified to it in accordance with s. 206, Act VIII of 1859. **BHUBUN MOHAN BONNERJEE v. SADU CHARAN  
SARKAR** . 6 B. L. R., 339: 15 W. R., O. C., 5

**32. ———— Agreement be-  
tween parties for payment of decree by instalments  
—Subsequent application for execution.**—*C* obtained a decree against *N* for payment of a certain sum of money. Various applications were made to execute the decree, and on one of them, in September 1869, the sum of Rs. 1,000 was paid. Subsequently, on December 16th, 1870, it was arranged, upon a petition of *N* and the consent of *A,* that a further payment of Rs. 1,000 should be made, and that the balance of the debt should be paid with interest at the rate of 1 per cent. per month by monthly instalments of Rs. 125. In May 1872, *C* applied for execution for recovery of the balance due on the decree, deducting the amount received under the arrangement. *Held* he was not entitled to execution in supersession of the agreement. **CHUNDER NATH MISSE v.  
GOUREE KOMUL BHUTACHARJEE**

[10 B. L. R., Ap., 23: 19 W. R., 155

**33. ———— Kistbundi—Ef-  
fect of, on decree.**—A kistbundi, or arrangement to pay by instalments the amount of a decree obtained

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

upon a bond, does not effect an extinction of the original debt or the mortgagee's lien upon property mortgaged to him by the bond. **RAMCHURN LALL v.  
KOONDUN KOOMAREE** . 14 B. L. R., 428 note

**RAM CHURN LALL v. RUGHOOBEER SINGH**

[11 W. R., 481

**34. ———— Kistbundi—  
Postpone-petition—Execution of decree.**—Plaintiff sued in the Munsif's Court of Ellore for recovery of certain moneys claimed as due under a "postpone-petition." In execution of a decree in a former suit between the same parties a petition was presented by them to the Munsif's Court, stating an arrangement between them for the payment of the amount decreed by instalments, with a provision that in default of payment, "the Court may, on the application of the plaintiff, issue a warrant and collect the amount, with costs of the petition, from the produce of my share of the aghrahama lands . . . which are held liable by the razinama decree of this suit, from the said lands, from my other property and from myself, and pay the same to plaintiff." The petition concluded thus: "We, both the parties, present this postpone-petition with our free will and consent, and pray for its being enforced according to its terms." *Held,* on second appeal, by the Full Court, affirming the decree of both the lower Courts, that, as it was clear that no intention existed between the parties to create new rights enforceable by suit in supersession of those acquired or declared by the decree, a suit on the "postpone-petition" was not maintainable. **DARBHA  
VENKAMMA v. RAMA SUBBARAYADU**

[I. L. R., 1 Mad., 387

*See* **DEBI RAI v. GOKUL PRASAD**

[I. L. R., 3 All., 585

and **GANGA v. MURLIDHAR**

[I. L. R., 4 All., 240

**35. ———— Kistbundi, Sub-  
stitution of, for decree—Consent of parties—Execu-  
tion of decree.**—The consent of parties cannot give jurisdiction, nor can it alter the nature of the decree. An agreement introducing fresh parties cannot be substituted for the decree or become capable of execution as if it was the original decree. **BHOORENDRO-  
NATH CHOWDHRY v. KALEE PRSUNNO GHOSE**

[24 W. R., 205

**36. ———— Instalment bond  
intended to revive barred decree.**—An instalment bond by a judgment-debtor acknowledging a balance to be due under the decree, but executed without consideration, and after the decree is barred by limitation, cannot either revive a decree or be legally binding on his representatives. **HEERA LALL MOOKERJEE v.  
ROY DHUNPUT SINGH** . . . 24 W. R., 282

**37. ———— Agreement to pay  
by instalments—Enforcing kistbundi or instalment-  
bond by execution.**—An agreement between the parties to a decree to reduce its amount or to give time for his payment, or that the amount shall be paid by

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued**

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

of a decree, dated the 14th June 1878, the parties, on the 11th January 1881, entered into an agreement,

provided that in case of default the amounts due

12 C. 22, 117, 120

BAHHTAWAR . . . I. L. R., 7 All., 327

39. ——— Contract super-  
seding decree—Civil Procedure Code, s. 258—Cer-  
tification.—In the course of proceedings in execution

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

respect of a temporary arrangement under which the decree remained in force. *Per* MAHMOOD, J.—That the agreement of the 11th January 1881 was intended by the parties as a performance of the obligation created by the decree, by substituting a fresh obligation founded upon contract, but that the deed could not be regarded as such an adjustment of the decree as satisfied the requirements of s. 258 of the Civil Procedure Code, because the creditors, whilst admitting the creation of a separate contract, took care to say that the decree was to be kept alive, and the attachment thereunder was to subsist; and that, therefore, the certification of the adjustment was inadequate and could not be recognized in executing the decree. *FATEH MUHAMMAD v. GOPAL DAS*

[I. L. R., 7 All., 424]

## 40. Adjustment by parties out of Court—Subsequent application for execution of decree—Refusal to certify payment to Court.

When a decree has been adjusted between the parties by a contract binding upon them, a Court is not bound to issue process of execution on the original decree in violation of the terms of the contract, although the decree-holder refuses to certify the adjustment of the decree under s. 206 of the Procedure Code, especially where the Court executing the decree is the Court to which the parties would go for the adjustment. *KRISHNAJI* and without receiving any consideration, gave a letter in Bengali, purporting to be a release to him. The remainder of his adjustment was applied not to the use of enforcing the contract. *KESAVA PUNDIT v. SUBBARAYA TAKER*

[7 Mad., 387]

**41. Certifying part payment of decree—"To show cause," Meaning of.**—In determining under s. 258 of Act XIV of 1882 whether or no the cause shown by the decree-holder is sufficient, it is incumbent upon the Court to investigate and decide any questions of fact upon which the parties may not be agreed. In such an investigation evidence may be given either orally or by affidavit. The term "to show cause" does not mean merely to allege causes, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court. *RUNG LALL v. HEM NARAIN GIR*

[I. L. R., 11 Cal., 168]

**42. Power of Court to examine parties as to satisfaction of decree made out of Court.**—A Court executing decrees, whilst giving effect to s. 206 of Act VIII of 1859, should also take reasonable care that its process is not about to be abused for fraudulent purposes. It may, by examining the judgment-debtor and others having knowledge, inform itself of the position of the decree, and whether it has or has not been satisfied. This, however, is merely an enquiry to inform the Court, and it need not frame and decide an issue. *PARBEE CHUT v. RUGHOO GOORDEO*

[2 N. W., 48]

**43. Payment out of Court—Power of Court to go into question of satisfaction of decree.**—If a judgment-debtor, after receiving notice that the right, title, and interest of the

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

decree-holders in the decree has been attached, pays the decree-holders the money due under the decree, the payment is not a valid payment and the Court whose duty it is to execute the decree is competent to enter into that question, and to determine whether the alleged satisfaction is binding upon the auction-purchaser of the attached right, title, and interest above mentioned. *BEJNATH SAHOO v. DOOLAB CHAND SAHOO*

[24 W. R., 245]

**44. Injunction to restrain execution after agreement out of Court not to execute.**—Where a decree-holder agrees for a good consideration not to enforce his decree, the Court may legitimately, on the suit of the opposite party, issue an injunction against the former not to do what he has agreed not to do, Act VIII of 1859, s. 206, notwithstanding. *NUBO KISHEN MOOKERJEE v. DEBNATH ROY CHOWDHRY*

[22 W. R., 194]

**45. Refusal to certify to Court.**—Where a payment alleged to have been made in satisfaction of a decree is not certified to the Court executing the decree, the Court is bound to proceed as if such payment had never been made. If such payment has in fact been made to the judgment-creditor and he dishonestly refuses to certify it to the Court when called upon to do so, he can be made liable to refund it in an action. *MAHOMED KAZEM JOWHURAY v. KATOO BEBEE*

[20 W. R., 150]

**46. Contract to certify satisfaction of decree, Breach of—Suit for damages.**—The provision in s. 258 of the Code of Civil Procedure, 1908, which forbids any Court to recognize a payment under a decree, unless certified to the Court executing the decree, does not debar a suit for damages for a breach of a contract to certify. *MALLAMA v. VENKAPPA*

[I. L. R., 8 Mad., 277]

**47. Act XII of 1879, s. 36—Suit to recover money paid out of Court in satisfaction of decree.**—The provisions of s. 206 of the Civil Procedure Code (Act VIII) of 1859 only prevent the Court executing the decree from recognizing a payment made out of Court, and do not bar a suit for the refund of such payment. *G* held a decree against *D*, who satisfied it out of Court, and obtained a receipt from *G* to the effect that it was satisfied. Notwithstanding this, *G* executed the decree and recovered the amount of it through the Court, although *D* pleaded satisfaction in the execution proceedings and produced the receipt. In a suit brought by *D* against *G* for refund of the money received by *G* out of Court, the defendant contended that the suit was not maintainable. Held that it was maintainable according to the law as it stood before the passing of Act XII of 1879. *Gunamani Das v. Prankishori Dasi*, 5 B. L. R., 223, and *Gulawad v. Rahimtulla*, 4 Bom. A. C., 76, followed. *Quare*—Whether such a suit is maintainable under s. 36 of Act XII of 1879, which has been substituted for

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

§ 258 of the Civil Procedure Code (Act X) of 1877.  
DAYLATA v. GANESH SHASTRI

[L. R., 4 Bom., 295]

48. \_\_\_\_\_ *Suit for money*  
*given in satisfaction of the decree*

LAND, C. J., BHU INNES, J., dissenting; that such a  
suit is not maintainable. ANUNACHELLA PILLAI v.  
APPAYA PILLAI 3 Mad., 188

KUNHI MOIDIN KUTTI v. RAMEN UNNI  
[L. R., 1 Mad., 203]

49. \_\_\_\_\_ *Payments made*  
*in satisfaction of the decree*

v. NOBINCHUNDER ADRIKARE 8 W. R., 449

50. \_\_\_\_\_ *Part satisfaction*

Overruling ALUNGA BEEB v. GOOROO CHURN ROY  
[3 W. R., S. C. C. Ref., 3]

BHUGOJAN TANTER v. GOHIND CHUNDER ROY  
[9 W. R., 210]

where it was held that a suit would lie for damages  
for breach of contract in not certifying the payments.

51. \_\_\_\_\_ *Suit to enforce*

52. \_\_\_\_\_ *Rejection of ob-  
jection that decree had been satisfied out of Court—  
Suit to recover thing given in satisfaction—Held*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

that the rejection, under s 206 of Act VIII of

given in satisfaction of the decree. GULAWAD  
CHANDABHAI v. RAHIMTULLA JAMALBHAI  
[4 Bom., A. C., 76]

53. \_\_\_\_\_ *Suit for breach  
of contract in not certifying payment to Court.*—  
A suit will, notwithstanding s. 206 of Act VIII  
of 1859, lie for damages for an alleged breach of  
contract in not certifying to the Court a payment of  
money in satisfaction of a decree, made out of and  
not through the Court, in consequence of which the  
same was fraudulently recovered a second time by the

54. \_\_\_\_\_ *Uncertified ad-  
justment out of Court with a decree-holder—Subse-  
quent execution—Fraud of decree-holder—Power of*

55. \_\_\_\_\_ *Satisfaction of  
decree not certified—Fraudulent execution—Charge  
under Penal Code, s. 210—Proof of payment.*—

56. \_\_\_\_\_ *Fraudulent exe-  
cution of decree—Duty of the decree-holder to  
inform the Court of private adjustment or satisfac-  
tion of a decree—Construction of Penal Code,*

**PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

have no application to a Criminal Court  
nating a charge of fraudulently executing a  
nder s. 210 of the Penal Code. Those words  
ar any criminal remedy which an injured  
nt-debtor may have against a fraudulent de-  
der, whether by a prosecution under ss. 193,  
6, or any other section of the Penal Code. In  
f the Penal Code the word "satisfied" is  
nderstood in its ordinary meaning, and not  
ing to decrees, the satisfaction of which has  
ertified to the Court. **QUEEN-EMPRESS v.  
DAYARAM . . . I. L. R., 10 Bom., 288**

*Adjustment of de-  
without certifying—Proof of payment of  
otherwise than by certificate—Fraudulent  
on of decree after adjustment.—Where a  
has been satisfied out of Court, and the  
t has not been recorded in accordance with  
f the Civil Procedure Code, it is nevertheless  
o the quondam judgment-debtor when suing  
a sale made by the quondam decree-holder  
tisfaction of the decree set aside, to prove the  
t of the decretal money otherwise than by a  
ite under that section. **PAT DASI v. SHARUF  
MALA . . . I. L. R., 14 Calc., 376**  
see **MOHURA MOHUN GHOSH MONDUL v.  
KUMAR MITTER I. L. R., 15 Calc., 557***

*Suit to recover  
ments due under a mortgage made in adjust-  
of a decree.—Under s. 258 of the Civil  
ure Code, no Court can recognize an uncertified  
ment of a decree for any judicial purpose what-  
soever. **Pattankar v. Derji, I. L. R., 6 Bom., 146,**  
led. A suit will not lie to enforce an uncerti-  
fied adjustment of a decree against  
ment-debtor, the consideration for which is, that  
l operate in satisfaction of the decree; as there  
that case, no consideration which the Court can  
ize, and therefore no valid consideration for the  
ent-debtor's agreement. The plaintiff was the  
ee of a decree obtained by one O K against the  
lants on the 5th May 1883. By that decree,  
was declared entitled to recover R9,961-5-6,  
interest at nine per cent. from the defendants;  
ayment was ordered to be made to him of the  
um by weekly instalments of R200. In order  
ure the payment of the said instalments, the  
lants were required to execute a mortgage  
K of certain property, with power to him to sell  
ame and to execute the decree for the whole  
nt, in case of default, for six months. O K  
ed the decree to the plaintiff in the present  
and subsequently to the assignment (viz., on the  
July 1883) the defendants executed to the  
iff the mortgage on which the present suit was  
ht. The mortgage-deed, after reciting the  
facts, stated that the defendants had agreed to  
y the amount of the decree, and it contained a  
ant by the defendants that they would pay  
1-5-6, with interest at six per cent. by monthly  
ments of R400 from the 21st August 1883.*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

The mortgage, therefore, differed from the decree,  
both with regard to the instalments and the rate of  
interest. The plaintiff sued to recover the sum of  
R4,207, being the amount of instalments due to him  
under the said mortgage. *Held* that the suit would  
not lie, as the mortgage was an adjustment of the  
decree, and had not been certified to the Court as  
required by s. 258 of the Civil Procedure Code.  
**ABDUL RAHMAN v. KHOJA KHAKI ABUTH**

**[I. L. R., 11 Bom., 6**

**59. ————— Payment made  
towards decree, but uncertified—Effect of such pay-  
ments on limitation for application for execution  
of decree.—Where certain payments had been made  
on account of a decree, but such payments had not  
been certified to the Court under s. 258 of the Civil  
Procedure Code, it was held, following **Fakir Chand  
Bose v. Madan Mohan Ghose, 4 B. L. R., F. B., 130,**  
that such payments, although not certified to the  
Court, were effectual to prevent the appellant's  
application for execution from being barred by limita-  
tion. It would, however, be necessary for the  
appellant to certify these payments. **PURMANAN-  
DAS JIWANDAS v. VALLABDAS WALLJI****

**[I. L. R., 11 Bom., 506**

**60. ————— Sanction of  
Court to agreements for satisfaction of decree—  
Payments by judgment-debtor under void agree-  
ment—Effect of uncertified payments to decree-  
holder.—A sum paid under an agreement void under  
s. 257A of the Civil Procedure Code cannot be  
acknowledged or recognized in execution of a decree  
under s. 258 of the Code, unless it has been certified  
within the proper time. Agreements for the satis-  
faction of a judgment-debt not sanctioned under  
s. 257A of the Civil Procedure Code are void; but,  
if sanctioned, they may be carried out in execution.  
**DURGAPRASAD BANERJEE v. LALIT MOHUN SINGH  
ROY . . . . . I. L. R., 25 Calc., 86****

**61. ————— Payment made  
by defendant in satisfaction of decree not certified  
—Subsequent reversal of decree on appeal—Appli-  
cation by defendant for refund of money paid in  
satisfaction.—The plaintiff obtained a decree against  
the defendant for R60 and costs, R29-10-1, against  
which the defendant immediately appealed. Shortly  
afterwards the defendant sent R70 to the plaintiff's  
vakil, intimating by a letter that the remittance was  
in part payment of the decree, and that an arrange-  
ment would be made to pay the balance. The  
plaintiff did not take out execution of the decree,  
but the part payment was not certified to the Court.  
On appeal the decree was reversed, and the  
defendant applied for the refund of the amount  
which he had paid to the plaintiff. The Court of  
first instance granted the application. The plaintiff  
appealed, and the Appellate Court reversed the  
order, holding that, under the provisions of s. 258  
of the Civil Procedure Code, the payment made  
by the defendant, not having been certified, could not**

## CODE ACT XIV

consideration, and the mortgage was restored. The Court accordingly, under s 622 of the Civil Procedure Code, discharged the order of the lower Appellate Court and restored the order of the Court of first instance. *VASUDEY GOVIND v. VISHNUT VITHAL*. I. L. R., 11 Bom., 724

62. — *Judgment-debtor as part-purchaser of a decree, Suit by*—*H D and R D* owned a 6 anna share in certain decrees. The other decree-holders subsequently sold their 10-anna share to *H S* and *S M*, two of the judgment-debtors *H D* and *R D* then proceeded to

63. — *Mortgage in satisfaction of decree—Adjustment not certified.*—In a suit brought by a Hindu to recover certain land, defendant pleaded that he held the same under a mortgage granted to him by plaintiff's mother and guardian in satisfaction of a decree obtained against plaintiff's deceased father. Plaintiff contended that, as the mortgage was in adjustment of a

*Aruth*, I. L. R., 11 Bom., 61.  
*Mallamma v. Venkappa*, I. L. R., 8 Mad., 277,  
distinguished *THIRUMALAI v. SUNDARA*  
(I. L. R., 11 Mad., 469)

64. — *Purchase by mortgagee holding decree for sale of portion of*

## CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

*mortgaged property, subject to mortgage—Right of mortgagor to redeem*—A mortgagee having obtained a decree against his mortgagor for the sale of the mortgaged property, a portion of the latter was subsequently sold, subject to the said decree, in

Civil Procedure, claiming that the mortgagee was

the remainder of the property. *Quere*  
tion was an  
meaning of  
*ERUSAPPA*  
MORTGAGOR  
*BANK*. I. L. R., 23 Mad., 377

65. — *Decree—Satisfaction of Court—Payment uncerti-*

66. — *Omission to cer-*  
— *Suit to enforce mort-*

*THAN*. I. L. R., 11 Bom., 61

67. — *Decree, adjust-*  
— *Adjustment after attach-*

*BALSHET v. JOHANNIS*. I. L. R., 10 Bom., 61

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**68.** ————— *Adjustment or satisfaction of decree—Civil Procedure Code Amendment Act (VII of 1888), s. 27—Recognition of adjustment by a Civil Court, except in execution.*—Where under a bond a decree was adjusted by making a small deduction, and by providing for the payment of the balance as part of the entire amount of the bond,—*Held* that since the amendment made in s. 258 of the Civil Procedure Code by s. 27 of Act VII of 1888 (Act amending the Civil Procedure Code of 1882), such adjustment may be recognized by a Civil Court, except in execution. **GHANASHAM LAESHMANIDAS v. KASHIRAM NARODA**

[I. L. R., 16 Bom., 589]

**69.** ————— *Decree payable by instalments—Limitation—Waiver by decree-holder—Payment out of Court—Limitation Act (XV of 1877), sch. II, art. 179 (6).*—An application for execution of a decree payable by instalments was resisted by the judgment-debtor as barred by limitation on the ground that nothing had been paid under the decree, and that the application was made more than three years after the first instalment fell due. The decree-holder pleaded that he had waived the default in payment of the first instalment by accepting such payment shortly afterwards, and that the application was in time, having been made within three years from the date when the second instalment was due. *Held* that the decree-holder could not raise this plea, as the payment in question had not been certified to the Court executing the decree, and therefore could not, under s. 258 of the Civil Procedure Code, be recognized. **Sham Lal v. Kanahia Lal, I. L. R., 4 All., 316, and Zahur Husain v. Bakhtawar, I. L. R., 7 All., 317, not followed.**  
**MITTHU LAL v. KHAIRATI LAL**

[I. L. R., 12 All., 589]

**70.** ————— *Execution of decree—Attachment—Previous assignment in satisfaction of decree of third party—Suit by assignee to establish right to attached property.*—Where a regular suit under s. 283 of the Code of Civil Procedure was brought to establish the plaintiff's right to certain attached property on the allegation that the property attached had been transferred to him in satisfaction of a decree held by him against the judgment-debtor,—*Held* that it was not necessary that such transfer should be certified under the provisions of s. 258 of the Code of Civil Procedure. The prohibition to take cognizance of adjustments and payments referred to in s. 258 above-mentioned relates only to the Court executing the decree. **KALYAN SINGH v. RAMTA PRASAD** . . . I. L. R., 13 All., 339

**71.** ————— *Landlord and tenant—Mirasi tenure declared in decree—Subsequent payment of rent by defendants not a payment under decree, but under the tenure—Payment not certified to Court.*—The plaintiff sued the defendants to recover possession of certain land. The defendants pleaded they were mirasi tenants and entitled to

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

possession as long as they paid the rent. The suit was compromised, and by a consent decree it was declared that the defendants held by mirasi tenure, and they were directed to pay rent "as before," or in default the plaintiff should take possession. The plaintiff afterwards applied in execution for possession, alleging that the rent had not been paid. The defendants pleaded that it had been paid, and the plaintiff rejoined that, even if it had been paid, the Court could not recognize the payment, as it had not been certified under s. 258 of the Civil Procedure Code. *Held* that, under the circumstances, the rent, when paid, was to be deemed as paid under the mirasi tenure and not under the decree, and, therefore, s. 258 of the Civil Procedure Code did not apply, and payment need not be certified. **KEDARI v. GAJAI**

[I. L. R., 18 Bom., 690]

ss. 259, 260 (1859, s. 200).

*See CASES UNDER RESTITUTION OF CONJUGAL RIGHTS.*

**1.** ————— *Decree for performance of a particular act.*—A decree had been obtained that "the defendants do, within six weeks after the service upon them of this decree, remove the obstruction and reopen the pathway or lane leading from the north-west end of the plaintiff's house, northwards to a public road, as the same existed before the commencement of the suit and as described in the plaint." *Held* that this was a decree for the performance of a particular act on the part of the defendants, and must be executed under the provisions of s. 200, Act VIII of 1859, i.e., by imprisonment of the party or attachment of his property, or by both; therefore, an order for execution of the decree by causing the obstruction to be removed was set aside as illegal. **BHOOBUN MOHUN MUNDUL v. NOBIN CHUNDER BULLER**

[10 B. L. R., Ap., 12: 18 W. R., 282]

**2.** ————— *Execution of decree for restitution of conjugal rights.*—A, who had been directed by a decree to refrain from preventing her daughter returning to her husband, after the date of the decree permitted her daughter, who was of age, to reside in her house. *Held* that such conduct on the part of A was no such evidence of interference with her daughter's return as would justify the execution of the decree against her, under the provisions of s. 200 of Act VIII of 1859. **AJXASI KUAB v. SURAJ PRASAD** . I. L. R., 1 All., 501

**3.** ————— *Decree for possession of wife—Enforcing execution of decree.*—Where there has been a decree in favour of an applicant for special possession of his wife, and application made for execution, the process under the ordinary sections will not be enforced. **AKBARALLY v. HOSSAIN ALLY**

[I Ind. Jur., N. S., 101: 5 W. R., Mis., 29]

**4.** ————— *Decree ordering wife to return to husband—Enforcing decree under a suit for restitution of conjugal rights against*

**CIVIL-PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

*wife.—Quere—Whether, under the present proce-*

BEGUM

[8 W. R., P. C., 3:11 Moore's I. A., 551

5. ——— Opportunity of, and refusal to, obey decree—*Enforcing execution of decree.*—No order for enforcing a decree by imprisonment under s. 200 of the Code of Civil Pro-

s. 260.

*See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.*  
[I. L. R., 19 Bom., 84

*See EXECUTION OF DECREE—MODE OF EXECUTION—DECLARATORY DECREES*  
[I. L. R., 21 Calc., 784  
L. R., 21 I. A., 59

*See EXECUTION OF DECREE—MODE OF EXECUTION—REMOVAL OF BUILDINGS.*  
[I. L. R., 8 Calc., 174  
9 C. L. R., 453

ss. 261, 262.

*See REGISTRAR OF HIGH COURT.*  
[I. L. R., 16 Calc., 330

s. 263 (1859, s. 223).

*See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION*

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

s. 264 (1859, s. 224).

*See CASES UNDER POSSESSION—NATURE OF POSSESSION.*

s. 265 (1859, s. 225).

*See COLLECTOR* I. L. R., 11 Bom., 882  
[I. L. R., 12 Bom., 371

*See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION.*  
[I. L. R., 6 All., 452

*See CASES UNDER PARTITION.*

s. 266 (1859, s. 205).

*See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT.*

ss. 266-270.

*See CASES UNDER ATTACHMENT.*

s. 268 (1859, ss. 234, 236, 239, 241).

*See LIMITATION ACT, 1877, s. 15.*

[I. L. R., 13 All., 79  
I. L. R., 14 All., 182  
I. L. R., 17 All., 198  
L. R., 22 I. A., 31

ment. NURSING DAS RAGHUNATH DAS v. TULSIAM  
BIN DOULATRAM I. L. R., 2 Bom., 558

1. ——— s. 272—Court of Justice—

[10 W. R., 43

2. ——— Application for money  
deposited in Court

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877) —continued.**

— s. 273.

See ATTACHMENT—SUBJECTS OF ATTACH-  
MENT—DECREES I. L. R., 2 All., 230

I. L. R., 6 Mad., 416

I. L. R., 10 Bom., 444

I. L. R., 16 Bom., 522

I. L. R., 20 Cal., 111

I. L. R., 21 All., 405

— s. 274 (1859, s. 235).

See CASES UNDER ATTACHMENT—MODE OF  
ATTACHMENT AND IRREGULARITIES IN  
ATTACHMENT.

See PROCESS, SERVICE OF.

[I. B. L. R., 5 N., 20

10 W. R., 204

10 B. L. R., Ap., 12

— s. 275 (1859, s. 245)—Tender of  
amount of decree—*Stay of execution*.—Under  
s. 245 of Act VIII of 1859, the mere tender of money  
before the Judge is not sufficient to entitle the  
judgment-debtor to have the sale of his property  
stayed, and the law contemplates that payments  
should be made in accordance with the rules and  
forms of Courts. *HUDONATH ROY v. INDOONOO-  
SHUN DEN ROY* . . . . . 2 Hay, 302

— s. 276 (1859, s. 240).

See CASES UNDER ATTACHMENT—ALIENA-  
TION DURING ATTACHMENT.

— s. 278 (1859, s. 240).

See CASES UNDER CLAIM TO ATTACHED  
PROPERTY.

See COURT FEES ACT, SCH. II, ART. 17,  
CL. 1 . . . I. L. R., 4 Bom., 515, 535

[15 B. L. R., Ap., 1

I. L. R., 13 Cal., 162

I. L. R., 2 All., 63

I. L. R., 6 All., 341, 466

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

[I. L. R., 4 Mad., 302

I. L. R., 8 Mad., 506

I. L. R., 11 Cal., 673

I. L. R., 17 Mad., 17

See CASES UNDER LIMITATION ACT, 1877,  
ART. 11.

See CASES UNDER LIMITATION ACT, 1877,  
ART. 13.

See CASES UNDER ONUS OF PROOF—CLAIMS  
TO ATTACHED PROPERTY.

— ss. 278-283.

See CASES UNDER CLAIM TO ATTACHED  
PROPERTY.

— s. 280 (1859, s. 246).

See CASES UNDER CLAIM TO ATTACHED  
PROPERTY.

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OF 1882 (ACT X OF 1877) —continued.**

See CASES UNDER SMALL CAUSE COURT,  
MORTGAGE—JURISDICTION—CLAIMS TO  
PROPERTY SEIZED IN EXECUTION.

— s. 291 (1859, s. 246).

See CASES UNDER CLAIMS TO ATTACHED  
PROPERTY.

See CASES UNDER LIMITATION ACT, 1877,  
ART. 11.

— s. 293 (1859, s. 246).

See CASES UNDER CLAIMS TO ATTACHED  
PROPERTY.

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

[I. L. R., 4 Mad., 302

I. L. R., 11 Cal., 673

I. L. R., 8 Mad., 506

I. L. R., 17 Mad., 17

See CASES UNDER LIMITATION ACT, 1877,  
ART. 11.

See CASES UNDER ONUS OF PROOF—CLAIM  
TO ATTACHED PROPERTY.

See CASES UNDER RIGHT OF SCIT—EXECU-  
TION OF DECREE.

See CASES UNDER SMALL CAUSE COURT,  
MORTGAGE—JURISDICTION—CLAIMS TO  
PROPERTY SEIZED IN EXECUTION.

— s. 295.

See CASES UNDER SALE IN EXECUTION OF  
DECREE—INVALID SALES—WANT OF  
JURISDICTION.

— ss. 288 and 296 (1859, s. 248)—  
Construction of.—In s. 248, Act VIII of 1859, the  
words "whom the Court may appoint" apply not  
only to the words "any other person," but also the  
officers of the Court. In the absence of the Sub-  
ordinate Judge it is not competent to the Judge,  
because he is a superior officer, to perform the duties  
required by s. 248. *JUDONATH ROY v. RAM BUKSH  
CHATTERJEE* . . . . . 12 W. R., 238

— ss. 287-320.

See CASES UNDER SALE IN EXECUTION OF  
DECREE.

— ss. 287, 289, and 290 (1859, s. 249).

See CASES UNDER SALE IN EXECUTION OF  
DECREE—SETTING ASIDE SALE—  
IRREGULARITY.

1. ——— Part of an estate.—The  
"part of an estate," in s. 249, Act VIII of 1859,  
meant the aliquot part of an estate. *KALLIPROSONNO  
BOSE v. DINONATH MULLICK*

[11 B. L. R., 56: 19 W. R., 434

2. ——— Proclamation under.  
—The object of the proclamation under s. 249

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

Is to give notice to intending purchasers, not to the judgment-debtors. *LAKH RAM v. MOHESH DASS*  
[12 W. R., 488]

— s. 290 (1859, s. 249, last para.)

See SALE IN EXECUTION OF DECREE—  
BIDDERS. I. L. R., 14 Mad., 235.

See CASES UNDER SALE IN EXECUTION OF  
DECREE—SETTING ASIDE SALE—IRREG-  
ULARITY.

— s. 293.

See SALE IN EXECUTION OF DECREE—RE-  
SALES. I. L. R., 5 Bom., 575  
I. L. R., 7 Calc., 337  
I. L. R., 18 Calc., 535  
I. L. R., 12 Mad., 454  
I. L. R., 19 All., 22  
2 C. W. N., 411

— ss. 293, 307, and 308 (1859, s. 254).

See APPEAL—SALE IN EXECUTION OF DE-  
CREE. I. L. R., 1 All., 181  
I. L. R., 13 All., 564  
I. L. R., 14 All., 201

See CASES UNDER SALE IN EXECUTION OF  
DECREE—RE-SALE. 3 W. R., 3  
[9 W. R., Mis., 82, 128  
7 W. R., 110  
I. L. R., 1 All., 181]

— s. 294.

See SALE IN EXECUTION OF DECREE—SET-

— s. 295 (1859, ss. 270, 271).

See CASES UNDER SALE IN EXECUTION OF  
DECREE—DISTRIBUTION OF SALE-PRO-  
CEEDS.

See SMALL CAUSE COURT, MORTGAGE—  
JURISDICTION—SALE-PROCEEDS.  
[I. L. R., 9 Mad., 250]

— s. 308 (1859, s. 253).

See SALE IN EXECUTION OF DECREE—SET-

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

— s. 307.

See PAYMENT INTO COURT.

[I. L. R., 22 Bom., 415]

— Vacation—Holiday—Days on  
which the office is open—Office day—Payment of  
fees—Money for payment of the said fees.

— ss. 307, 308 (1859, s. 254).

See CASES UNDER SALE IN EXECUTION OF  
DECREE—RE-SALE.

— s. 310 (Act XXIII of 1861, s. 14).

See CASES UNDER PRE-EMPTION.

— s. 310A.

See APPEAL—ORDERS.

[I. L. R., 19 All., 140]

See EXECUTION OF DECREE—EFFECT OF  
CHANGE OF LAW PENDING EXECUTION.

[I. L. R., 21 Calc., 940  
I. L. R., 22 Calc., 787  
I. L. R., 18 Mad., 477]

See SALE FOR ARREARS OF RENT—SETTING  
ASIDE SALE—GENERAL CASES.

[I. L. R., 23 Calc., 393, 398 note  
1 C. W. N., 114  
2 C. W. N., 127]

See SALE IN EXECUTION OF DECREE—SET-  
TING ASIDE SALE—GENERAL CASES.

[I. L. R., 20 Mad., 158  
I. L. R., 22 Mad., 286  
I. L. R., 23 Bom., 723  
I. L. R., 34 Calc., 682  
I. L. R., 25 Calc., 218, 609  
1 C. W. N., 695, 703  
I. L. R., 28 Calc., 449  
3 C. W. N., 283]

See SALE IN EXECUTION OF DECREE—SET-

— ss. 311, 312 (1859, ss. 256, 257).

See CASES UNDER SALE IN EXECUTION OF  
DECREE—SETTING ASIDE SALE—IRREG-  
ULARITY.

— The word "disallowed" in s. 312  
of the Civil Procedure Code has no reference to an

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

order passed on an appeal, but refers to the disallowance of the objection by the Court before which the proceedings under s. 311 are taken. *MAHOMED HOSSEIN v. PURUNDUR MAHTO*

[I. L. R., 11 Calc., 287

— s. 312 (1859, s. 257).

See RIGHT OF SUIT—SALE IN EXECUTION  
OF DECREE . . . 11 W. R., 297

[12 W. R., 41

I. L. R., 3 All., 112, 206, 554, 701

I. L. R., 14 Calc., 1, 9

I. L. R., 19 Bom., 216

1. — Letters Patent, 1865, ss. 15 and 36.—Cls. 15 and 36 of the Letters Patent of the High Court must be treated as qualifying s. 257 of Act VIII of 1859. *ROY NANDIPAT MAHATA v. URQUHART*

[4 B. L. R., A. C., 181; 13 W. R., 209

2. — Application of.—S. 257, Act VIII of 1859, applied only to sales held after that Act came into operation. *ABDOOL HYD v. LALLA NOWAH ROY*

1 W. R., 204

— s. 313.

See CASES UNDER SALE IN EXECUTION OF  
DECREE—INVALID SALES—WANT OF  
SALEABLE INTEREST.

— s. 315 (1859, s. 258).

See CASES UNDER SALE IN EXECUTION OF  
DECREE—SETTING ASIDE SALE—RIGHTS  
OF PURCHASERS—RECOVERY OF PUR-  
CHASE-MONEY.

See SMALL CAUSE COURT, MOFUSSIL—  
JURISDICTION—PURCHASE-MONEY.

[I. L. R., 11 Mad., 269

— s. 316 (1859, s. 259).

See REGISTRATION ACT, 1877, s. 17 (1866,  
1871, s. 17) . . . I. L. R., 3 Mad., 37

[10 Bom., 435

12 Bom., 247

7 C. L. R., 115

21 W. R., 349

11 Bom., 218

I. L. R., 2 All., 392

I. L. R., 5 All., 84, 588

I. L. R., 5 Calc., 226

I. L. R., 9 Calc., 82

I. L. R., 4 Bom., 155

I. L. R., 8 Bom., 377

See SALE IN EXECUTION OF DECREE—  
INVALID SALES—DECREES BARRED BY  
LIMITATION . . . I. L. R., 7 Calc., 91

[I. L. R., 11 Calc., 376

See CASES UNDER SALE IN EXECUTION OF  
DECREE—PURCHASERS, TITLE OF—  
CERTIFICATES OF SALE.

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

Certificate of sale, Applica-  
tion for—*Court Fees Act, 1870, s. 6.*—An applica-  
tion by an auction-purchaser for a certificate of sale  
need bear no stamp, since by s. 316 of the Civil Proce-  
dure Code it is not even required to be in writing.  
*HIRA AMBAIDAS v. TEKCHAND AMBAIDAS*

[I. L. R., 13 Bom., 670

— s. 317.

See CASES UNDER BENAMI TRANSACTION—  
CERTIFIED PURCHASE RS—CIVIL PRO-  
CEDURE CODE, s. 317.

— s. 320.

See COLLECTOR I. L. R., 11 Bom., 478  
[I. L. R., 9 All., 43  
I. L. R., 16 All., 1

See EXECUTION OF DECREE—TRANSFER OF  
DECREE FOR EXECUTION AND POWER  
OF COURT, ETC. I. L. R., 7 Bom., 332  
[I. L. R., 7 All., 407  
I. L. R., 8 Bom., 301  
I. L. R., 11 Bom., 478

See RULES MADE UNDER ACTS.

[I. L. R., 15 Bom., 322

I. L. R., 12 All., 564

I. L. R., 23 Bom., 531

— ss. 322, 322A, and 322B:

See EXECUTION OF DECREE—EXECUTION  
BY COLLECTOR . I. L. R., 18 All., 318  
[I. L. R., 20 All., 428

— ss. 325A, 326—Execution of de-  
cree—*Limitation—Execution as to immovable pro-  
perty of judgment-debtor stayed by reason of such pro-  
perty being in charge of the Collector.*—The plain-  
tiffs obtained in 1874 a decree for money against the  
defendant. In 1879, by an order under s. 326 of the  
Code of Civil Procedure, the immovable property of  
the judgment-debtor was placed under the manage-  
ment of the Collector. Before this order was made,  
and during the period when the judgment-debtor's  
property was in charge of the Collector, various  
applications for execution were made by the decree-  
holders. Finally, in 1896, about ten years after the  
last preceding application, the decree-holders applied  
for execution of their decree shortly after the pro-  
perty had been released by the Collector. *Held* that,  
as regards the immovable property of the judgment-  
debtors, against which execution was sought, the  
application was not barred by limitation, inasmuch as  
the decree-holders had no remedy by execution against  
that property until the Collector's management had  
ceased. *GIRDHAR DAS v. HAR SHANKAR PRASAD*  
[I. L. R., 20 All., 383

— s. 326 (1859, s. 244).

See EXECUTION OF DECREE—EXECUTION  
BY COLLECTOR . I. L. R., 18 All., 318

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

*See* EXECUTION OF DECREE—STAY OF  
EXECUTION . I. L. R., 2 All., 856  
[I. L. R., 9 Calc., 290

1. ——— Arrangement leaving  
property in execution in possession of  
debtor . . . . .

Judge, who exceeded his jurisdiction in interfering in  
the matter. The arrangement proposed by the  
Collector was not one which could be proposed or  
accepted under the terms of s. 244 of the Civil Proce-  
dure Code. *MUTTRA PERSHAD v. RAMPERSHAD*  
[6 N. W., 39

ss. 328-335.

*See* CASES UNDER RESISTANCE OR OB-  
STRUCTION TO EXECUTION OF DECREE.

s. 328 (1850, s. 226).

*See* CASES UNDER RESISTANCE OR OB-  
STRUCTION TO EXECUTION OF DECREE.

s. 332 (1850, s. 230).

*See* CASES UNDER ONUS OF PROOF—POS-  
SESSION AND PROOF OF TITLE.

*See* CASES UNDER RESISTANCE OR OB-  
STRUCTION TO EXECUTION OF DECREE.

Application under—

*See* COURT-FEES—ACT XXVI OF 1867.

[4 B. L. R., F. R., 94

Order rejecting applica-  
tion under—

*See* APPEAL—ORDERS

[2 B. L. R., A. C., 303 note

W. R., 1864, Mia., 24

1 W. R., 140

5 Mad., 183

13 W. R., 284

21 W. R., 39

I. L. R., 16 Mad., 127

I. L. R., 21 Bom., 392

I. L. R., 22 Calc., 830

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

s. 338.

*See* ATTACHMENT—ATTACHMENT OF PER-  
SON . . . . .

I. L. R., 7 Calc., 19

[I. L. R., 11 Calc., 527

I. L. R., 8 Mad., 278, 503

I. L. R., 16 Calc., 85

I. L. R., 9 Mad., 99

*See* SURETY—LIABILITY OF SURETY.

[I. L. R., 13 All., 100

I. L. R., 14 Calc., 757

I. L. R., 15 Calc., 171

I. L. R., 18 All., 37

I. L. R., 19 Bom., 210

s. 337A.

*See* ARREST—CIVIL ARREST.

[I. L. R., 22 Bom., 731, 961

2 C. W. N., 593

*See* APPEAL—DECREES.

[I. L. R., 31 Mad., 39

s. 339 (1850, s. 276).

*See* CASES UNDER SUBSISTENCE MONEY.

s. 341 (1850, s. 276).

*See* CONTEMPT OF COURT—CONTEMPTS  
GENERALLY . I. L. R., 4 Calc., 655

*See* CASES UNDER SUBSISTENCE MONEY.

1. ——— Release of judgment-  
debtor—Confinement in Court-house.—Where the

2. ——— Decree—Execution—Arrest

s. 342 (1850, s. 276).

*See* CONTEMPT OF COURT—CONTEMPTS  
GENERALLY . I. L. R., 4 Calc., 655

*See* EXECUTION OF DECREE—EFFECT OF  
CHANGE OF LAW PENDING EXECUTION.

[I. L. R., 2 Bom., 148

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

See IMPRISONMENT.

[I. L. R., 13 Mad., 141

See CASES UNDER SUBSISTENCE MONEY.

— s. 344 (1859, ss. 273, 280).

See CASES UNDER INSOLVENCY—INSOLVENT-DEBTORS UNDER CIVIL PROCEDURE CODE.

— ss. 344-360 (Ch. XX).

See DEPUTY COMMISSIONER OF ARYAB.

[I. L. R., 4 Calc., 94

See CASES UNDER INSOLVENCY—INSOLVENT-DEBTORS UNDER CIVIL PROCEDURE CODE.

— s. 349.

See ATTACHMENT—ATTACHMENT OF PERSON

I. L. R., 11 Calc., 451

[I. L. R., 12 Calc., 652

I. L. R., 8 Mad., 503

I. L. R., 12 Bom., 46

— s. 350 (1859, s. 281).

See CASES UNDER INSOLVENCY—INSOLVENT-DEBTORS UNDER CIVIL PROCEDURE CODE.

— s. 351 (1859, s. 281).

See APPEAL—ORDERS.

[I. L. R., 2 Mad., 219

I. L. R., 4 Calc., 888

I. L. R., 6 Calc., 168: 7 C. L. R., 282

I. L. R., 5 Calc., 719: 6 C. L. R., 135

I. L. R., 11 Mad., 136

I. L. R., 15 Mad., 89

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

— s. 357—Insolvency—Execution of decree—Limitation.—S. 357 of the Code of Civil Procedure provides a limitation of its own and in substitution for the limitation provided for the execution of decrees by the Limitation Act, 1877. LALMAN v. GOPI NATH . I. L. R., 19 All., 144

— s. 364 (1859, s. 101).

See LIMITATION—QUESTION OF LIMITATION . I. L. R., 12 Calc., 642

See PARTIES—ADDING PARTIES TO SUITS—DEFENDANTS.

[I. L. R., 12 Calc., 642

— s. 365 (1859, ss. 102, 377).

See CASES UNDER ABATEMENT OF SUIT.

See CASES UNDER EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

See CASES UNDER LIMITATION ACT, 1877, ARTS. 171, 171A, 171B.

See CASES UNDER PARTIES—SUBSTITUTION OF PARTIES.

— s. 367 (1859, s. 103)—Dispute as to claim to represent deceased plaintiff—Per Curiam (SHEPHERD and BEST, J.J.).—A dispute within the meaning of Civil Procedure Code, s. 367, need not be between persons claiming to represent the deceased plaintiff. SUBDAYYA v. SAMINADAYYAR

[I. L. R., 18 Mad., 496

— s. 368 (1859, s. 104).

See LIMITATION ACT, 1877, ARTS. 171, 171A, 171B

I. L. R., 6 Bom., 28

[I. L. R., 11 Calc., 694

I. L. R., 7 All., 734

I. L. R., 10 Bom., 663

I. L. R., 7 Bom., 373

I. L. R., 9 All., 118

I. L. R., 10 All., 280, 284

See LIMITATION ACT, 1877, ART. 175C.

[I. L. R., 16 Bom., 27

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS

I. L. R., 4 Bom., 654

[I. L. R., 9 Bom., 56

I. L. R., 8 Mad., 300

I. L. R., 11 Calc., 694

I. L. R., 9 Bom., 151

I. L. R., 9 All., 447

I. L. R., 10 All., 223

I. L. R., 11 All., 408

— s. 372—Construction of—Per PONTIFEX, J.—The words "pending the suit" in s. 372 relate to a suit in which no final order has been made. GOCOL CHUNDER GOSSAMEE v. ADMINISTRATOR GENERAL OF BENGAL

[I. L. R., 5 Calc., 726: 5 C. L. R., 569

— s. 373 (1859, s. 97).

See APPEAL—DECREES.

[I. L. R., 8 All., 82

I. L. R., 18 Calc., 322

I. L. R., 15 All., 169

I. L. R., 16 All., 19

I. L. R., 17 All., 97

I. L. R., 27 Calc., 362

4 C. W. N., 41

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R., 18 Calc., 462, 515, 635

I. L. R., 15 Mad., 240

I. L. R., 12 All., 179, 392

I. L. R., 15 Bom., 370

I. L. R., 17 All., 106

I. L. R., 22 I. A., 44

See CASES UNDER WITHDRAWAL OF SUIT.

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

ss. 374 (1859, s. 97).

See LIMITATION ACT, 1877, ART. 179—  
NATURE OF APPLICATION—GENERALLY.

[I. L. R., 6 Bom., 681

I. L. R., 7 All., 359

25 W. R., 108

I. L. R., 10 Bom., 62

I. L. R., 10 All., 71

See CASES UNDER WITHDRAWAL OF SUIT.

ss. 375 (1859, s. 98).

See CASES UNDER COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

See PRACTICE—CIVIL CASES—AFFIDAVITS.

[I. L. R., 7 Bom., 304

See PRACTICE—CIVIL CASES—CONSENT DECREE . . . 5 C. L. R., 464

See SPECIFIC PERFORMANCE—SPECIAL CASES . . . I. L. R., 13 Mad., 316

ss. 377, 379.

See PRACTICE—CIVIL CASES—PAYMENT OUT OF MONEY DEPOSITED IN COURT.

[I. L. R., 26 Calc., 766

ss. 380 (1859, ss. 34, 35).

See CASES UNDER SECURITY FOR COSTS—SUITS.

ss. 383, 384, 385 (1859, s. 175).

See COMMISSION—CIVIL CASES.

[Hyde, 68

20 W. R., 253

ss. 387, 391 (1859, s. 177)—*Act VIII of 1859, s. 177—Native Prince or State in alliance—Kingdom of Ava*—The kingdom of Ava was not the territory of a Native Prince or State in alliance with the British Government within the meaning of s. 177 of Act VIII of 1859. AGA MOHAMMED JAFFER TERBAKI v. MIRZA NAZIRULLA

[2 B. L. R., A. C., 73; 10 W. R., 385

ss. 389, 390 (1859, s. 179).

See COMMISSION—CIVIL CASES.

[2 B. L. R., A. C., 73

5 B. L. R., 252

8 B. L. R., Ap., 102

I. L. R., 26 Calc., 591

ss. 392, 393, 398, 399 (1859, s. 180).

See CASES UNDER AMEEN.

See CASES UNDER EVIDENCE—CIVIL CASES—REPORTS OF AMEEN AND OTHER OFFICERS.

See CASES UNDER LOCAL INVESTIGATION.

See RIGHT OF SUIT—COSTS.

[I. L. R., 4 Mad., 390

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

ss. 394, 395 (1859, s. 181).

See ACCOUNT, SUIT FOR.

[I. L. R., 6 Calc., 754

I. L. R., 7 Calc., 654

See APPEAL—DECREES.

[I. L. R., 12 Calc., 209, 273, 275

I. L. R., 19 Calc., 463

I. L. R., 18 Mad., 73

I. L. R., 23 Calc., 279

I. L. R., 24 Calc., 725

1 C. W. N., 374

L. R., 1 I. A., 346

See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION.

[I. L. R., 19 All., 194

See CASES UNDER PARTITION.

ss. 401-415 (1859, ss. 297-310).

See CASES UNDER LIMITATION ACT, 1877, s. 4.

See CASES UNDER PAUPER SUIT.

ss. 417 (1859, s. 17).

See CASES UNDER ss. 37, 38.

ss. 418 (1859, s. 20).

See CASES UNDER PLAINT—FORM AND CONTENTS OF PLAINT.

ss. 424.

See COLLECTOR . . . I. L. R., 3 All., 20  
[I. L. R., 11 Mad., 317

I. L. R., 13 Bom., 343

See PARTIES—PARTIES TO SUITS—GOVERNMENT . . . I. L. R., 9 Calc., 271

See PUBLIC OFFICER.

[I. L. R., 14 Bom., 395

See SUBORDINATE JUDGE, JURISDICTION OF . . . I. L. R., 21 Bom., 754, 778

[I. L. R., 23 Bom., 170

1. ———— Suit against public officer

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

necessary that a notice under that section should be read with the strictness with which a plaint should be read in regard to the statement of the cause of action. **PARBUTTI CHURUN MOZOOMDAR v. NODIN CHUNDER SEN** . . . . . 13 C. L. R., 195

2. ——— Suit against an officer of Government.—*Bombay Civil Courts Act (XIV of 1869), s. 32—Suit ex contractu—Notice of suit.*—S. 424 of the Civil Procedure Code (Act XIV of 1882), which requires notice to be given to a public officer two months before the institution of a suit against him, does not apply where the suit is one *ex contractu*. **Shahunshah Begum v. Fergusson, I. L. R., 7 Calc., 499, and Maueklal v. Municipal Commissioner for the City of Bombay, I. L. R., 19 Bom., 407, referred to. RAJMAL MANIKCHAND v. HANMANT ANYABA** . I. L. R., 20 Bom., 687

3. ——— Suit against public officer in respect of acts done by him in his official capacity.—*Notice of suit—Suit for damages against a public officer—Trespass—Misjoinder of causes of action—Amendment of plaint.*—The plaintiff sued the defendant, a public officer, to recover damages for two distinct acts (*viz.*, wrongful arrest and trespass) alleged to have been illegally and maliciously done by the defendant on two different occasions, and claimed one lump sum as damages for both the acts; no permission to amend the plaint was asked for in the lower Court. On the 21st of October 1895, the plaintiff instituted this suit, having on the 18th of September 1895 served the defendant with a notice under s. 424 of the Civil Procedure Code (Act XIV of 1882). *Held* that the former act (*viz.*, the plaintiff's arrest) was an act done by the defendant in his official capacity and was clearly of the kind contemplated by s. 424 of the Civil Procedure Code, under which two months' notice to the defendant would be necessary previous to the institution of the suit; and that the suit was rightly dismissed by the lower Court for want of such notice. **Shahunshah Begum v. Fergusson, I. L. R., 7 Calc., 499, distinguished. Quere**—Whether the latter act (*viz.*, the trespass into the plaintiff's house), on the allegations in the plaint, was an act done by the Magistrate in his official capacity, and whether a notice under s. 424 of the Civil Procedure Code would be necessary previous to suing for damages for such an act. *Held*, further, that as the two acts were mixed up together in the plaint and one lump sum claimed as damages for both, and as no permission to amend the plaint was asked for in the lower Court so as to convert the suit into one for damages with reference to the trespass only, the plaint ought not to be allowed to be amended on appeal to the High Court. **JOGENDRA NATH ROY v. PRICE** [I. L. R., 24 Calc., 584

4. ——— Suit against the Secretary of State for India in Council.—*Notice—Public Demands Recovery Act (Bengal Act VII of 1880), ss. 8, 9, 20—Sale for default in payment of*

**CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.**

*costs of realising Government revenue.*—S. 424 of the Civil Procedure Code provides that "No suit shall be instituted against the Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District," etc. The plaintiff had instituted a suit against the Secretary of State for India in Council to set aside a certain sale of the plaintiff's property (possession of which had been given to the purchaser), but had not given him the notice prescribed by s. 424 of the Civil Procedure Code. The first Court (**AMEER ALI, J.**) gave the plaintiff a decree. *Held* on appeal (reversing the decision of **AMEER ALI, J.**) that whether or not the words "in respect of an act purporting to be done by him in his official capacity" relate only to a public officer and not to the Secretary of State, no suit whatever is maintainable against the Secretary of State, unless the notice prescribed by s. 424 of the Code of Civil Procedure has been given; and that therefore the present suit could not be maintained. **SECRETARY OF STATE FOR INDIA IN COUNCIL v. RAJLECKI DEBI**

[I. L. R., 25 Calc., 239

s. 431.

*See FOREIGN COURT, JUDGMENT OF.*

[I. L. R., 22 Calc., 222;  
I. R., 21 I. A., 171

*See FOREIGN STATE.*

[I. L. R., 11 Calc., 17

s. 432 (1859, s. 17, para. 4)—*Suit by independent Prince in Court in British India—Recognized agent for institution of suit—Civil Procedure Code, s. 37—Signature and verification of plaint.*—S. 432 of the Civil Procedure Code does not prevent the institution by an independent prince of a suit in a Court in British India in his own name, and through a recognized agent other than one appointed under that section. **BEER CHUNDER MANTRAYA v. ISHAN CHUNDER BURDHUN**

[I. L. R., 10 Calc., 138

**MAHARAJA OF BHARTPUR v. KACHERU**

[I. L. R., 19 All., 510

ss. 432, 433.

*See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.*

[I. L. R., 8 Bom., 415

s. 433.

*See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.*

[I. L. R., 9 Calc., 535

3 C. L. R., 417

25 W. R., 404, 407

12 C. L. R., 473

I. L. R., 8 Bom., 415

CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.

## 2. PARTIES TO SUIT—continued.

See RES JUDICATA—COMPETENT COURT  
—GENERAL CASES.

[I. L. R., 15 Mad., 494

— s. 434.

See FOREIGN COURT, JUDGMENT OF.

[I. L. R., 8 Bom., 292

I. L. R., 14 Calc., 548

I. L. R., 22 Calc., 222

I. L. R., 21 I. A., 171

— s. 435 (1859, s. 28, para. 8, and  
s. 28, para. 2).See PLAINT—VERIFICATION AND SIG-  
NATURE . . . I. L. R., 21 Calc., 60

[L. R., 20 I. A., 139

I. L. R., 18 All., 420

— ss. 440-464.

See CASES UNDER MINOR.

— s. 443—Effect of section on ss. 74 and  
76 of the Code of Civil Procedure—Service of  
summons on a minor—Ss. 74 and 76 of the Code of  
Civil Procedure are controlled by s. 443 of that Code.JATINDEA MOHAN PODDAR v. SHINATH ROY  
[I. L. R., 28 Calc., 287

— s. 462.

See CASES UNDER COMPROMISE—COMPROMISE  
OF SUITS UNDER CIVIL PROCEDURE  
CODE.

— s. 483 (1859, s. 81).

See CASES UNDER ATTACHMENT—ATTACH-  
MENT BEFORE JUDGMENT.See ATTACHMENT—LIABILITY FOR WRONG-  
FUL ATTACHMENT.

[I. L. R., 17 Calc., 436

I. L. R., 17 I. A., 17

— ss. 484-487 (1859, s. 83).

See CASES UNDER ATTACHMENT—ATTACH-  
MENT BEFORE JUDGMENT.

— ss. 485, 486.

See LIMITATION ACT, 1877, s. 15.

[I. L. R., 14 All., 162

I. L. R., 17 All., 189

I. L. R., 22 I. A., 31

— s. 489 (1859, s. 80).

See ATTACHMENT—ATTACHMENT BEFORE  
JUDGMENT . . . Bourke, O. C., 133

[8 Mad., 133

1 N. W., 133

2 N. W., 325

I. L. R., 29 Cal., 521

CIVIL PROCEDURE CODE, ACT XIV  
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## 2. PARTIES TO SUIT—continued.

— s. 491 (1859, s. 88).

See COMPENSATION—CIVIL CASES.

[3 W. R., Mis., 28

6 W. R., Mis., 24

I. L. R., 18 Bom., 717

— s. 492 (1859, s. 92).

See CASES UNDER INJUNCTION—UNDEF.  
CIVIL PROCEDURE CODE.— s. 493—Temporary injunction—  
"Other injury"—The words "or other injury" in  
s. 493 of the Code of Civil Procedure do not include  
acts of trespass upon property. DABAD KUAR v.  
GOMTI KUAR . . . I. L. R., 22 All., 449

— s. 503 (1859, s. 243).

See CASES UNDER APPEAL—MANAGEMENT  
OF ATTACHED PROPERTY.

See CASES UNDER APPEAL—RECEIVERS.

See CASES UNDER MANAGER OF ATTACHED  
PROPERTY.

See CASES UNDER RECEIVER.

— s. 505.

See CASES UNDER APPEAL—RECEIVERS.

See CASES UNDER RECEIVER.

— s. 506 (1859, s. 313).

See CASES UNDER APPELLATE COURT—  
EXERCISE OF POWERS IN VARIOUS  
CASES—SPECIAL CASES—ARBITRATION,  
REFERENCE TO.See ARBITRATION—REFERENCE OR SUB-  
MISSION TO ARBITRATION.

[1 Ind. J., O. S., 133

1 Mad., 103

2 N. W., 419

1 And. Rev., 48, 63

1 H. L. R., S. N. 11:10 W. R., 171

I. L. R., 23 Bom., 629

I. L. R., 27 Cal., 21

4 C. W. N., 22

— ss. 508-528 (1859, ss. 312-327).

See CASES UNDER ARBITRATION.

— s. 529

See CASES UNDER ARBITRATION—ARBITRATION  
—FURNISHING OF AWARD AND  
FURNISHING OF AWARD.

— s. 530 (1859, s. 235).

See CASES UNDER APPEAL—ARBITRATION

See CASES UNDER ARBITRATION

— ss. 531, 532 (1859, ss. 236, 237)

See CASES UNDER ARBITRATION

ARBITRATION.

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

See SMALL CAUSE COURT, MOFUSSIL—  
JURISDICTION—ARBITRATION.

[3 N. W., 117

7 N. W., 329

1 B. L. R., A. C., 43; 10 W. R., 85

10 Bom., 54

5 Mad., 128

I. L. R., 13 Mad., 344

ss. 532-538, Ch. XXXIX (Act V of 1886).

See DECREE—FORM OF DECREE—BILL OF  
EXCHANGE . I. L. R., 16 Calc., 804

See LIMITATION ACT, ART. 159.

[I. L. R., 23 Calc., 573

See NEGOTIABLE INSTRUMENTS, SUMMARY  
PROCEDURE ON.

See PROMISSORY NOTE—ASSIGNMENT OF,  
AND SUITS ON, PROMISSORY NOTES.

[I. L. R., 19 Mad., 388

s. 539.

See ENDOWMENT . I. L. R., 5 Mad., 383

[I. L. R., 14 Mad., 1

I. L. R., 18 All., 227

See CASES UNDER RIGHT OF SUIT—  
CHARITIES.

See RIGHT OF SUIT—INTEREST TO SUP-  
PORT SUIT . I. L. R., 12 Mad., 157

s. 540 (1859, s. 332; Act XXIII  
of 1861, s. 23).

See APPEAL—COSTS.

[I. L. R., 16 Bom., 676

I. L. R., 13 All., 280

See APPEAL—DECREE.

[I. L. R., 2 All., 497

I. L. R., 3 All., 75

I. L. R., 9 Bom., 252

I. L. R., 18 Mad., 73

I. L. R., 22 Mad., 299

See CASES UNDER APPEAL—EX-PARTE  
CASES.

1. ——— s. 543 (1859, s. 336)—*Time  
allowed for correction—Memorandum of appeal.*—  
Where, under the provisions of s. 336, Act VIII of  
1859, a memorandum of appeal is returned for the  
purpose of being corrected, the Appellate Court  
should specify a time for such correction. JAGAN-  
NATH v. LALMAN . . . I. L. R., 1 All., 260

2. ——— *Practice—Rejec-  
tion of memorandum of appeal.*—Whenever a  
memorandum of appeal is rejected under the discre-  
tionary power vested in the Court, a judicial order to  
that effect, and the reasons for the same, ought to be  
recorded. LALLA JUGSEB SAHOY v. KASSENATH  
SEIN . . . 1 Ind. Jur., O. S., 121

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

3. ——— *Rejection of ap-  
peal, Time for.*—The time for rejecting an appeal is  
when it is presented, and not after it has once been  
admitted. GOOPER BULLUD ROY v. GOLUCK PRO-  
SHAD ROSE . . . W. R., 1884, 135

1. ——— s. 544 (1859, s. 337)—*Alter-  
ation of decree on appeal by one party—Ap-  
peal by one party—Reversal of decree against all.*—  
Power of the Court of appeal, under s. 337 of Act  
VIII of 1859, to reverse the whole of the decree of  
the Court below upon the appeal of one only of the  
parties against whom the decree was passed. JADU-  
MANI DAS v. FADU BIBI . . . 7 B. L. R., Ap., 28

SREEMENJUREE DOSSE v. POORUSUTTUN DOSS  
[9 W. R., 499

2. ——— *Decree on ground  
not common to all parties.*—A decree against several  
defendants, one of whom alone appeals, cannot be  
reversed as against the rest when it did not proceed  
on ground common to all. DOXAMORE DOSSEE v.  
ESHUR CHUNDER MUTTILLOL . . . 1 W. R., 203

WOOMESH CHUNDER ROSE v. MATUNGINEE DEBIA  
[2 W. R., 170

ABDOOL ALI v. BANOO . . . 2 W. R., 287

BOYDONATH SURMAH v. OJAN BIBEE  
[11 W. R., 236

KOOLADA PERSHAD MISREE v. GOURA CHAND  
MISREE . . . 17 W. R., 353

CHUNDER MONEE DOSSEE v. MODHOO DEY  
[23 W. R., 166

*Aliter* when it does. CHUNDER KULLA DOSSEE v.  
JOTENDRA MOHUN TAGORE . . . 6 W. R., 104

KRITARATH MOYEE DEBIA v. KHETTERNATH SIR-  
CAR . . . 9 W. R., 472

BADUL SINGH v. CHUTTERDHAREE SINGH  
[9 W. R., 558

RUNG LAL GOSSAIN v. GOWREE MUNDUL  
[10 W. R., 285

DOORGA CHURN DOSS v. MAHOMED ABBAS BHOO-  
YAN . . . 14 W. R., 121

SREESTEE DHUR CHUCKERBUTTY v. SREENATH  
BISWAS . . . 18 W. R., 332

3. ——— *Appeal by one de-  
fendant in respect of portion of decree.*—One of  
several defendants, who appeals in respect only of  
the sum decreed against her, is not entitled to take  
advantage of s. 337, Act VIII of 1859, and question  
the full amount claimed. SHEEROO COOMAREE DA-  
BEE v. MAHATAB CHUND . . . W. R., 1864, 380

4. ——— *Right to benefit  
by decree on appeal by one defendant—Decree of  
Privy Council.*—A plaintiff having been dismissed by  
the first Court, which decreed that the costs of all the  
defendants who had filed answers were to be borne by  
the plaintiff, the plaintiff appealed to the High Court,  
which reversed the decree. One of the defendants

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

AMOOBUNNISA . . . 12 W. R., 200

5. *Altering decree against defendant on co-defendant's appeal.*—It

to. OODOY SINGH v. PALUCK SINGH  
[16 W. R., 271]

6. *Pro forma defen-*

KHEMUNKUR DOSSEE v. NIDAMUR MUNDUL  
[2 W. R., 327]

7. *Opening whole*

8. *Appeal by one defendant—Reversal of whole decree.*—Where one of several defendants appeals not against the whole do-  
these defendants who have not appealed. RAM  
CHUNDER PAUL v. OMORA CHURN DEB

[18 W. R., 26]

NAKUR, CHUNDER SAHA v. JUDOO NATH CHUCK-  
ZEBUTTY . . . 24 W. R., 389

9. *Limitation as af-*  
fecting those who do not appeal.—Where a decree  
for possession of certain property is made against

**CIVIL PROCEDURE CODE, ACT XIV  
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others, against the execution of the decree. HUR  
PROSHAD ROY v. ENAYET HOSSEIN

[2 C. L. R., 471]

10. *Application of, to ex-parte decrees—Decree on ground common to all parties.*—S. 337, Act VIII of 1859, applies as well to ex-parte decrees as to other decrees, the

11 W. R., 111

11. *Cass disposed of under s. 116, Civil Procedure Code, 1859—Ex-parte decree—Decree on ground common to all parties.*—Where parties who have been made co-defendants do not appear, and the Court deals with the case under s. 116, Civil Procedure Code, the decree given is not

12 W. R., 510

12. *Decree on ground common to all parties.*—S. 337, Civil Procedure

Court has proceeded on such common ground.  
PROTAP CHUNDER DUTT v. KOORDANISSA BIRRE

[14 W. R., 130]

13. *Power of Appel-*  
late Court to make decree in respect of parties who  
have not appealed.—The Court of Appeal has power,  
under s. 337 of Act VIII of 1859 (corresponding  
with s. 544 of Act X of 1877), to draw up what  
would be a fair decree as regards all the parties to a  
suit, although some of them may not have appealed.  
JOYEKISTO COWAR v. NITTANUND NUNDY

[1 L. R., 3 Cal., 738; 2 C. L. R., 440]

14. *Common defence*

1000, s. 337, was applicable, and one defendant alone  
might appeal. MAHOMED SAFFOOLAH v. ANWAR  
ALI . . . 21 W. R., 112

15. *Reversal in one*  
suit where two suits have been erroneously brought  
instead of one.—Effect of reversal on other suit on  
appeal by one defendant.—Two suits brought by  
different parties claiming different interests in a cer-  
tain share to set aside the sale of that share having

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

been dismissed, one of the plaintiffs appealed and the sale was set aside. *Held* that the decision must be considered as setting the sale aside as to the whole of that share, although the other parties did not appeal. **NAGAR v. SIURITUOLLAN** . 20 W. R., 77

16. ————— *Appeal by alienee of Hindu widow—Suit by reversioner.*—In a suit by the reversioners against a Hindu widow and her patnidar impugning the act of the widow in granting the patni as an act of waste prejudicial to their interests, and claiming to set aside the patni as invalid and obtain immediate possession, a decree was granted against both defendants. *Held* that, under s. 337 of the Civil Procedure Code, the patnidar had such an interest as would entitle him to appeal against that part of the decree which regarded the rights of the widow, as well as that part which affected himself. **HURRY KISSEN DOSS v. LALL SOONDER DOSS** . 1 Ind. Jur., O. S., 32

**LALL SOONDER DOSS v. HURRY KISSEN DOSS**  
[Marsh., 113: 1 Hay, 339]

17. ————— *Power of Appellate Court to reverse decision as regards person not party to the appeal.*—In a suit against *A* and *B* for the recovery of the possession of property, the Court gave a decree against *A* and in favour of *B*. The plaintiff appealed from that part of the decision which was in *B*'s favour. *Held* that the Judge on appeal had no jurisdiction to reverse the decision of the Court below against *A*, he being no party to the appeal. **HURRO CHUNDER ROY v. LALLOHUND BANERJEE** . Marsh., 256: 2 Hay, 48

**LALLA RAMSUBUN LALL v. LOKEBAS KOER**  
[13 W. R., 39]

18. ————— *Original decree making liable one defendant out of several.*—In a suit by *A* against *B* and *C* in which a decree was given against *B* alone,—*Held* that *C* could not be made liable, either on the appeal of *B* or on the cross-appeal of *A*, to *B*'s appeal. **GREESH CHUNDER SINGH v. GOURMOHUN BANERJEE** . 7 W. R., 49

19. ————— *Reversal of decree on appeal by one defendant.*—*A* and *B* were sued on a joint liability to pay rent. *A* did not defend, *B* did, and a decree passed against both. *B* appealed. *Held* that it was competent to the Judge on appeal to reverse the decree, on the ground that there was no joint liability, but that *B* occupied a separate estate at a separate rent. **LUKHEE KANT SEIN v. RAMDEXAL DOSS**

[Marsh., 281: 2 Hay, 288]

20. ————— *Main ground of decree affecting all defendants.*—The plaintiff sued on a mortgage bond executed by the first defendant. The second defendant, who claimed the property under a mortgage from the first defendant, was admitted a defendant on his own application, but afterwards excluded from the suit. Before this was done, he had incurred certain costs, which, by the Munsif's

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

decree, he was ordered to bear himself. Upon appeal by the first defendant the Civil Judge found that the mortgage bond sued upon was not proved, dismissed the suit, and ordered the plaintiff to pay all costs, those of the second defendant included. *Held* that, under s. 337 of the Civil Procedure Code, it was competent to the Civil Judge so to modify the Munsif's decree, as the main ground of the whole decision—viz., the validity of the mortgage bond—affected all the defendants in common, and the appeal of the first defendant and the decision of the Appellate Court had reference to that common ground. **YERBA-BALU VIRARAGAVA REDDI v. ABDUL KHADIR**

[4 Mad., 26]

21. ————— *Suit on bond—Appeal by one of several defendants.*—In a suit for recovery of Rs300 due on a bond, the defendants denied the execution of the bond and the receipt of the consideration. The Court of first instance decreed the suit, which on appeal by one of the defendants was dismissed. *Held* that under s. 337, Act VIII of 1859, the Judge had no power, on appeal by one defendant, to set aside a decree against the other. **SRIRAM GHATAK v. BRAJAMOHAH GHOSAL**

[3 B. L. R., App., 41: 11 W. R., 449]

**RUGGHOONATH NEWGY v. SUDHAMOYEE DABEA**  
[Marsh., 106: 1 Hay, 183]

22. ————— *Any ground common to all the plaintiffs or to all the defendants—Appellate Court, Power of.*—S. 544 of the Civil Procedure Code presupposes a common ground of decision affecting property in which both those who have appealed and those who have not appealed have an interest direct or indirect. Thus a District Judge has no power under this section to reverse the decree of a lower Court, given for a plaintiff, in favour of a defendant who did not appeal, and in respect to property in which the other defendants who did appeal disclaim all interest. **Sriram Ghatak v. Braja Mohan Ghosal**, 3 B. L. R., App. 41, and **Appa Rau v. Ratnam**, I. L. R., 13 Mad., 249, cited and followed. **Seshadri v. Krishnan**, I. L. R., 8 Mad., 192, and **Nagamma v. Subba**, I. L. R., 11 Mad., 197, distinguished. **HUSSAIN v. MADAN KHAN** . I. L. R., 17 Mad., 265

23. ————— *Intervenor—Parties—Appeal—Decree set aside on appeal by one defendant.*—*D C S*, the zamindar, brought a suit against *B*, a raiyat, for recovery of arrears of rent, valued below Rs100. *B* set up in defence that the rent was not payable to *D C S*, but to *N C A*, the mokur-aridar. *N C A*, who claimed under a mokurari title, and alleged that he was in receipt of the rents from the raiyats, was made a party under s. 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff. On appeal by *N C A*, which was heard and decided by the Subordinate Judge on reference by the District Judge, the decree of the first Court was reversed, and the suit dismissed. On appeal to the High Court,—*Held* that *N C A* was properly

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made a defendant to the suit, and that he could prefer an appeal from the decree of the Court of first instance, and that the Court of Appeal could, on his appeal, set aside the whole decree. **DAYAL CHAND SAHOY v. NABIN CHANDRA ADHIKARI**

[8 B. L. R., 180; 16 W. R., 235]

the surety liable, and the Judge on appeal dismissed the claim against both defendants. *Held* that, as the decision of the first Court did not proceed on

10 W. R., 210; 2, 02

**25. — Substantial change in suit — Alteration or reversal of decrees where only some defendants are made parties —** Where a suit at the time of institution within the

original defendants were made parties the Court refused to reverse or alter the decree. **BULDEO DASS v. BULDEO DASS**

3 N. W., 169

**26. — Persons not parties to proceedings in appeal not bound by the result of those proceedings.**—Decrees in three separate suits for the partition of a certain estate

Court to set aside the Collector's scheme, and to direct a fresh partition. The Subordinate Judge of Vengurla granted the application and set aside the partition ordered by the Collector. Against this order *P*, who was plaintiff in one of the suits, appealed to the District Court, and in the appeal he made *B* alone the respondent. The District Court reversed the order of the Subordinate Judge, and upheld the order of the Collector. Thereupon *B*

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had been set aside by the Subordinate Judge, and that the appellant had not been a party to the proceedings in either of the Appellate Courts. He contended that he was, therefore, not bound by the decisions of the Appellate Courts, and that the order of the Subordinate Judge, setting aside the partition ordered by the Collector, was still in force so far as he was concerned. He therefore applied that the property should be

Court of first appeal, though one of them may represent his fellows in a further appeal, he cannot represent a person who was not his co-respondent, and against whom therefore no decree could have been made on a point common to the two, or on any point at all. **DEV GOPAL SAVANT v. VASUDEV VITHAL SAVANT**

I. L. R., 12 Bom., 371

**27. — Appeal on full Court-fee from decree dismissing suit in part—Remand of whole case though no cross-appeal or objections preferred—Dismissal of whole suit on remand—High Court competent in second appeal to consider validity of remand order not specially appealed.**—Civil Procedure Code, ss. 544, 561.—A plaintiff whose suit had been decreed in part

Appellate Court confirmed the decree. On a second

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

*Per MAHMOOD, J.*—S. 544 had no application to the case, that section relating only to cases where one or more of the parties arrayed on the same side appealed against a decree passed on a ground common to all, and not to cases where either of two opposite parties appealed from a part of the decree upon a Court-fee sufficient for an appeal from the whole. *Moheshur Sing v. Bengal Government*, 7 *Moore's I. A.*, 283, *Forbes v. Amceroonissa Begum*, 10 *Moore's I. A.*, 340, and *Mukkan Lal v. Sree Kishen Sing*, 12 *Moore's I. A.*, 157, referred to. *CHEDA LAL v. BADULLAH* [I. L. R., 11 All., 35]

**28.** ————— *Appeal by one of several plaintiffs claiming under a joint right—Decree in such appeal binds other co-plaintiffs, although not parties to the appeal—Procedure.*—*A* and *B* brought a suit against *C*, and obtained a decree awarding a part of their claim. *B* appealed, and the Appellate Court reversed the decree, and rejected the plaintiff's claim altogether. Subsequently *A*, who had not joined in the appeal, applied for execution of the original decree. *Held* that, although *A* had not been a party to the appeal, he was bound by the decision of the Appellate Court, and was not entitled to take out execution. *BABAJI DHONDHET v. COLLECTOR OF SALT REVENUE*

[I. L. R., 11 Bom., 598]

**29.** ————— *Power of Appellate Court to alter decree on appeal by one party—Madras Civil Courts Act, 1873—Jurisdiction of Munsif—Suit for partition and mesne profits.*—*N* sued *S* and others for partition of a share of certain land, and claimed mesne profits from other defendants who were tenants of the land. *S* obtained a decree by consent for her share, and a sum of Rs 99 was decreed to her against the tenants for mesne profits. Against this decree the tenants appealed. The Subordinate Judge, finding that the subject-matter of the suit, the land of which partition was claimed, exceeded the jurisdiction of the Munsif, reversed the decree of the Munsif, and directed the plaintiff to be returned for presentation in the proper Court. It was contended, on appeal to the High Court, that the Subordinate Judge could not set aside the decree against the tenants for mesne profits. *Held* that, as the Munsif's Court had no jurisdiction to entertain the suit for partition, it could make no decree for mesne profits, and, therefore, the Subordinate Judge had power to set it aside. *NAGAMMA v. SUBBA*

[I. L. R., 11 Mad., 197]

**30.** ————— *Appeal—Ground of appeal common to all the judgment-debtors—Reversal or modification of the decree as against all on appeal by one only.*—S. 544 of the Code of Civil Procedure does not enable an Appellate Court to decide, upon a ground which it considers to be common to all the defendants, an appeal preferred by one only of such defendants, and to reverse or modify the decree of the Court below in favour of all the defendants, unless the lower Court has proceeded

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upon a ground common to all the defendants. It is only when the decree appealed against has proceeded upon a ground common to all the defendants, that is, when the Court below has made a decree against several defendants upon a finding which applies equally to all of them, that under s. 544 any one of the defendants may appeal against the whole decree, and the Appellate Court may reverse or modify that decree in favour of all the defendants. *Protap Chunder Dutt v. Koorbanissa Bibee*, 14 *W. R.*, 130, referred to. *PURAN MAL v. KRANT SINGH* . I. L. R., 20 All., 8

**31.** ————— *Decree proceeding upon ground common to several defendants—Decree upset in appeal, but restored on appeal by one only of the defendants—Execution for costs by other defendants—Decree to be executed when there has been an appeal.*—A suit brought against several defendants was dismissed with costs. The plaintiffs appealed, and the case was remanded to the Court of first instance under s. 562 of the Code of Civil Procedure. One of the defendants appealed against the order of remand to the High Court, which set aside the order of remand and restored the decree of the first Court. *Held* that, the decree of the first Court being restored in its entirety, the defendants, who had not appealed, were entitled to take out execution of that decree for the costs awarded to them by it, notwithstanding that they were not parties to the decree of the High Court. *Muhammad Sulaiman Khan v. Muhammad Yaq Khan*, I. L. R., 11 All., 267, distinguished. *Sohrat Singh v. Bridgman*, I. L. R., 4 All., 376, referred to. *MUL CHAND v. RAM RATAN* [I. L. R., 20 All., 493]

**32.** ————— *Appeal by only some of several defendants—Power of Court as to reversing decree as to all the defendants—Ground not common to all.*—S. 544 of the Code of Civil Procedure does not, unless the decree itself proceeds on the ground common to all the defendants, enable an Appellate Court to decide, upon a ground which it considers to be common to all the defendants, an appeal preferred by some only of such defendants and to reverse the decree of the Court below in favour of all the defendants. *Puran Mal v. Krant Singh*, I. L. R., 20 All., 8, referred to. *CHAJJU v. UMRAO SINGH* . . . I. L. R., 22 All., 388

**33.** ————— *Reversal of whole decree on appeal by one party—Appeal by two persons—Withdrawal of one appellant from appeal.*—A decree was passed for the plaintiff in a suit to redeem a kanom brought against various persons most of whom disclaimed all interest. An appeal was preferred by one of the defendants who claimed to be the jenni of the premises comprised in the kanom and another who held a kanom from him. The first-mentioned appellant withdrew from the appeal, which, however, was prosecuted by the other, and the Appellate Court reversed the decree. *Held* that, since the appellants were the only substantial defendants, the Appellate Court was right in allowing

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

the appeal to proceed. SRIMANA VIKRAMAY v.  
RAYAN . . . I. L. R., 16 Mad., 293

**s. 545 (1859, s. 338).**

See CASES UNDER EXECUTION OF DECREE  
—STAY OF EXECUTION.

See SALE IN EXECUTION OF DECREE—  
INVALID SALES—SALE PENDING APPEAL.  
[I. L. R., 6 Mad., '98]

See SURETY—LIABILITY OF SURETY.

[I. L. R., 2 Bom., 654  
I. L. R., 3 Bom., 204]

**s. 546 (Act XXIII of 1861, s. 36)**

See CASES UNDER EXECUTION OF DECREE—  
STAY OF EXECUTION.

See SURETY—ENFORCEMENT OF SECURITY

[I. L. R., 8 All., 639  
I. L. R., 12 Bom., 411  
I. L. R., 13 Mad., 1  
I. L. R., 23 Calc., 212]

1. **s. 548 (1859, s. 341)—Registration of petition of appeal.**—The registration of

2. **Appeal preferred after time—Power of Appellate Court.**—Held by the

DEB SIRCAR . . . 8 W. R., 141

**s. 549 (1859, s. 342).**

See CASES UNDER SECURITY FOR COSTS—  
APPEALS

**Restoration of appeal rejected for neglect to give security for costs.**—An appeal,

Court's discretion, and that there were grounds for it, upon the appellant's giving approved security within

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

such time as the Court might fix. HALWANT SINGH  
v. DAULAT SINGH . . . I. L. R., 8 All., 315

**s. 551.**

See APPEAL—DISMISSAL OF APPEAL.

[I. L. R., 21 Bom., 546  
I. L. R., 24 Calc., 759  
I. L. R., 23 Mad., 293]

See SPECIAL OR SECOND APPEAL—ADMISSION OR SUMMARY REJECTION OF APPEAL.

[I. L. R., 15 All., 367  
I. L. R., 23 Mad., 293]

1. **Hearing of appeal ex-parte.**

undivided brothers, and that, as a childless widow, she had no right to sell the property. Both the lower Courts upheld the sale as absolute, on the

as they did not contain the limitation pointed out above, and remanded the case for the trial of the issue, whether there were any such special circumstances

2. **Order of adjudication—Decree—Judgment.**—The order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment ROYAL REDDI v. LINGA REDDI

[I. L. R., 3 Mad., 1]

**s. 553 (1859, s. 345)—Notice of appeal—Time for deposit of talabana.**—When a notice of appeal is transmitted by the High Court to a Court below, with instructions to make a return

**s. 558 (1859, s. 346).**

See APPEAL—DEFAULT IN APPEARANCE.

[I. L. R., 2 All., 618  
I. L. R., 3 All., 382, 519  
I. L. R., 12 Calc., 605  
I. L. R., 18 Bom., 23  
I. L. R., 15 All., 359]

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10 . I. L. R., 14 All., 361  
[I. L. R., 15 All., 359]

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[3 Mad., 109  
6 Mad., 1  
I. L. R., 27 Calc., 529  
4 C. W. N., 237]

1. ——— Dismissal of appeal for non-appearance.—Where both parties make default in appearing at the hearing of an appeal, the Court must dismiss the appeal, and not go into the merits and reverse the decree. *MANICKRAM v. ROOPNARAIN SINGH* . Marsh., 5: 1 Ind. Jur., O. S., 36

2. ——— Miscellaneous cases—Notice of hearing.—S. 346, Act VIII of 1859 (providing for the dismissal of an appeal for default), even if it applies to miscellaneous cases, does not apply to a case in which it is not shown distinctly that the appellant had any notice that his appeal would be heard on the day to which the case was adjourned, and on which the Judge disposed of it. *SHIB CHUNDER GOOPTO v. ALLAD MONEE DASSIA* [5 W. R., Mis., 22]

3. ——— Dismissal on non-appearance of appellant—Application for re-admission.—Where a Judge on the non-appearance of the appellant in person or by pleader, instead of observing the direction of the law, Act VIII of 1859, s. 349, goes into the merits of the case and gives a judgment against the appellant, the appeal must be considered as dismissed for default of the appellant in appearing; and an application for re-admission and re-hearing cannot be treated as one for review, but must be entertained under s. 347. *MOHESH CHUNDER BOSE v. THAKOOR DOSS GOSEAMEE* . 20 W. R., 425

4. ——— Appearance of pleader without instructions.—Where the appellant himself does not appear and the pleader appears and states he is not instructed, a judgment of dismissal for default is a proper judgment. *TRILOKE CHUNDER SEN v. AUKHIL CHUNDER SEN* . 21 W. R., 65

5. ——— s. 558 and s. 558—Non-attendance of appellant at hearing of appeal—Dismissal of appeal on the merits—Application for re-admission.—In an appeal before an Appellate Court, the appellant did not attend in person or by pleader, and the Court, instead of dismissing the appeal for default, tried and dismissed it upon the merits. Subsequently, the appellant applied to the Court, under s. 558 of the Civil Procedure Code, to re-admit the appeal, explaining her absence when the appeal was called on for hearing. The Court rejected the application on the ground that the appeal had been decided on the merits, and reasons had been recorded for its dismissal which there were no apparent grounds for setting aside. *Held* that the Court should have dismissed the appeal for default, and it was illegal

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

to try it on the merits, and the judgment was consequently a nullity, the existence of which was no bar to the re-admission of the appeal. *ZAINAB BEGAM v. MANAWAR HUSAIN KHAN* . I. L. R., 8 All., 277

————— s. 558 (1859, s. 347).

See CASES UNDER APPEAL—DEFAULT IN APPEARANCE.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10 I. L. R., 14 All., 361  
[I. L. R., 15 All., 359]

See LIMITATION ACT, ART. 168.

[8 W. R., 61  
15 W. R., 80  
I. L. R., 23 Calc., 339]

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 18 All., 119]

1. ——— Re-admission of appeal struck off for default—Ground for re-admission.—On an application under s. 558 of the Code of Civil Procedure for the re-admission of an appeal which had been decided *ex-parte* against the applicant, it appeared that he had been misled by reason of the appeal having been transferred from the file of one Court to another, no notice of the transfer having been given to him by the pleaders in the case. *Held* that, under the circumstances, the applicant was entitled to have the appeal re-admitted. *NARAIN SINGH v. BHEURAB CHURN PANDA* . . . 8 C. L. R., 350

2. ——— Dismissal of appeal for default—Pleader present but unprepared to go on with case—Civil Procedure Code, 1882, ss. 556, 558.—Where, when an appeal is called on, the pleader is not absent, but is unprepared to go on with the case, the dismissal is a dismissal for default within s. 556 of Act XIV of 1882, and the appeal can therefore be re-admitted under s. 558. *Buldeo Misser v. Ahmed Hossein*, 15 W. R., 143, followed. *SHIBENDRA NARAIN CHOWDHURI v. KINOO RAM DASS* [I. L. R., 12 Calc., 605]

3. ——— Dismissal of appeal for default—Pleader asking for time to go on with a case—Civil Procedure Code, s. 556.—The provisions of ss. 556 and 558 of the Civil Procedure Code do not apply, when the pleader for the appellant not merely informs the Court that he has no instructions, but makes an application for postponement, which is refused, and the appeal is thereupon dismissed. A second appeal does not, therefore, lie in such a case from an order of the first Appellate Court refusing to re-admit an appeal under the provisions of s. 558 of the Code of Civil Procedure. *WATSON & CO. v. AMBICA DASI* [I. L. R., 27 Calc., 529]

See RAM CHANDRA PANDURANG v. MADHUR PURUSHOTTAM . . . I. L. R., 16 Bom., 23

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

4. ——— Dismissal of appeal for default of appearance.—Civil Procedure Code, s. 556.—Where on an appeal being called on for hearing the vakil who held the brief for the appellant stated that he was unable to argue the case, the court held that the brief had come into his hands too late to be used.

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KUNDAN LAL . . . I. L. R., 20 All., 294

## s. 559.

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS.

1. ——— s. 580—Appeal *ex-parte*—Application for re-hearing.—An applicant presenting a petition for the re-hearing of an appeal decided *ex-parte* must, at the time of making such application, be prepared to satisfy the Court that the notice of appeal was not duly served upon him, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing. ANUNDA SHAIKHA BISWAS alias NYOMUDDIN SHA BISWAS v. KEMA BUBEE . . . I. L. R., 6 Calc., 548

2. ——— Re-hearing of appeal—Grounds for re-hearing.—When an appeal has been

him to such re-hearing. MAHOMED DALUN v. DINOMOKER DASHITA . . . 8 C. L. R., 112

3. ——— Re-hearing of appeal *ex-parte*—Sufficient cause.—

4. ——— Re-hearing of an appeal heard *ex-parte*—“Sufficient cause.”—Where a party (respondent in an appeal) had received no

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

5. ——— Default of appearance.—  
dent . . .  
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s. 560 of Act X of 1877, on the ground that the defendant had engaged pleaders to appear for him, but that the court was prevented from appearing.

[11 C. L. R., 537]

## s. 561 (1859, s. 348).

See CASES UNDER APPEAL—OBJECTIONS BY RESPONDENT.

See LIMITATION ACT, 1877, s. 5.

10 Bom., 397  
I. L. R., 4 All., 430  
I. L. R., 7 Calc., 654  
I. L. R., 9 Calc., 631

See PRIVY COUNCIL, PRACTICE OF—OBJECTIONS BY RESPONDENT.

[I. L. R., 23 Calc., 922]

s. 562 (1859, s. 351)—s. 563 (1859, s. 355).

See CASES UNDER REMAND.

## s. 568 (1859, s. 355).

See CASES UNDER APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

## s. 574 (1859, s. 359).

See CASES UNDER JUDGMENT—CIVIL CASES—FORM AND CONTENTS OF JUDGMENT.

## s. 576 (Act XXIII of 1861, s. 23).

See LETTERS PATENT, HIGH COURT, CL. 15.  
[4 B. L. R., A. C., 161]

See LETTERS PATENT, HIGH COURT, CL. 36.  
[I. L. R., 3 Bom., 204]

See REVIEW—GROUND FOR REVIEW.

[I. L. R., 11 All., 176]

1. ——— Act XXIII of 1861, s. 23—Judges sitting on appeal from original civil jurisdiction.—S. 23 of Act XXIII of 1861 referred

reason, that all the Judges of the Court so sitting in appeal are supposed in law to be equal, whereas s. 23 of Act XXIII of 1861 only contemplated an appeal from a Court of inferior jurisdiction to the

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

late Sudder Court, and had nothing at all to do with the Court of Appeal from the original civil jurisdiction as that Court is now constituted. *GREENWAY v. HOOG* . . . *Bourke, A. O. C.*, 139

2. ————— *Difference of opinion between two Judges.*—It was held under this section that, if the Judges differed in opinion on points of law and did not state the points on which they differed, there was no determination of the case; so that, if the case were then referred to other Judges for final determination, they would have jurisdiction to go into the whole case. *KHELU CHUNDER GHOSH v. TARACHURN KOONDoo CHOWDERY*

[6 W. R., 289

3. ————— *Order in execution of decree—Appeal—Party to suit.*—*Semble*—S. 23 applied to orders made in execution of decrees, but the right of appeal was given only as between the parties to the suit in which the decree or order was made. *ANNAMALAI CHETTI v. MUTHULINGA PILLAI* . . . *6 Mad.*, 360

4. ————— s. 575—*Rules made by High Court, N.-W. P.—Reference of appeal to other Judges of same Court—Composition of Bench hearing referred appeal—Presence of referring Judges necessary.*—The only Bench which can legally deal with an appeal which has been referred under the provisions of s. 575 of the Civil Procedure Code is one which includes the Judges who first heard the appeal, and whose difference in opinion on a point of law necessitated the reference. *Khelat Chunder Ghose v. Tara Churn Kundoo Chowdary*, 6 W. R., 269, *Mahomed Akil v. Asad-un-nissa Bibi*, B. L. R., Sup. Vol., 774, and *Brand v. Hammersmith and City Railway Company*, 36 L. J., Q. B., 137, referred to. The word "judgment" as used in Rule II of the Rules made by the High Court, North-Western Provinces, to regulate references under s. 575 of the Civil Procedure Code, must not be understood in its strict sense, but merely as an expression of opinion containing reasons for a contemplated or proposed judgment. *ROHILKHAND AND KUMAON BANK v. ROW* . . . *I. L. R.*, 6 All., 468

5. ————— *Difference of opinion between Judges hearing appeal—"Judgment"—Reference to Full Bench after delivery of dissentient judgments on the appeal—Reference ultra vires.*—Where a Bench of two Judges hearing an appeal and differing in opinion have delivered judgments on the appeal as judgments of the Court, without any reservation, they are not competent to refer the appeal to other Judges of the Court under s. 575 of the Civil Procedure Code. *Rohilkhand and Kumaon Bank v. Row*, I. L. R., 6 All., 468, referred to. *IAL SINGH v. GHANSHAM SINGH* . . . *I. L. R.*, 9 All., 625

6. ————— *Practice—Appeal—Difference of opinion on Division Bench regarding preliminary objection as to limitation—Letters Patent, N.-W. P., s. 827.*—S. 27 of the Letters

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

Patent for the High Court of the N.-W. Provinces has been superseded in those cases only to which s. 575 of the Civil Procedure Code properly and without straining language applies. There are many cases to which s. 575, even with the aid of s. 647, does not apply; and to these s. 27 of the Letters Patent is still applicable. One of the cases to which s. 575 of the Code does not apply is where a preliminary objection being taken to the hearing of a first appeal before the High Court on the ground that the appeal is time-barred, the Judges of the Division Bench differ in opinion as to whether the appellant has shown sufficient cause, within the meaning of s. 5 of the Limitation Act (XV of 1877), for not presenting the appeal within the prescribed period. The decision of such a preliminary objection is not a "hearing" of the appeal, but precedes the hearing or determines that there is no appeal which the Court can hear or decide. Where such a preliminary objection is allowed, it cannot be said that the Court which, by reason of the Limitation Act, has no jurisdiction to hear the appeal, should nevertheless "affirm" the decree of the Court below. In the case of such a preliminary objection and such a difference of opinion (the Bench being equally divided), the opinion of the senior Judge should, under s. 27 of the Letters Patent, prevail. *Appaji Bhirav v. Chirlal Khubchand*, I. L. R., 3 Bom., 204, and *Gridharaji Maharaj Tickait v. Porushotum Gassami*, I. L. R., 10 Calc., 814, distinguished. *HUSAINI BEGAN v. COLLECTOR OF MUZUPPARNAGAR*

[I. L. R., 11 All., 176

7. ————— *Composition of Bench to hear appeal referred to a third Judge under s. 575 of the Civil Procedure Code—Judges differing in opinion.*—*Quare*—Whether, where there is a difference of opinion between the two Judges of a Division Bench who have delivered judgment on the matter of the appeal, the reference to a third Judge under s. 575 of the Civil Procedure Code should be heard by the third Judge sitting separately or by a Bench composed of the third Judge and the two Judges who first heard the appeal and differed in opinion. *Rohilkhand and Kumaon Bank v. Row*, I. L. R., 6 All., 468, referred to. *Per WEIR, J.*—The language of s. 575 does not imply that the appeal must necessarily be heard again at the reference by the two Judges who first heard it and differed. *SUBDAYYA v. KRISHNA*

[I. L. R., 14 Mad., 186

8. ————— *Appeal referred owing to a difference of opinion on a point of law.*—Where, owing to the difference of opinion between two Judges, an appeal was referred to the Chief Justice under Civil Procedure Code, s. 575, and was heard by him sitting with the two other Judges,—*Held* that the whole appeal was open for argument, and not only the point of law on which the Judges had differed in opinion. *SESHADRI AYYANGAR v. NATARAJA AYYAR*

[I. L. R., 21 Mad., 179

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**9.**—*Decision when appeal heard by two or more Judges—Letters Patent of 1865, cl. 15, 36—S. 575 of Act XIV of 1882 does not take away the right of appeal which is given by cl. 15 of the Letters Patent. When the judgment of a lower Court has been confirmed under s. 575 of*

**ss. 577, 578 (1859, s. 350).**

*See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.*

*See CASES UNDER APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.*

**ss. 579, 580 (1859, s. 360; Act XXIII of 1861, s. 26).**

*See CASES UNDER DECREE—FORM OF DECREE—COSTS.*

**s. 582 (Act XXIII of 1861, s. 37).**

*See ABATEMENT OF SUIT—APPEALS.*

[I. L. R., 7 All., 693, 734  
3 Bom. A. C., 81  
12 C. L. R., 45  
I. L. R., 11 All., 408]

*See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—APPEAL.*

[I. B. L. R., A. C., 155  
10 W. R., 160  
4 W. R., 109  
14 W. R., O. C., 17]

*See CASES UNDER APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—ARBITRATION, REFERENCE TO.*

*See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—PLAINT, AMENDMENT OF.*

[I. L. R., 19 Bom., 303]

*See CASES UNDER LIMITATION ACT, 1877, ARTS. 171, 171A, AND 171B.*

*See CASES UNDER PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS.*

*See WITHDRAWAL OF SUIT.*

[Bourke, A. O. C., 89  
14 W. R., O. C., 17  
I. L. R., 8 All., 82]

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

**s. 582A.**

*See LIMITATION ACT, s. 4.*

[I. L. R., 22 Bom., 849  
I. L. R., 26 Calc., 925]

**s. 583 (1859, s. 362).**

*See s. 244—QUESTIONS IN EXECUTION OF DECREE.*  
[I. L. R., 7 All., 432  
[I. L. R., 23 Calc., 501]

*See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.*  
[I. L. R., 11 Mad., 258  
I. L. R., 13 Bom., 485]

*See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR.*

[I. L. R., 7 All., 197  
I. L. R., 11 Mad., 261  
I. L. R., 21 Calc., 989]

*See PRE-EMPTION—PURCHASE—MONEY.*

[I. L. R., 10 All., 400  
I. L. R., 18 All., 262]

*See RESTITUTION OF RIGHTS BY MOTION.*  
[I. L. R., 21 Calc., 340  
I. L. R., 19 All., 136  
I. L. R., 20 All., 139, 430  
I. L. R., 21 All., 1  
I. L. R., 23 Mad., 306]

*See SURETY—ENFORCEMENT OF SECURITY.*  
[I. L. R., 12 Bom., 411  
[I. L. R., 13 Mad., 1  
I. L. R., 17 All., 99]

*Act VIII of 1859, s. 362—Application for execution of decree.—An application for execution of the decree of an Appellate Court*

**s. 584 (1859, s. 372).**

*See CASES UNDER SPECIAL OR SECOND APPEAL.*

**CHOKOWRI SANU . . . B. L. R., Sup. Vol., 1**

**2.**—*Construction of—“May.”—The word “may” in Act VIII of 1859, s. 372, does not imply “by some possibility,” but means “may not improbably.”* RAM CAKENDER CHOWDHRY v. KASHEE MONTUN . . . 21 W. R., 57

**s. 585.**

*See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.*

[I. L. R., 17 Calc., 291  
I. L. R., 18 I. A., 233  
I. L. R., 15 All., 123]

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

— s. 586 (Act XXIII of 1861, s. 27).

See APPEAL—ORDERS.

[I. L. R., 3 All., 18  
I. L. R., 7 Bom., 292  
I. L. R., 10 Calc., 523  
I. L. R., 22 Calc., 734  
I. L. R., 19 Mad., 391

See CASES UNDER SMALL CAUSE COURT,  
MORUSSIL—JURISDICTION.

See CASES UNDER SPECIAL OR SECOND  
APPEALS—SMALL CAUSE COURT SUITS.

— s. 587 (1859, ss. 373, 374, Act  
XXIII of 1861, s. 25).

See SPECIAL OR SECOND APPEAL—PROOF-  
DURE IN SPECIAL APPEAL 1 Mad., 250

[I. L. R., 4 Mad., 419  
Agra, F. B., 100: Ed., 1874, 75  
I. L. R., 9 All., 147  
I. L. R., 15 All., 123

1. ——— Act VIII of 1859, s. 374  
—Ground of appeal not taken in petition.—S. 374  
leaves it in the discretion of the Court to admit any  
new ground of appeal arising out of the proceedings,  
though it may have been omitted in the petition of  
special appeal. JOXKISHEN MOOKERJEE v. RAJ-  
KISHEN MOOKERJEE . . . 5 W. R., 147

2. ——— and s. 587—Appeal from  
appellate decree—Issue of fact referred to Appel-  
late Court—Objection—Finality of finding.—A  
District Court on appeal having reversed the decree  
of a District Munsif's Court and dismissed the suit  
upon a preliminary point of law, the High Court, on  
appeal from the District Court's decree, reversed it  
and directed the District Court to submit its finding  
to the High Court upon an issue of fact which had  
been framed and tried by the District Munsif, but  
had not been decided by the District Court. Upon  
the return of the finding upon this issue to the High  
Court, a memorandum of objections to the finding  
was presented under s. 567 of the Code of Civil Pro-  
cedure. Held that, as the words "as far as may  
be" in s. 587 (by which the provisions of Ch. XLI  
are made applicable to appeals from appellate  
decrees) must be taken to mean "as far as is consis-  
tent with the principles on which appeals from appel-  
late decrees are admitted and determined," no objec-  
tions could be taken to the finding of the District  
Court under s. 567 of the Code of Civil Proce-  
dure. HINDE v. PONNATH BRAYAN

[I. L. R., 7 Mad., 52

— s. 588 (1859, ss. 363, 364, 365).

See CASES UNDER APPEAL.

See LETTERS PATENT, HIGH COURT, CL. 15.

[I. L. R., 9 Mad., 447  
I. L. R., 19 Mad., 422  
I. L. R., 20 Mad., 152, 407

**CIVIL PROCEDURE CODE, ACT XIV  
OF 1882 (ACT X OF 1877)—continued.**

See LETTERS, PATENT, HIGH COURT,  
N.-W. P., CL. 10 I. L. R., 11 All., 375  
[I. L. R., 14 All., 361  
I. L. R., 15 All., 359  
I. L. R., 18 All., 443

See REMAND—CASES OF APPEAL AFTER  
REMAND . I. L. R., 5 Calc., 144

[I. L. R., 7 All., 136  
I. L. R., 14 Bom., 232  
I. L. R., 12 All., 510  
I. L. R., 17 Calc., 168  
I. L. R., 19 Mad., 422  
I. L. R., 18 All., 19

See CASES UNDER SPECIAL OR SECOND  
APPEAL—ORDERS SUBJECT OR NOT TO  
APPEAL.

— s. 590.

See INSOLVENT ACT, s. 73.  
[I. L. R., 12 Calc., 629

— ss. 590-591.

See REMAND—CASES OF APPEAL AFTER  
REMAND . I. L. R., 7 All., 136

[I. L. R., 14 Bom., 232  
I. L. R., 12 All., 510  
I. L. R., 15 All., 119  
I. L. R., 18 Mad., 421  
I. L. R., 18 All., 19  
I. L. R., 22 All., 368

— ss. 592, 593 (1859, ss. 367, 370).

See PAUPER SUIT—APPEALS.

[I. L. R., 8 Mad., 504  
1 N. W., 187: Ed. 1873, 246  
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— ss. 595-608 (Act VI of 1874, s. 4).

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— ss. 598-600.

See CASES UNDER LIMITATION ACT, 1877,  
ART. 177.

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[I. L. R., 21 Calc., 473

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[I. L. R., 14 Calc., 290  
I. L. R., 4 I. A., 1  
I. L. R., 22 Calc., 1  
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I. L. R., 27 Calc., 1  
4 C. W. N., 34

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s. 610.

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[I. L. R., 5 Calc., 329  
I. L. R., 8 Calc., 482  
I. L. R., 8 All., 650  
I. L. R., 20 Calc., 105  
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I. L. R., 23 Calc., 283  
2 C. W. N., 89

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[I. L. R., 2 All., 604  
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s. 617 (Act XXIII of 1861, s. 28).

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s. 620.

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[I. L. R., 15 Calc., 507

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[I. L. R., 6 Calc., 236  
[I. L. R., 10 Calc., 287  
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I. L. R., 5 Calc., 688  
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s. 626 (1859, s. 378).

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[I. L. R., 13 Bom., 171  
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1 C. W. N., 338  
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4 C. W. N., 39

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N.-W. P., CL. 10. I. L. R., 11 All., 375  
[I. L. R., 14 All., 228  
I. L. R., 15 All., 359

s. 640 (1859, s. 21).

See COMMISSION—CIVIL CASES.

[I. L. R., 14 Bom., 584

See PARDA-NASHIN WOMEN.

[8 W. R., 282  
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3 C. W. N., 750, 751, 753  
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s. 642.

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[I. L. R., 5 Calc., 109  
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5 C. L. R., 170  
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[I. L. R., 23 Calc., 532

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[I. L. R., 7 All., 671

1. ——— Act XXIII of 1861, ss. 16  
and 19—Power of Civil Court to send case to  
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2. ——— Fraudulent execution of  
decree—Penal Code, s. 210—Civil Procedure Code,  
1877, s. 258—The fact that the provisions of s. 258  
of the Code of Civil Procedure have not been complied  
with does not render a commitment to a Magistrate,

# CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—continued.

under s. 613, for investigation of the offence of fraudulent execution of a decree, illegal. The Civil Court sending up the accused is not debarred from admitting evidence that the decree has been satisfied out of Court. *QUEEN v. MOTURAMAN CHETTI*

[I. L. R., 4 Mad., 325]

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[I. L. R., 23 Calc., 425]

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I. L. R., 11 All., 304

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I. L. R., 21 Calc., 249

I. L. R., 24 Bom., 310

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[I. L. R., 21 Calc., 249]

s. 647 (Act XXIII of 1861, s. 38).

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[I. L. R., 18 Calc., 462, 515, 635]

I. L. R., 15 Mad., 240

I. L. R., 12 All., 179, 392

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I. L. R., 17 All., 108 : I. L. R., 22 I. A., 44

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I. L. R., 1 All., 178

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[I. L. R., 1 All., 180]

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[I. L. R., 17 Calc., 699]

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[I. L. R., 5 All., 318]

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[I. L. R., 4 All., 27]

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[I. L. R., 18 Mad., 236]

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[I. L. R., 7 Calc., 428]

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[I. L. R., 24 Calc., 766]

1 C. W. N., 550

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[I. L. R., 23 Calc., 404]

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[I. L. R., 15 Bom., 419]

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I. L. R., 18 All., 437

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[I. L. R., 15 All., 14]

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[I. L. R., 18 Bom., 603]

s. 60.

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CIVIL PROCEDURE CODE AMEND-  
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[I. L. R., 15 All., 117]

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[I. L. R., 15 All., 84  
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[I. L. R., 15 All., 49, 84  
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[I. L. R., 21 Calc., 840  
I. L. R., 22 Calc., 787  
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1 C. W. N., 185, 278  
3 C. W. N., 353  
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1. ——— Limitation Act, 1877, s. 7 (1859, s. 11)—*Civil Procedure Code, 1877-1882, ss. 278, 280, 281, 293 (1859, s. 247).*—The provisions of s. 11 of the Limitation Act, XIV of 1859 (relating to minority, Limitation Act, 1871 and 1877, s. 7), apply to proceedings under this section. HURO SOONDUREE CHOWDHRAIN v. ANUND NATH ROY CHOWDHRY. 3 W. R., 8

2. ——— Act VIII of 1859, s. 246—*Operation of section.*—The provisions of this section were prospective, and did not apply to proceedings in execution under the old procedure. GOKOOL RAM DEB v. RAM SOONDUR SURMAN. 9 W. R., 292

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3. ——— S. 246 of Act VIII of 1859 is in effect the same as s. 283 of Act X of 1877. BAILUR KRISHNA RAU v. LAKSHMANA SHANBHOGUE. I. L. R., 4 Mad., 302

4. ——— Subject of claim—*Money paid to release attachment in execution of decree.*—Money paid to release an attachment in execution of a decree cannot be made the subject of a claim under Act VIII of 1859, s. 246. MOHAMED BEG v. JUGGERNAUTH DASS. CLAIM OF OMEROHAND [1 Ind. Jur., N. S., 248

5. ——— *Money debt—Civil Procedure Code, 1859, s. 246.*—Act VIII of 1859, s. 246, only applied to immoveable property, or to specific moveable property, not to a debt due. RAMBUTTY KOOER v. KAMESSUR PERSHAD [22 W. R., 36

6. ——— Nature of claims—*Claim under title derived from judgment-debtor.*—There is nothing in s. 246, Act VIII of 1859, which restricts claims under it to titles derived from the judgment-debtor, or out of the estate. It comprises all claims or objections to the sale of lands in execution of decrees. HORISH CHUNDER ROY v. BROJO SOONDUR MOZOOMDAR. 6 W. R., 164

7. ——— Claim by intervenor to moveable property.—A Court is bound to investigate a claim made by an intervenor under s. 246, Act VIII of 1859, to a share of moveable property attached in execution of a decree. DEANUTH BISWAS v. ISSUR GINE. EX-PARTE HUR CHUNDER GINE [14 W. R., 52

ISSUR CHUNDER GANGOOLY v. MOHINI MOHUN DOSS. 17 W. R., 74

8. ——— Second trial of claim under same attachment—*Title of objector as against debtor in possession.*—A Judge has no jurisdiction to try the same objector's claim under s. 246, Act VIII of 1859, a second time as against the same attachment, or to re-open a question finally decided on the former occasion. The title of the objector, as compared with that of the debtor in possession, is not a point for adjudication under s. 246. KHELAT CHUNDER GHOSE v. BHUGGUBUTTY CHURN MOOKERJEE. 14 W. R., 144

9. ——— Dismissal of claim without adjudication on the merits.—But where a claim is dismissed or struck off without any adjudication in either of the modes provided by the section, a fresh claim may be entertained, subject to s. 247. MOHADEB MUNDUL v. MODHOO MUNDUL. 16 W. R., 59

10. ——— Property seized under decree against person in representative character.—Where property is seized as belonging to A, as representative of B, deceased, and A claims the property as his own and denies that it ever belonged to B or B's estate, A's claim is properly dealt with under s. 246 of Act VIII of 1859. DHIRAJ MAHATAB CHUND v. PRAREE DOSSEE [6 W. R., Mis., 61

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11. — Claim to a portion of property attached.—*Alienees of judgment-debtor—Civil Procedure Code, 1859, ss. 229, 230.*—On the application of a decree holder of a money-decree for the sale of immoveable property belonging to the judgment-debtor, certain parties objected that they had purchased the rights of the judgment-debtor therein. Subsequently some of the objectors who claimed a 14-anna share in the property compromised with the decree-holder, who then applied that the remaining 2-anna in possession of certain specified parties should be sold. The lower Court ordered that the sale of these 2 annas should not proceed if the objectors who claimed them paid to the decree-holder a sum equal, rateably, to that levied from the 14 annas. *Held* on appeal by the decree-holder against the original judgment-debtor that the provisions of the Civil Procedure Code, 1859, ss. 229, 230, applied.

12. — Intervenor claiming property attached under decree for rent.—*Attachment of crops—Beng. Act VI of 1862, s. 16.*—In a suit by a landlord against his raiyat for rent, in

such a case is that pointed out in s. 246, Act VIII of 1859. *KARTICK CHUNDER MOOKERJEE v. MOOKTA RAM SIRCAR*. 10 W. R., 21

13. — Right of purchaser from debtor.—*Quere*—Whether a person holding by purchase from the judgment-debtor is in a position to succeed under Act VIII of 1859, s. 246. *WAJID HOSSEIN v. AHMED REZA*. 17 W. R., 480

14. — Mortgages in possession of mortgaged premises attached in execution

liability to sale or not under s. 246. But in a suit brought to set aside a sale made under that section, it is not the mere possession, but the actual right and title, which determines whether the sale ought or ought not to stand. *WOMIA CHURN CHOWDHURY v. KERRALEN CHURN CHOWDHURY*

[W. R., 1884, 163]

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—continued.

16. — Attachment of right, title, and interest.—*Possession—Right to have property released.*—Certain property had been attached in execution of a decree under the 235th section of Act VIII of 1859, which was specified in the schedule annexed to the order of attachment as “the right, title, and interest of *B. H.* deceased, in the hands of *B. D.* and *W. D.*, his widows.” *M. D.* claimed the property under the 246th section of Act VIII of 1859, and proved that the property was in his possession, and not in the possession of *B. D.* or *W. D.* *Held* that the property must be released from the attachment. *BINDORASEN DASS v. BISSOMOT DASS*. 2 Ind. Jur., N. S., 339

17. — Attachment of fractional share of property.—*Right to have property released—Claim to share of property.*—In execution of a decree against *A*, “the moiety or half share of *A*” in certain lands was attached. *M.* filed a petition under s. 246 of Act VIII of 1859, in which he

against *A*, the “right, title, and interest of *A*” in

also, in both cases, that *M.* was entitled to have the

*S. C. RAJCOOMAR ROY v. KADUMBINT DEBI*  
[13 W. R., F. B., 83]

18. — Possession in trust for judgment-debtor.—*Question for decision on claim.*

*HURDEO NARAIN SAHOO* 18 W. R., 119

19. — Possession, Question of title to property.—*Civil Procedure Code (Act XIV of 1852), ss. 278, 290, 281—Satisfaction of decree by private sale—Purchaser—Subsequent*

## CLAIM TO ATTACHED PROPERTY —continued.

*attachment.*—*A* and *B* attached, in execution of their decree, property of *C* and his two brothers, their judgment-debtors. Subsequently *D* obtained a decree against *C* alone, and on the 11th January 1884 applied for attachment of the one-third share of *C* in the property attached by *A* and *B*, which belonged to *C* and his two brothers jointly. No order was on that date passed on the application. On the 14th January 1884, *E* purchased from *C* his one-third share in the attached properties, and the purchase-money was, by arrangement between the brothers, applied in satisfying the debt due to *A* and *B*. On the 28th January 1884, an order was passed on the application of the 11th January 1884, granting the attachment asked for by *D*; and on the 23rd April 1884 *E* preferred his claim to the one-third share purchased by him, and which had been since the purchase attached by *D*. The claim was disallowed on the ground that *E* had no title to the property, he having purchased whilst the property was under attachment. *Held* on appeal that the Judge should have, in accordance with s. 280 of the Code of Civil Procedure, confined himself to determining whether or no the property was in the possession of *E* on his own account at the time that *D* attached the property. **KOTLASH CHUNDER SEN v. KOTLASH CHUNDER CHAKRABARTI** [I. L. R., 10 Cal., 1057]

**20.** ———— *Procedure—Order to release property.*—In disposing of a claim under s. 246, Act VIII of 1859, if the Court be of opinion that the property attached ought not to be sold, the proper order for the Court to make is a simple order to release the property from attachment. **BHURU LALL BHUKUT v. ABDOL HOSSEIN** . 8 W. R., 93

**21.** ———— *Claim of purchaser before attachment.* Where a claim is lodged to attached property on the ground of purchase before attachment, and the decree-holder alleges that the claimant is a benamidar for the judgment-debtor, the Court is bound, under Act VIII of 1859, s. 246, to enquire whether the property is or is not in the possession of the party against whom execution is sought, or of some other person in trust for him. **IN THE MATTER OF HUREEHUR MOOKERJEE. HUREEHUR MOOKERJEE v. NOBIN CHUNDER DOSS** [20 W. R., 202]

**22.** ———— *Suit to set aside order allowing claim—Evidence given on claim.*—In a suit to set aside a summary award under s. 246, Civil Procedure Code, a Judge is bound to find facts upon the evidence tendered and taken in the case, and not upon any evidence taken in the summary cause. **LEKHRAJ ROY v. MUTTA MADHUB SEN** [14 W. R., 95]

**23.** ———— *Property of different sets of defendants—Claim by one set of defendants.*—Where a suit resulted in two distinct orders for the payment of costs, one against the first set of defendants and another against the second, and the property of one of the former set was taken in execution of the order against the latter,—*Held* that the application of the aggrieved defendant for release of his property fell within the provisions of Act VIII of

## CLAIM TO ATTACHED PROPERTY —continued.

1859, s. 246. *Held* also that the applicant had a right to establish what the law required by any evidence sufficient for the purpose, and that the Court had no power to require from him any particular kind of evidence. **BINODE LALL PAKRASHEE v. GINERDHR CHUCKERBUTTY** . 22 W. R., 392

**24.** ———— *Refusal of admissible and proper evidence—Invalid order.*—Where a Judge makes an order under Act VIII of 1859, s. 246, after refusing to receive evidence which it is his duty to receive, his order is *ultra vires*. **BHOIHARISEE DABEE v. NILMONEE SINGH DEO BAHADOOR** [24 W. R., 422]

**25.** ———— *Order for release from attachment, Nature of—Limited effect of order.*—When, under s. 246, Act VIII of 1859, property which has been attached is ordered to be released, the order for release is made with reference merely to the particular claimant who has obtained the order. This order is not to be regarded as a general decision (of which all the world can have the benefit) that the property does not belong to the judgment-debtor. **IMAM BANDEE BEGUM v. MAHOMED TUKEE KHAN** [8 W. R., 27]

**BOOLIROONNISSA BIBEE v. KUREEMOONNISSA KHATOON** . 21 W. R., 230

**26.** ———— *Decree against party in representative character—Third party—Execution of decree.*—*A* obtained a decree against *B*, in her representative character, for a debt contracted by her mother. The decree declared that execution should be taken out against the property of the mother, and not against any part of her (the mother's) deceased husband's estate. In execution, *A* attached and put up to sale certain property as belonging to the mother. *B* objected to the sale, alleging that the property was not her mother's, but was inherited by her from her father. The Munsif disallowed her objection on the ground that only the right, title, and interest of the defendant's mother was put up for sale. On appeal the Judge set aside the Munsif's order. *Held* that, for the purposes of her objection, *B* was a third party unconnected with the decree, and that her objection should have been disposed of under s. 246 of Act VIII of 1859. S. 11 of Act XXIII of 1861 did not apply, and there was no appeal. **HARIS CHANDRA GUPTO v. SHASHI MALA GUPTI** [6 B. L. R., 721: 15 W. R., 168]

**27.** ———— *Claim by representative—Appeal—Act XXIII of 1861, s. 11—Execution of decree.*—In execution of his decree, the decree-holder attached certain property as being that of the judgment-debtor. On this *R*, the son of the judgment-debtor, intervened, stating that he held possession of the property in his own right, and did not inherit it as any part of his mother's assets. The Munsif admitted his claim on the ground that the property was not that of the judgment-debtor. *Held* the order was one under s. 246, and no appeal would lie to the Judge. **IN RE RANAY** [6 B. L. R., 725 note]

## CLAIM TO ATTACHED PROPERTY

—continued.

S. C. RAJNEY v. ISHUR CHUNDER BRUTTACHARJEE  
[12 W. R., 333]28. — Attachment—Civil Procedure Code, 1892, s. 280—Wakf—Trust property—Code of Civil Procedure, 1882, s. 280. Code of Civil Procedure under question of judgment—  
—suit for recovery of property—

29. — Property attached in possession of same person in trust for the judgment-debtor—Code of Civil Procedure (Act

attached, and it does not appear that the possession of the claimant was in reality that of the judgment debtor, the claim must be allowed. SHEORAJ NAN DAN SINGH v. GOPAL SURAN NARAIN SINGH

[I. L. R., 18 Cal., 286]

30. — Release of lands as being

property, but held by them as surpluses of a religious endowment. The Munsif found that, although the land formed part of some which had been released by Government as appropriated to religious purposes, they were held by the defendants entirely to their own use, and overruled the objection. Held that the order was one under Act VIII of 1859, s. 246, and that no appeal lay to the Judge. NIKHAI CHITRY PUTTENDRER v. JOGENDRO NATH BANERJEE

[21 W. R., 365]

31. — Suit to set aside summary order—Order releasing attached property—

## CLAIM TO ATTACHED PROPERTY

—continued.

against power to is under so is un- against

[14 W. R., 123]

32. — Suit for reversal of order under s. 246—Nature of claim in suit—

[11 W. R., 113]

33. — Proof of possession—Title—Act VIII of 1859, s. 15.—In a suit brought under s. 246, Act VIII of 1859, for establishment of right,—Held that the plaintiff's failure to

34. — Suit after rejection of claim—Civil Procedure Code, 1892, ss. 278, 283—Damages for wrongful attachment—Suits under s. 283 of the Code, although they are brought for the purpose of establishing rights which have been negatived in execution-proceedings, are neither described in the Code nor are dealt with in practice as appeals from the orders of lower Courts; they are substantive suits to all intents and purposes, and must be tried like any other suits subject to the ordinary evidence. There is nothing

of 1859, but his claim was rejected

red

**CLAIM TO ATTACHED PROPERTY**

—continued.

brought a suit under that section for a declaration that *M*'s interest in the property was that of a tenant, and not that of a usufructuary mortgagee. It appeared that, on the termination of *M*'s tenancy, the plaintiff let the land to another person. *Held* that the suit would not lie. *AMJAD ALI v. KUNGU SHAW*

[9 B. L. R., Ap., 28; 17 W. R., 304]

30.

*Claim by mortgager in execution proceedings in Small Cause Court—Civil Procedure Code (Act XII of 1882), ss. 278, 279, 280, 281, 282, and 283—Presidency Towns Small Cause Courts Act (XI of 1882), s. 37.*—An order made upon a claim to attached property filed in the Small Cause Court of Calcutta in a proceeding under s. 278 of the Civil Procedure Code is "an order made in suit" within the meaning of s. 37 of the Presidency Small Cause Courts Act (Act XV of 1882), and is final, subject only to the right to apply for a new trial. *Ismael Solomon Bhamji v. Mahomed Khan*, I. L. R., 18 Calc., 296, followed. *DENO NATH DATADYAL v. NUFFER CHUNDER NUNDY*

[I. L. R., 26 Calc., 778]

3 C. W. N., 590

On appeal . . . . . 4 C. W. N., 470

37.

*Effect on suit of satisfaction of decree and release of property—Intervenor—Cause of action—Civil Procedure Code (Act VIII of 1859), ss. 246, 247.*—Where a person whose property has been attached in execution of a decree against another person, and whose claim under s. 246 of Act VIII of 1859 has been rejected, brings a suit under the provisions of s. 247 of Act VIII of 1859, it is no objection to that suit that, previously to the filing thereof, the decree (in execution of which the property had been attached) was satisfied by the judgment-debtor and the property released from attachment. *SREEPUTTY MIRDHA v. KARTICK SINGHA*

[I. L. R., 9 Calc., 10; 11 C. L. R., 181]

38.

*Civil Procedure Code, 1882, s. 278—Claim to property directed to be sold under a mortgage-decree—Attachment.*—Proceedings by way of claim under s. 278 of the Civil Procedure Code are applicable only to cases of money-decrees where property has been attached, and not to claims preferred to properties directed to be sold under mortgage-decrees. *IN THE MATTER OF DEEFHOLTS. DEEFHOLTS v. PETERS* . I. L. R., 14 Calc., 631

39.

*Civil Procedure Code (Act XIV of 1882), ss. 278, 283—Mortgage-decree—Attachment.*—If an executing Court does in the case of a mortgage-decree for sale take action under s. 278, Civil Procedure Code, it applies a procedure which is inapplicable, and the statutory bar contained in s. 283, Civil Procedure Code, does not operate to exclude a suit by either party. *Badri Prasad v. Mahamad Yusuf*, I. L. R., 1 All., 381, and *Nilo Pandurang v. Rama Patloji*, I. L. R., 9 Bom., 35, distinguished. *Deefholts v. Peters*, I. L. R., 14 Calc., 631, referred to. *JOY PROKASH SINGH v. ABHOY KUMAR CHUND* . 1 C. W. N., 701

40.

*Claim on property ordered to be sold under a mortgage-decree—Civil Procedure Code (1882), ss. 278 and 287—Stay*

**CLAIM TO ATTACHED PROPERTY**

—continued.

*of sale in execution of decree.*—*H* obtained a decree upon a mortgage against *D* in 1891, and applied in execution for the sale of the mortgaged property. On the proclamation of the sale being issued, *K* intervened, alleging that the property had been sold to him by *D* in 1893 at a private sale. The Subordinate Judge allowed his claim, and stopped the sale, being of opinion that he had power, under s. 287 of the Civil Procedure Code, to make this order. *Held* that the order was made without jurisdiction, and must be discharged. Proceedings by way of claim as provided by s. 278 of the Civil Procedure Code (Act XIV of 1882) are not applicable where the property is directed to be sold under a mortgage-decree, and s. 287 had no application. *Deefholts v. Peters*, I. L. R., 14 Calc., 631, followed. *HIMATRAM v. KHUSHAL JETHIRAM GUJAR*

[I. L. R., 18 Bom., 98]

41.

*Order of attachment—Judgment-debtor declared insolvent—Appointment of receiver—Vesting of insolvent's property in receiver—Objection to attachment—Jurisdiction to entertain objection—Civil Procedure Code, s. 278.*—Where property has been made the subject of attachment under Ch. XIX of the Civil Procedure Code, the right of an objector to assert his claim to be the true owner of the property under s. 278, and the jurisdiction of the Court to entertain the objection, are not ousted by the mere circumstance that the judgment-debtor has been declared an insolvent, and his property vested in a receiver under Ch. XX. It is the judgment-debtor's property only, not that of the objector, that is thus vested. *PARAS RAM v. KARAM SINGH*

[I. L. R., 9 All., 232]

42.

*Claim to attached property in Calcutta Court of Small Causes—Attachment—Suit in High Court by unsuccessful claimant—Right of suit—Res judicata—Code of Civil Procedure (XIV of 1882), ss. 278, 283—Presidency Small Cause Courts Act (XV of 1882), ss. 9, 23, and 37—Act X of 1888, s. 2.*—An order made upon a claim to attached property filed in the Small Cause Court of Calcutta under s. 278 of the Civil Procedure Code, 1882, is an order in the suit within the meaning of the Presidency Small Cause Courts Act, 1882, s. 37, and is final, subject only to the right to apply for a new trial. Where such a claim has been disallowed, a suit brought under s. 283 of the Civil Procedure Code by the person against whom that order has been passed to establish the right which he claims to the property in dispute is not maintainable in any Court. The exclusion by the Small Cause Court, under the powers conferred on it by s. 23 of the Presidency Small Cause Courts Act, 1882, of s. 283 of the Civil Procedure Code has not been affected by Act X of 1888. *ISMAIL SOLOMON BHAMJI v. MAHOMED KHAN*

[I. L. R., 18 Calc., 296]

43.

*Code of Civil Procedure, ss. 278, 280, 283—Investigation of claim to attached property.*—The extent to which the "investigation" required by s. 280 should be carried

## CLAIM TO ATTACHED PROPERTY

—continued.

depends upon the circumstances of the case. *SAR-  
DHARI LAL v. AMBICA PRASHAD*

[I. L. R., 15 Cal., 521  
L. R., 16 I. A., 123]

44. — *Civil Procedure Code, 1882, s. 281—Order disallowing claim to attached property.—The effect of an order made*

45. — *Application by third party for removal of attachment—Order refusing to remove attachment—Omission by third party to bring subsequent suit to establish right to attached property—Subsequent withdrawal of attachment by attaching party, Effect of—Subsequent claim to property by the party who had failed to remove attachment—Civil Procedure Code, 1882, s. 281 and 283—Title.—The plaintiff*

deed of sale, under the Civil Procedure Code, 1882, s. 281 and 283.

purchase, was reversed on appeal. *I.* that when the plaintiff withdrew his application

## CLAIM TO ATTACHED PROPERTY

—continued.

was not acquired before November 1883. *GOPAL PURSOTAN v. BAI DIVALI I. L. R., 18 Bom., 241*

46. — *Suit to set aside order removing attachment—Suit for declaration of title—Adverse possession—Civil Procedure Code (1882), s. 283.—The plaintiff obtained a decree against *I.* and in execution attached the property in dispute. The defendants intervened, and obtained an order for the removal of the attachment on the 11th August 1883. On the 13th August 1883, the plaintiff instituted this suit for a declaration that the property belonged to his judgment-debtor (*I.*) and as such was liable to attachment and sale. The defendants pleaded that they had been in possession of the property for more than twelve years prior to the institution of the suit, and that the suit was therefore barred. The Judge rejected the plaintiff's claim. *Held*, reversing the decree, that the suit being brought under s. 283 of the Civil Procedure Code (Act XIV of 1882), it was a suit to set aside the order of 11th August 1883, directing the removal of the attachment, and should be determined by ascertaining the rights of the parties at the date of that order. As the defendants*

47. — *Goods consigned to agent for sale on commission—Equitable assignment of goods by consignee—Goods attached by judgment-creditor of consignee—Claim by agent—Civil Procedure Code (1882), s. 280.—One *P* at Viramgam consigned certain bags of seed to *V H & Co.* at Bombay for sale on commission, and drew hundis against the goods for Rs. 200, which, at his*

specific advances against them, *Held* also that at the date of attachment the goods were in possession of *P* by the railway company "on account of or in trust for" *V H & Co.* in the name in which that expression is used in s. 280 of the Civil Procedure Code. *VELJI HIRJI v. BHASKAR SHETPAL*

[I. L. R., 21 Bom., 255]

48. — *Application by person holding claim—Form of application—Circular Order of Civil Court, Bombay No. 1—Court fees—Act II, ch. I—Notice—Mortgage—A person holding a claim or interest in property—A suit in execution of a decree*

**CLAIM TO ATTACHED PROPERTY**

—concluded.

to attached property, what the Code of Civil Procedure provides is a summary investigation into the question of possession, and the question of title is required to be gone into only so far as it may be necessary to determine whether the person in possession holds such possession as agent of, or as trustee for, another. Having regard to the facts that X, the creditor, brought her suit after the institution of the suit by B, the claimant, and

fact, the do in under, and provided in the Code of Civil Procedure relating to claims to attached property. **BRAGAWAY** **HAKANAY DAS v. KUNTO MOONI DAS**

[1 C. W. N., 617

—Consolidation of—

**See Practice—Civil Cases—ADJUDICATING COURTS** . I. L. R., 22 Cal., 611

[3 C. W. N., 87

**CLERK OF THE COURT.**

**Functions of—Ministerial officer—** It is not within the province of the Clerk of a Court to issue judicial orders on any subject. He is merely a ministerial officer of the Court, and any act which he is competent to perform must be of that character only, and therefore not one to be judicially dealt with or rescinded by the Court. **GOSWAMI JAG MOOD** (**Green v. CHINGUN LALL** . 3 N. W., 46

**CLERK OF SMALL CAUSE COURT.**

**See Practice AND Summary—LITIGATION** . I. L. R., 11 All., 87

**CLUB.**

**Held** further that, as G had no opportunity of defending himself on the charge of writing the

**CLUB—concluded.**

letters, his expulsion was illegal. **GOSWAMI JAG MOOD** . (101

I. L. R., 9 Mad., 310

**2.**—Suit for price of goods supplied by club to a member.—**Right of withdrawal of club.**—An action to recover the price of goods supplied to a member of a non-proprietary club or on his responsibility cannot be brought in the name of the secretary of the club. **MICHAEL v. BRIGGS** . I. L. R., 14 Mad., 363

**3.**—Liability of the secretary of a club in respect of a contract entered into for the benefit of the members of the club.—**Held** that the secretary of a club could not, unless he specially accepted a personal liability, be sued personally on a contract entered into on behalf of the members of the club by his predecessor in office, nor could the members of a club collectively be sued through their secretary as their representative. **NORTH-WESTERN PROVINCIAL CLUB v. SADRULAY** . I. L. R., 30 All., 497

**CO-DEFENDANT.**

**See Inspection of Documents** . I. L. R., 17 Bom., 364

**See Cases under His Judicata—Parties** . —CO-DEFENDANTS.

**CODICIL.**

**See Will—Form of Will.**

**See Will—Form of Will.** . I. L. R., 4 Cal., 731

**See Statutes, Construction of.** . I. L. R., 23 Cal., 663

**COERCION.**

**See Accountant.**

**See Contract Act, ss. 15 and 16.** . I. L. R., 13 Mad., 214

**See Contract Act, s. 25.** . I. L. R., 4 All., 353

**See Duress.**

**COMARBITRATION.**

—Agreement in consideration of—

**See Contract Act, s. 23—Illegal Consideration—General.**

**See Contract Act, s. 23.** . I. L. R., 3 All., 781



the Nazir in India, is a ministerial officer when he executes a decree. He, like the Nazir, must carry

orders are subject accordingly to revision and cor-

rection on the application of a party aggrieved whenever he misconceives the decree or acts illegally in giving effect to it. He is limited strictly to the precise line of activity laid down for him in the Code and the orders under it; and in cases of error or doubt it is the Court that must determine whether he, as its ministerial officer, has or has not transgressed his powers. *Per Hindwood, J.*—A sale made by a Collector under Ch. XIX of the Civil Procedure

Code and under the provisions of the Code is not subject to revision or correction on the application of a party aggrieved

in that behalf by Government under the revenue paragraph of s. 320. Where the property has been sold or re-sold, the sale or re-sale cannot be set aside by the Collector. Any application for setting it aside must be made to the Civil Court under s. 311 and dealt with by it under s. 312; and if no application is made to the Court, the sale must be confirmed by it under that section. *Lal Bahadur Shastri v. State of Bihar*, 1951, 1 L. R., 11 Bom., 478

*See Kesabdev v. Bahadur Prasad*  
[L. R., 11 All., 84  
Madho Prasad v. Harnet Kaur  
[L. R., 5 All., 314  
Narain Mal v. Lachmi Narain  
[L. R., 9 All., 43

3. *Civil Procedure Code, 1908, s. 265—Execution—Decree for partition referred to Collector—Collector bound to*

for partition is not bound to refer to Collector—Collector bound to

lands decreed to be divided, but includes the delivery of the shares to their respective allottees. *Prasanna Das Lakshmi v. Shaktikarni*  
[L. R., 11 Bom., 682  
4. *Civil Procedure*

entertain it. *Madho Prasad v. Harnet Kaur*, L. R., 5 All., 314, referred to. *Narain Mal v. Lachmi Narain*, 1 L. R., 9 All., 43

5. *Civil Procedure Code, 1908, s. 265—Execution of decree—Decree*

made of partition granted by the Collector. Against this order, if who was plaintiff in one of the suits, appealed to the District Court and in the appeal he made it alone the

ORDER OF THE JUDGE IN THE SUIT IN WHICH HE WAS PLAINTIFF IN ONE OF THE SUITS, APPEALED TO THE DISTRICT COURT AND IN THE APPEAL HE MADE IT ALONE THE

**COLLECTOR—continued.**

the Subordinate Judge was no longer in force, having been set aside by the High Court. On second appeal to the High Court,—*Held* that the appellant could not succeed in the present appeal, the object of which was to revive the order of the Subordinate Judge. That order was one which the Subordinate Judge had no power to make. It involved taking the execution of the decree for partition out of the Collector's hands into his own, in direct contradiction of the law. In case of partition of lands, s. 265 of the Civil Procedure Code (XIV of 1882) and s. 113 of the Bombay Revenue Code (Bombay Act V of 1879) place the execution of the decree entirely in the Collector's hands. This does not deprive the Court of judicial control of its decree; as, for instance, if it should appear to have been obtained by fraud or surprise; but in the present case nothing of that kind was relied on. Nor was it asserted that the Collector had acted in bad faith, or contravened the command of the Court, or transgressed the law. What was alleged was that he had made an objectionable partition. This was not a ground on which the Subordinate Judge could interfere. **DEV GOPAL SAVANT v. VASUDEV VITHAL SAVANT I. L. R., 12 Bom., 371**

6. ————— *Execution of decree for partition—Collector, Power of, to refuse execution—Ultra vires.*—The plaintiffs obtained a decree against the defendants for partition and possession of their share in the lands in the village of Kasai. That decree was sent for execution to the Collector. In the meantime, a revision survey had been introduced into the village, under which the designation of some of the lands directed to be partitioned was changed from khoti to dhara lands. The Collector proposed to partition them, as described by the survey; but the plaintiffs having declined the proposal, he refused to partition the lands, and returned unexecuted the decree to the Court. On reference to the High Court,—*Held* that the Collector had acted *ultra vires*. The plaintiffs were entitled to have the lands partitioned, quite independent of the result of the new survey as regards the character of the lands. The proposal of the Collector was virtually to contravene the command of the Court, which as a purely ministerial officer, it was not in his power to do either directly or indirectly. **GANOJI UTEKAR v. DHONDU**

[I. L. R., 14 Bom., 450]

7. ————— *N.-W. P. Land Revenue Act (XIX of 1873), ss. 3, sub-s. (1), 107—Partition—Wajib-ul-urz—Power of Collector on constituting a new mehal by partition to frame a fresh wajib-ul-urz for such mehal.*—It is within the implied, though not within the specified, powers of a Collector while constituting new mehals by partition of a previously existing single mehal to frame a new wajib-ul-urz for each of the new mehals so constituted. **KEDAR NATH v. RAM DIAL**

[I. L. R., 15 All., 410]

8. ————— *Power of Collector—Officer acting in two capacities—Criminal Procedure Code, 1861, s. 168.*—A Collector who entertains a charge, under s. 168 of the Code of Criminal Procedure, of an offence against any Court or public

**COLLECTOR—continued.**

servant, should not try the case himself as a Magistrate nor, unless under very exceptional circumstances, give evidence as a witness before himself as Magistrate. **QUEEN v. NEHAL MAHTEE**

[9 W. R., Cr., 13]

9. ————— *Power to authorize manager to sue—Beng. Act IV of 1870, s. 11.—Quære—Whether, where the estate and effects of minors are by an order of the Civil Court vested in the Collector, who appointed a manager under Act XL of 1858, the Collector has power, under Bengal Act IV of 1870, s. 11, to give authority to the manager to bring a suit in the Civil Court. The point being a technical one, and no substantial injury having been done, the High Court refused to interfere. IN THE MATTER OF KALEE DOSS ROY* . 18 W. R., 466

10. ————— *Collector as manager of a minor's estate—Act XX of 1864, ss. 11 and 15—Officer of Government—Act XIV of 1869, s. 32—Jurisdiction.*—Ss. 11 and 15 of Act XX of 1864, taken together, show that a Collector, when appointed to take charge of the estate of a minor, is so appointed in his capacity as Collector, and therefore as an officer of Government within the meaning of Act XIV of 1869, s. 32. **NARISINGBAO RAMACHANDRA v. LUXUMANBAO I. L. R., 1 Bom., 318**

11. ————— *Civil Procedure Code, 1882, s. 424—Collector as guardian of ward—Notice in suit to recover money from estate of ward.*—In a suit to recover money due on a promissory note executed by the deceased zamindar out of the estate of the deceased and of his son, the defendant, a minor under the Court of Wards, the Collector being appointed guardian *ad litem* of the defendant, pleaded that under s. 424 of the Code of Civil Procedure he was entitled to notice before suit, and the suit was dismissed on the ground of want of notice. *Held* on appeal that s. 424 was not applicable to the case. **ANANTHARAMAN v. RAMASAMI**

[I. L. R., 11 Mad., 371]

12. ————— *Civil Procedure Code, 1882, s. 424—Notice to Collector—Collector joined a party in respect of minor's property administered by him, to protect minor's title.*—The plaintiff sued, as purchaser at a Court-sale of the interest of defendant No. 1, to redeem and recover possession of the land in dispute, alleging that it had been mortgaged by defendant No. 1 to defendant No. 2. Defendant No. 1 denied the mortgage, and that he had any title to the land, which he said belonged to R, and formed a part of R's desmukhi vatan. R having died, leaving a minor widow, sued as defendant No. 4 in the suit, the estate was administered by the Collector. On the application of the minor's personal guardians, the Collector was joined as a party. The Collector contended on the minor's behalf that, the suit having been brought without notice to him as required by s. 424 of the Civil Procedure Code (Act XIV of 1882), it was not maintainable. The District Judge was of opinion that notice was necessary. He therefore rejected the plaintiff's claim, and ordered the sale to be set aside. On appeal by the plaintiff to the High Court,—*Held* that notice under s. 424 of the



**COLLECTOR—continued.**

powers conferred on a Collector by Madras Act VIII of 1865. **RAJARAM LALA v. KALLAPPEN**

[5 Mad., 129]

22. ———— **Objection to register and assess land transferred in accordance with Mad. Reg. XXV of 1802.**—A Collector is bound to register and sub-assess a portion of a zamindari transferred in accordance with the provisions of Regulation XXV of 1802, such transfer not being opposed to Hindu or Mahomedan law, or the existing law. **PONNUSAMY TEVAR v. COLLECTOR OF MADURA**

[3 Mad., 35]

23. ———— **Issue of summons to attend departmental enquiry.**—*Mad. Act III of 1869.*—A Collector who, in order to draw up a report for the information of Government, holds a departmental enquiry into the conduct of a tahsildar accused of extortion in the discharge of his executive duties, is authorized, under the provisions of Madras Act III of 1869, to issue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation. **SRINIVASA AYANGAR v. QUEEN**

[I. L. R., 4 Mad., 393]

24. ———— **Power of Collector to transfer suits under the Rent Recovery Act.**—*Mad. Reg. VII of 1828.*—The Collector of a district is competent to transfer suits under the Rent Recovery Act filed before an Assistant Collector in his district to the file of any other Assistant Collector in the same district. **KAILASANATHA v. TIRUVENGADA**

[I. L. R., 7 Mad., 420]

25. ———— **Reference to district panchayet.**—*Mad. Reg. XII of 1816—Village panchayet—Power of Collector.*—A Collector cannot order a reference to a district panchayet under Regulation XII of 1816, unless there has been (1) an enquiry as to whether the parties will submit to the jurisdiction of a village panchayet; (2) an objection from either party to such reference, and a request in writing by one of the parties that the matter be referred to a district panchayet. **CHIKANT v. PEDDAKIMEDI**

[I. L. R., 8 Mad., 569]

26. ———— **Deputy Collector—Reference of cases to Munsif.**—*Mad. Reg. XII of 1816—Act VII of 1857.*—A Deputy Collector, invested by a Collector with all the powers of a Covenanted Assistant, or with the special power to determine claims under Regulation XII of 1816, is competent to refer cases under that Regulation for disposal to a District Munsif. The authority must be delegated under s. 3, Act VII of 1857. **ANONYMOUS**

[4 Mad., Ap., 1]

27. ———— **Suit for resumption.**—*Beng. Reg. II of 1819, s. 30.*—Under s. 30, Regulation II of 1819, a Deputy Collector, although authorized to put the case in such a state of preparation as to facilitate the hearing and decision by the Collector, had no authority to pronounce a decision himself. **RADHAMADHUB GHOSE v. KHIRUDNAUTH ROY**

1 Ind. Jur., O. S., 84

28. ———— **Suit under Beng. Reg. II of 1819.**—A Deputy Collector has no

**COLLECTOR—continued.**

jurisdiction to try a suit under s. 30, Regulation II of 1819, but should return the plaint, and refer the party to the Collector who has jurisdiction. **GOUREEKANT BANERJEE v. LALL MAHOMED MOLLAH**

[W. R., F. B., 70]

Marsh., 265; 2 Hay, 107

**KALLY DASS BANERJEE v. MUTTY LALL CHUCKERBUTTY**

Marsh., 483

29. ———— **Act XXII of 1872—Act XIV of 1863, s. 8—Collector in charge of sub-division.**—A Deputy Collector, who by virtue of Act XXII of 1872 must be deemed to have been a Deputy Collector in charge of a sub-division within the meaning of Act X of 1859 and Act XIV of 1863, and whose powers for the decision of suits were therefore the powers of a Collector, was transferred to the settlement department, and heard and determined a suit under Act X of 1859 for enhancement of rent. *Held* that his powers continued in him notwithstanding his transfer, and that therefore he did not need to be re-invested under s. 8 of Act XIV of 1863. **GIBDHAREE v. DILSOOKH RAI**

[5 N. W., 221]

30. ———— **Deputy Collector whether a "Court" under Land Acquisition Act—Judicial Officer—Revenue Court—Prosecution for false evidence—Criminal Procedure Code, 1898, s. 476—Penal Code, s. 193.**—The expression "the Court" in the Land Acquisition Act does not include a Collector, nor is there any authority given to the Collector to administer an oath or to require a verification. It is a false statement made under a verification that constitutes an offence under s. 193 of the Penal Code, not a verification oath or solemn affirmation. The Deputy Collector acting under the Land Acquisition Act is not a judicial officer, he cannot properly be regarded as a Revenue Court within the terms of s. 476 of the Code of Criminal Procedure, his proceedings under the former Act are not regulated by the Code of Civil Procedure, nor is he right in requiring a petition put in before him to be verified in accordance with that Code, so as to make any false statement punishable as perjury. The Deputy Collector is not in a position to pass any final order in the matter of value of the land or the right to claim the price fixed; a party dissatisfied can claim a reference to the Civil Court, whose duty it is to settle the matter in dispute judicially; therefore, to subject parties who claimed the right to such a reference to a criminal prosecution, when the matters on which the Deputy Collector had formed an opinion as a Revenue Officer under the Land Acquisition Act must be submitted to the determination of a Court, is obviously premature and improper, and is almost certain to operate very prejudicially towards them in the trial before the Civil Court of the same matter. **DURGA DAS RUKHT v. QUEEN-EMPRESS**

[I. L. R., 27 Calc., 820]

31. ———— **Deputy Collector not acting as Settlement Officer—Act XXII of 1872—Act I of 1874, ss. 7, 8.**—The provisions of s. 2 of Act XXII of 1872 applied only to suits in which the proceedings of Deputy Collectors were liable

**COLLECTOR—continued.**

to be set aside for want of jurisdiction, and did not have the effect of reviving decrees passed by them which had been annulled in appeal, or of annulling the decrees in appeal by which those decrees were annulled. Except in the cases of Deputy Collectors employed in making or revising a settlement, Act I of 1874 made no provision for the validation of decrees of Deputy Collectors set aside for want of jurisdiction, or for the invalidation of the decrees of the Appellate Courts which annulled those decrees. *Quære*—Whether the proviso to s. 8 of Act I of 1874, that the provisions of the section should not apply to any case in which the holder of a decree made by an officer employed in making or revising a settlement, and treated as invalid for want of authority in such

suit, the decree in which was against him. *JREWA BAH v. ISREB* . 8 N. W., 153

32. — Deputy Collector acting as Settlement Officer—*Reg. IX of 1825, ss. 5 and 6*.—Any Deputy Collector, deputed and authorized

plots under 50 bighas, with respect to which it has waived its right to resume in favour of the proprietor of the mahal. *BHOLAN MISHR v. KASHITA LAL* . 7 N. W., 302

33. — Transfer of case to Assistant Collector to record evidence.—A Collector is incompetent to send a case to the Assistant Collector merely to record the evidence therein, and when this is done, all subsequent proceedings will be annulled. *ZAIR-DOONISSA v. ADJODDHYA PERSHAD*

[2 N. W., 98]

*BHOWANER DUTT SINGH v. BEER SINGH*  
[2 N. W., 199]

cused of an offence against either of these Acts. *EXPRESS OF INDIA v. BROOKI NARAYAN LAL*

[I. L. R., 2 All., 806]

ards  
Land  
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n, is  
424  
of Act X of 1877, and consequently, when sued for acts done in that capacity, is entitled to the

**COLLECTOR—concluded.**

notice of suit required by the latter section. *COLLECTOR OF BILKOT v. MUNIVAR*

[I. L. R., 3 All., 20]

38. — Power to set aside sale under s. 311, Civil Procedure Code

to set aside a sale. *NARAYAN v. BASULKHAN*  
[I. L. R., 23 Bom., 631]

[I. L. R., 18 Mad., 321]

**COLLISION.**

*See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.*

[10 Bom., 110]

1 Hyde, 375

4 Bom., O. C., 149

*See CASES UNDER SHIPPING LAW—COLLISION.*

— Damage done to ship by—

*See LIMITATION ACT, 1877, ART. 36.*

[I. L. R., 11 Bom., 133]

**COLLUSION.**

*See DIVORCE ACT, s. 13.*

[I. L. R., 11 Calc., 651]

*See CASES UNDER FRAUD.*

*See INSOLVENT ACT, s. 9.*

[I. L. R., 21 Bom., 205]

**COMMISSION.**

Col.

1. CIVIL CASES . . . 1371

2. CRIMINAL CASES . . . 1370

*See RECEIVER* . I. L. R., 15 Mad., 233

— Order disallowing, to Administrator General.

*See LETTERS PATENT, HIGH COURT, CL. 15.*

[I. L. R., 1 Mad., 148]

— Payment of—

*See INSOLVENT ACT, s. 40.*

[I. L. R., 14 Mad., 133]

— Right to—

*See BROKER* . I. L. R., 20 Bom., 124

— Rule as to rate of—

*See ADMINISTRATOR GENERAL'S ACT, 1874.*

s. 27 . . . I. L. R., 1 Mad., 148

**COMMISSION—continued.**

- to Ameen to fix mesne profits.  
*See* COURT FEES ACT, s. 20.  
 [I. L. R., 17 Calc., 281]
- to Executor.  
*See* EXECUTOR . I. L. R., 22 Calc., 14  
*See* MAHOMEDAN LAW—WILL.  
 [I. L. R., 25 Calc., 9]
- to Mooktears, Practice of giving—  
*See* PLEADER—REMOVAL, SUSPENSION, AND  
 DISMISSAL OF . 11 B. L. R., 312
- to Official Assignee.  
*See* INSOLVENT ACT, s. 19.  
 [I. L. R., 8 Mad., 79  
 I. L. R., 13 Calc., 66]
- to take evidence.  
*See* APPELLATE COURT—ERRORS AFFECT-  
 ING OR NOT MERITS OF CASE.  
 [I. L. R., 25 Calc., 807  
 2 C. W. N., 566]
- See* EVIDENCE—CIVIL CASES—SECONDARY  
 EVIDENCE—NON-PRODUCTION FOR OTHER  
 CAUSES . . . I. L. R., 9 Calc., 939
- See* PARDANASHIN WOMEN.  
 [I. L. R., 4 Calc., 20; 3 C. L. R., 93  
 18 W. R., 230  
 I. L. R., 26 Calc., 650, 551 note  
 3 C. W. N., 750, 751, 753]
- See* PRACTICE—CIVIL CASES—COMMISSION.  
 [I. L. R., 23 Calc., 404]
- to Trustees.  
*See* WILL—CONSTRUCTION.  
 [I. L. R., 24 Calc., 44]

**1. CIVIL CASES.**

**1. ——— Case on peremptory board—**  
*Practice.*—A commission for the examination of witnesses will be issued, even though the cause is entered upon the peremptory board of the day, if the issuing of such commission is not calculated to prejudice the defendants, or to subject them to loss or inconvenience. *JANSSEN v. DUNDAS* . 1 Hyde, 289

**2. ——— Witness out of jurisdiction—**  
*Power of granting commission to examine a party to suit.*—A commission will be granted merely as a matter of course to examine a material witness who is out of the jurisdiction of the Court, if the witness cannot be brought into Court by its ordinary process. But the commission will not be granted, at the instance of either party, to enable him to give evidence himself under a commission, except under very strong circumstances indeed, such as where he is seriously ill. *DOUGETT v. WISE*

[I. Ind. Jur., N. S., 357]

**3. ——— Obligation to issue.—As to the obligation on the Court to issue a commission,**

**COMMISSION—continued.****1. CIVIL CASES—continued.**

*see per* AINSLIE, J., in *HARIDAS BAISAKH v. MOAZAM HOSSEIN*  
 [8 B. L. R., Ap., 16; 15 W. R., 447]

**4. ——— Non-resident witnesses—**  
*Civil Procedure Code, 1859, s. 175.*—The Court is invested with discretionary power to grant or to refuse applications made under s. 175, Act VIII of 1859, for the examination by commission of witnesses resident more than 100 miles distant from Calcutta. *BURNEY v. EYRE* . . . 1 Hyde, 68

**5. ——— Commission to examine witnesses—**  
*Grounds for granting commission.*—A plaintiff applied, under s. 640 of the Civil Procedure Code (Act XIV of 1882), for a commission to issue for the examination of three female witnesses (*P*, *B*, and *A*) at the residence of one of them (*P*). The grounds upon which he based his application were the following:—(1) That *P* had lost her husband ten months previously and was in mourning; that, according to Parsi usage, a widow observed mourning for two or three years, and during that time did not leave her house; (2) that *B* was fifty-eight years of age and sickly and physically unable to attend the Court; (3) that *A* was about to go up-country, and could not stay in Bombay until the hearing. *Held* the circumstances alleged were not such as to justify the issue of a commission. *RUSTOMJI FRAMJI v. BANOOBAI*  
 [I. L. R., 14 Bom., 584]

**6. ——— Application by a defendant (caveator) to examine witnesses on commission—**  
*Civil Procedure Code (Act XIV of 1882), Ch. XXV—Practice.*—Where a defendant (caveator) applied for the issue of a commission to examine witnesses, the Judge, having regard to the circumstances of the case and to the principles laid down in *Berdan v. Greenwoods, L. R., 20 Ch. D., 764, footnote 3*, refused the application. *MOWJI DHARAMSEY v. NEMCHAND NARANJI* . I. L. R., 23 Bom., 626

**7. ——— Power of Deputy Collector.**—A Deputy Collector is competent to depute an officer of his Court to take evidence on commission if the place where the witness is examined is within his jurisdiction. *RAM CHAND MOOKERJEE v. KAMINER DABEA* . . . 10 W. R., 236

**8. ——— Examination of infant.**—The Court will not issue a commission for the examination of an infant of tender years. *IN THE MATTER OF BEENODEENY DOSSEE* . 2 Hyde, 152; Cor., 78

**9. ——— Witness, servant of party applying—**  
*Civil Procedure Code, 1859, s. 175.*—An application for the issue of a commission under Act VIII of 1859, s. 175, should be supported by some reason other than the mere distance of place of residence of the witness. If the witness is a stranger, a commission will be right and reasonable, but not if he is a servant of the party applying. *AMRITH NATH JHA v. DHUNPUT SINGH* . 20 W. R., 253

**10. ——— Notice to opposite party.**—The issue of a commission for the examination of an absent witness without notice to the opposite party,



## MISSION—continued.

## 1. CIVIL CASES—continued.

consider what was fair and reasonable, regard to the nature and circumstances of the case are not necessarily to be measured by the view followed by the Official Assignee for his counsel. **GHASEERAM** . 12 B. L. R., Ap., 4

## Pardanashin women—

The Court will not order the costs of a commission to examine a defendant who is a pardanashin to be paid by her, or order the estimated cost of the commission to be paid into Court, although the order for the commission is made by the lady. **MONINDROBHOSHUN BISWAS v. SHOSHNEE BISWAS** . I. L. R., 5 Calc., 866

**Difference between arbitrators and commissioners.**—Commissioners appointed by the Court are officers of the Court, and act in conformity with its orders; therefore, where two of the commissioners are agreed,—*Held* that they had power to return the commission, notwithstanding the dissent of the third. **RAJENDRA MATILAL v. AIN MATILAL** . 3 B. L. R., Ap., 3

**Evidence taken on commission—Admissibility of—Act VIII of 1859, s. 76, and 179—Powers of High Court to issue commission.**—A commission for the examination of a witness at a Mandalay can only issue from the High Court. The consent of parties is not requisite to the admissibility of evidence taken under such commission. The examination have been upon oath or otherwise. **AGA MAHOMED JAFER TEHARANI v. LAH** . 2 B. L. R., A. C., 73 [10 W. R., 385]

**Act VIII of 1859—Evidence on record—Use by one party of evidence under a commission issued at the instance of another party.**—The evidence of the plaintiff taken under a commission was allowed to be used by the plaintiff's behalf without the deposition of the plaintiff in as part of the plaintiff's case, as being the record under s. 179, Act VIII of 1859. **NATH DUTT v. GUNGA DATT**

[8 B. L. R., Ap., 102]

**Evidence taken on behalf of defendant—Right of plaintiff to such evidence as part of record of suit—Criminal Procedure Code (Act XIV of 1882), ss. 389 and 390—Act VIII of 1859, s. 179.**—Defendant called a witness on commission. The commission was referred to the Court. The plaintiff in opening his case claimed the right to refer to the evidence of the witness on commission as part of the record of the suit. The plaintiff objected, contending that, if plaintiff read the deposition of the witness as his own evidence. *Held* that the plaintiff was entitled to refer to the evidence as part of the record. **Dwarkanath Dutt v. Gunga Datt**, 8 B. L. R., Ap., 102, followed. **NISTARINI DASSEE v. LAAL BOSE** . I. L. R., 26 Calc., 591

**Evidence taken on behalf of other side.**—That the evidence was taken in the absence of the other side is not enough to prevent the deposition of a witness taken on commission

## COMMISSION—continued.

## 1. CIVIL CASES—concluded.

inadmissible. **RAM CHAND MOOKERJEE v. KAMINEE DABIA** . 10 W. R., 236

**26.**—A Court may legally refuse to hear read in evidence the deposition of a defendant taken by commission where there is no evidence to prove that the defendant was from sickness unable to attend personally at the time of the trial, and the Court declines to dispense with the proof of such circumstance. **PRITHEE BULLUBH PAL SREECHUNDUM MARI SULTAN v. HARA DHUN SHOME** [22 W. R., 331]

**27.**—*Documents attached to return of commission.*—Documents attached to the return of a commission, and identified with the documents referred to in the evidence, may be read at the hearing of the suit in which the commission issued, unless they have been objected to on being tendered in evidence before the commissioner. Objections to the admissibility of such documents cannot be taken at the hearing of the suit. **STRUTHERS v. WHEELER** . 6 C. L. R., 109

## 2. CRIMINAL CASES.

**28.**—*Evidence of Government servant ordered on service taken by commission previously to departure—High Courts' Criminal Procedure Act (X of 1875), s. 76.*—Where a Government servant who had executed his recognizance to appear and give evidence for the prosecution at a criminal trial to take place in the High Court of Bombay was subsequently ordered to a distant station on the public service, and could not, with due regard to the public interest, return to Bombay in time for the trial,—*Held*, on the application of Government, that his evidence might be taken by commission before his departure from Bombay under the provisions of s. 76 of the High Courts' Criminal Procedure Act (X of 1875). **EMPRESS v. BAL GANGADHAR TILAK** . I. L. R., 6 Bom., 265

**29.**—*Ground for refusing commission—Prejudicing prisoner—High Courts' Criminal Procedure Act (X of 1875), s. 76.*—The High Court refused to issue a commission in a criminal case on the ground that such a course would be unsatisfactory and dangerous to the interests of the prisoner. **EMPRESS v. COUNSELL**

[I. L. R., 8 Calc., 896]

**30.**—*Pardanashin woman—Examination by commission—Personal appearance in Court—Criminal Procedure Code (Act X of 1872), s. 330.*—*Semble*—That in criminal cases pardanashin women are not of right exempted from personal attendance at Court. Also that the word "inconvenience" in s. 340 of the Criminal Procedure Code (Act X of 1872) empowers the Courts to allow examination by commission in criminal cases where a witness, according to the manners and customs of the country, ought not to appear in public. The complainant in a case of defamation, alleging that she was a pardanashin, applied to be examined by commission. *Held* that the fact that she was a complainant, and not

## COMMISSION—continued.

## 2. CRIMINAL CASES—continued.

By a witness materially altered her position as

except in cases where the Commission is granted for convenience. IN THE MATTER OF THE PETITION OF FARID-UN-NISSA . . . I. L. R., 5 All. 92

## 31. ——— Criminal Proce-

TABINI DEBI . . . I. L. R., 5 All. 92

32. ——— Examination of parda-nashin lady—Code of Criminal Procedure (1882), ss. 6, 7, 503, 504, 505, 506, and 507—Presidential Magistrate, Power of.—It is doubtful if a

(I. L. R., 24 Calo., 561  
1 C. W. N., 333

33. ——— Grounds for granting commission—Inconvenience—Expense.—At the trial of a person for an offence under s. 411, Penal Code, the Court of Session, under s. 33 of the Evidence Act, used against the accused the evidence of the owner of the property in respect of which the accused

## COMMISSION—continued.

## 2. CRIMINAL CASES—continued.

his position, could he arrange for their cross-examination. Held that on these grounds the Sessions Judge was not justified in issuing a commission under s. 503 of the Criminal Procedure Code. QUEEN-EMPERESS v. BURKE . . . I. L. R., 6 All. 224

34. ——— Application by prisoner for commission to place out of the jurisdiction.—Previously to the trial at the Sessions, the prisoner had

the accused . . . I. L. R., 5 Bom., 338

enquiry before him cannot be used in evidence at the trial before the High Court under s. 407 of the Criminal Procedure Code. Held, further, that on the facts before the High Court it was also inadmissible under s. 33 of the Evidence Act. QUEEN-EMPERESS v. JACOB . . . I. L. R., 19 Calo., 113

35. ——— Evidence taken on commission, Admissibility of, in evidence—Evidence Act (I of 1872), s. 33—Right and opportunity to cross-examine—Criminal Procedure Code (1882), Ch. XL, ss. 503 and 507—Interrogatories, Evidence taken by.—Depositions taken on commission in criminal cases, although inadmissible under Ch. XL of the Criminal Procedure

**COMMISSION—concluded.****2. CRIMINAL CASES—concluded.**

Code (Act X of 1882), may be admitted under s. 33 of the Evidence Act (I of 1872) if the requirements of the proviso to that section have been complied with. The words "opportunity to cross-examine" in the proviso to s. 33 do not imply that the actual presence of the cross-examining party or his agent before the tribunal taking the evidence is necessary. To make evidence admissible against an accused person under s. 33 of the Evidence Act, the fact that he had full opportunity of cross-examination, if not admitted, must be proved. *Quare*—Whether the opportunity to administer cross-interrogatories under a commission is an "opportunity to cross-examine" within the meaning of the proviso to s. 33 of the Evidence Act so as to render the evidence taken on interrogatories admissible. *QUEEN-EMPRESS v. RAM-CHANDRA GOVIND HERSHE*

[I. L. R., 19 Bom., 740]

**COMMISSION AGENT.**

*See CONTRACT—CONSTRUCTION OF CONTRACTS.*

[I. L. R., 13 Bom., 470]

*See PRINCIPAL AND AGENT—COMMISSION AGENTS*

[I. L. R., 18 Mad., 238]

[I. L. R., 17 Bom., 520]

**COMMISSION SALE.**

on— Goods remaining with Insolvent

*See INSOLVENCY—ORDER AND DEPOSITION.*

[I. L. R., 3 Calc., 58]

**COMMISSIONER.**

— Award of—

*See NAWAB NAZIM'S DEBTS ACT.*

[I. L. R., 19 Calc., 584, 742]

— Dismissal of suit for non-payment of fee of—

*See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.*

[I. L. R., 13 Mad., 510]

— Fee of—

*See COMMISSION—CIVIL CASES.*

[I. L. R., 15 Bom., 209]

— for partition, Appointment of—

*See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.*

[I. L. R., 23 Calc., 879]

— in Insolvency.

*See INSOLVENT ACT, s. 51.*

[I. L. R., 13 Mad., 150]

I. L. R., 26 Calc., 873

4 C. W. N., 32

*See INSOLVENT ACT, s. 73.*

[1 B. L. R., O. C., 130]

3 B. L. R., Ap., 14

5 B. L. R., 179

15 B. L. R., Ap., 10

9 Bom., 319]

**COMMISSIONER—concluded.**

— Lien of, for fees—*Lien of commissioners on return for fees.*—Certain commissioners, who had acted under a commission of partition, refused to give up the return they had made until they were paid their fees. On application to the Court, they were ordered to send in the return. *Held* that commissioners, under a commission of partition, have no lien on their return thereunder for their fees. *RAJMOHENEY DABEE v. MUDDOOSODUN DEX*

Bourke, O. C., 24

— Power of—

*See VILLAGE CHOWKIDARS ACT, ss. 48 AND 64*

I. L. R., 21 Calc., 626

— Reference to—

*See LOCAL INVESTIGATION.*

[I. L. R., 16 Mad., 350]

— Suit by, for his costs.

*See RIGHT OF SUIT—COSTS,*

[I. L. R., 4 Mad., 399]

— under Bengal Act VI of 1870.

*See VILLAGE CHOWKIDARS' ACT, ss. 58, 61.*

[I. L. R., 11 Calc., 632]

**COMMISSIONER FOR TAKING ACCOUNTS.**

*See CASES UNDER PRACTICE—CIVIL CASES—COMMISSIONER FOR TAKING ACCOUNTS.*

1. — Dismissal of suit on failure to pay fee—*Civil Procedure Code, 1877, s. 394—Remuneration of commissioner.*—The Code of Civil Procedure does not authorize the dismissal of a suit on refusal or failure of a party to deposit the amount ordered by the Court as remuneration to a commissioner appointed under s. 394 to examine accounts. The remuneration of a commissioner appointed by the Court to examine accounts should, as a rule, be a definite amount, and not at a monthly allowance. *BAGAYA CHARIAR v. VEDANTA CHARIAR*

[I. L. R., 3 Mad., 259]

2. — Enquiry into correctness of report—*Civil Procedure Code, 1859, s. 181—Power of High Court to examine accounts—Act XXIII of 1861, s. 37.*—An error in the principle on which an account is taken is not the only ground on which a Court should enquire into the correctness of a report of a commissioner appointed under s. 181 of the Code of Civil Procedure. It is competent to an Appellate Court, under the powers conferred by s. 37 of Act XXIII of 1861, to examine the accounts, even if no exception has been taken to them in the Court appointing the commissioner. Madras rulings dissented from. *AHMED VALAD NANHUBHAI v. KHASAJI VALAD KARIMBHAI*

6 Bom., A. C., 149

3. — Power of High Court to deal with commissioner's report—*Civil Procedure Code, 1859, s. 181.*—Where a commissioner appointed under s. 181 of Act VIII of 1859 to investigate the state of accounts between a debtor

# COMMISSIONER FOR TAKING ACCOUNTS—continued.

and creditor made his report on which the judgment appealed against was founded, the High Court on regular appeal refused to take a fresh account. *SARAFU VENKADESAN v. MALAI ISVARAIA*

[1 Mad., 1

4. ———— *Objection not taken in Court below—Error in taking account.*—The Appellate Court will not enter into the details of the account of a commissioner appointed under s. 181 of the Code of Civil Procedure. A party cannot be heard in the Appellate Court upon items to which he took no objection in the Court below. But where there has been error in the principle upon which such account has been taken, the Appellate Court will correct such error, if excepted to in the Court below. *VENKATA REDDI v. VENKATARAMAIA. CHINNAMALLAIA v. VENKATARAMAIA*

1 Mad., 418

5. ———— *Effect of commissioner's report.*—Although a commissioner's report should have very great weight attached to it, it is not absolutely binding. *Venkata Reddi v. Venkata Ramaya*, 1 Mad., 418, dissented from. *KANKATA CHELLAMAIYA v. POLESUBETTI PAPAIYA*

[3 Mad., 36

an ameen, under s. 181 of Act VIII of 1859, to investigate the accounts. Such an investigation does not include or allow the taking the depositions of witnesses; and such depositions are not legally admissible as evidence in the case. *CHAND RAM v. BROJO GOVIND DOSS*

19 W. R., 14

8. ———— *Power of Court to deal with facts found by commissioner—Civil Procedure Code, 1859, s. 181—References to examine accounts.*—In a suit for an account, it was ordered by consent of parties that the case should be referred to a commissioner to take accounts, who in taking them was to decide upon all questions of fact, whe-

*Quere*—Whether it would be competent to the Court to reopen a question of account against a clear finding upon a question of fact relating to the account,

# COMMISSIONER FOR TAKING ACCOUNTS—concluded.

and made by the commissioner under the evidence properly before him. *WATSON v. AGA MEHEDER SHERAZER*

L. R., 1 L. A., 346

# COMMISSIONERS OF REVENUE AND CIRCUIT.

— The law relating to Commissioners of Revenue and Circuit reviewed. *IN RE PARSHU NARAYAN SINGH*

[3 B. L. R., A. C., 370; S. C., 12 W. R., 323

# COMMITMENT.

— *Irregularity in—*

*See CRIMINAL PROCEEDINGS.*

[L. L. R., 17 Mad., 403

\* *See CASES UNDER MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.*

*See CASES UNDER REVISION—CRIMINAL CASES—COMMITMENTS.*

— *Trial without—*

*See SESSIONS JUDGE, JURISDICTION OF.*

[L. L. R., 22 Cal., 50

appear to it sufficient for a conviction within the terms of s. 226. *QUEEN v. SHAMA SUNKER BHOWAS*

[10 W. R., Cr., 23

2. ———— *Discretion of Sessions Judge to commit discharged person.*—A dis-

CROWDERY

3 W. R., Cr., 44

directly afterwards, on the representation of the prosecutor that he wished to withdraw from the proce-

*EMPRESS v. JANGELIN*

L. L. R., 4 All., 150

4. ———— *Commitment after order of discharge—Criminal Procedure Code, 1872, s. 197.*

—A Magistrate, after examining four witnesses for the prosecution, discharged the accused under s. 195, Criminal Procedure Code, 1872. Subsequently on becoming aware that there was a fifth witness

**COMMITMENT—continued.**

present, the Magistrate cancelled his order of discharge, took further evidence, and committed the accused for trial to the Court of Session. *Held*, on submission of the case with reference to Explanation 1 of s. 197, Act X of 1872, that the commitment was good. *ANONYMOUS* . . . 7 *Mad. Ap.*, 40

5. ——— Commitment made without jurisdiction.—Where a Magistrate without jurisdiction commits an accused person to the Sessions Court, such commitment is void, and no reference to the High Court is necessary to have it set aside. *IN THE MATTER OF EMPRESS v. ALIM MUNDLE*

[11 C. L. R., 55

See, however, s. 532 of the Criminal Procedure Code, 1882.

6. ——— Illegal commitment—*Criminal Procedure Code, 1872, s. 197—Power to quash commitment.*—Where the accused could not be found and the witnesses were examined in his absence under s. 327, Criminal Procedure Code, 1872, and he was on arrest committed and put on his trial without any re-examination of the witnesses and pleaded not guilty.—*Held* that, having been committed and having pleaded to the charge, the commitment could not be quashed. *EMPRESS v. SAGAMUR*

[12 C. L. R., 120

7. ——— *Criminal Procedure Code, 1882, s. 215—Defect in law.*—Where a person was committed on a charge of using certain evidence known to be false.—*Held* that the fact that there was not any evidence to connect such person with the use of such false evidence was defect in law sufficient to justify the quashing of the commitment. *EMPRESS v. NAROTAM DAS*

[11 L. R., 8 All., 98

8. ——— *Order for further enquiry and commitment passed simultaneously.*—Where the order of the Sessions Judge amounted to simultaneously directing further enquiry into the alleged offence and to ordering commitment of the accused.—*Held* that the commitment was premature and illegal, and must be set aside. *ADYAN SING v. QUEEN-EMPRESS* . . . I. L. R., 13 Cal., 121

9. ——— Power of the Court of Session to commit a discharged person for trial without the intervention of a Magistrate.—*Criminal Procedure Code, ss. 193, 436, and 537.*—In cases exclusively triable by the Court of Session, s. 436 of the Code of Criminal Procedure (Act X of 1882) empowers the Court of Session or District Magistrate to order a discharged person to be committed for trial by such Court. There is nothing in that section to show that, when such order is made, the commitment thereupon must necessarily be made by the Magistrate who has discharged him, whilst the first proviso to it shows that it may be made by the Court of Session or by the District Magistrate, according as the power under that section happens to be exercised by one or the other. Meaning of the expression "a Court of competent jurisdiction" in s. 537 of the Criminal Procedure Code (X of 1882) considered. A Court of

**COMMITMENT—concluded.**

Session may try a prisoner so committed and charged by itself. *QUEEN-EMPRESS v. KRISHNABHAT*

[1. L. R., 10 Bom., 319

10. ——— Appellate Court, Powers of, as to commitment—*Criminal Procedure Code, ss. 423, 436, 439.*—The Appellate Court referred to in s. 423 of the Criminal Procedure Code can, in an appeal from a conviction, only order an accused person to be committed for trial when it considers that the accused is triable exclusively by the Court of Session. The meaning of the words in s. 423 (b) of the Criminal Procedure Code, "or order him to be tried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial," is as follows: If on an appeal from a conviction the Appellate Court finds that the accused person, who was triable only by a Magistrate of the first class or by a Court of Session, has, by an oversight or under a misapprehension, been tried, convicted, and sentenced by a Magistrate of the second class, the Appellate Court may in that case reverse the finding and sentence, and order the accused to be re-tried by a Magistrate of the first class or by the Court of Session; and, in like manner, when the appellant, who was triable solely by the Court of Session, has been tried, convicted, and sentenced by a Magistrate of the first class, the Sessions Judge, in disposing of the appeal, is empowered to reverse the finding and sentence, and to order that the accused be committed for trial. *QUEEN-EMPRESS v. SUKHA* . . . I. L. R., 8 All., 14

11. ——— *Criminal Procedure Code, ss. 423, 439—Sessions Judge, Powers of, as a Court of Appeal.*—It is competent to a Sessions Judge acting as a Court of Appeal under s. 423 of the Code of Criminal Procedure, 1882, having reversed the finding and sentence, to order the appellant to be committed for trial to the Court of Session. *Queen-Emress v. Sukha, I. L. R., 8 All., 14*, dissented from. *QUEEN-EMPRESS v. MAULA BAKSH*

[1. L. R., 15 All., 205

See *QUEEN-EMPRESS v. JAHANULLA*

[I. L. R., 23 Cal., 975

and *SATIS CHANDRA DAS BOSE v. QUEEN-EMPRESS*

[I. L. R., 27 Cal., 172

4 C. W. N., 166

12. ——— *Criminal Procedure Code (1882), s. 423—Power of Appellate Court—Commitment to the Court of Session—Offences triable exclusively by the Court of Session.*—S. 423 of the Criminal Procedure Code is not limited to cases triable exclusively by the Court of Session. An Appellate Court has under that section the power to order an accused person to be committed for trial by the Court of Session in cases which are not exclusively triable by the Court of Session. *Queen-Emress v. Sukha, I. L. R., 8 All., 14*, dissented from. *Queen-Emress v. Abdul Rahiman, I. L. R., 16 Bom., 580*, followed. *MISRI LAL v. LACHMI NARAIN BAJPIE*

[I. L. R., 23 Cal., 350

**COMMON, RIGHTS OF—**

See *ENGLISH LAW.*

[I. L. R., 14 Bom., 213



**COMMITMENT—continued.**

present, the Magistrate cancelled his order of discharge, took further evidence, and committed the accused for trial to the Court of Session. *Held*, on submission of the case with reference to Explanation 1 of s. 197, Act X of 1872, that the commitment was good. *ANONYMOUS* . . . 7 *Mad. Ap.*, 40

5. ——— Commitment made without jurisdiction.—Where a Magistrate without jurisdiction commits an accused person to the Sessions Court, such commitment is void, and no reference to the High Court is necessary to have it set aside. *IN THE MATTER OF EMPRESS v. ALIM MUNDLE*

[1 *C. L. R.*, 55

See, however, s. 532 of the Criminal Procedure Code, 1882.

6. ——— Illegal commitment—*Criminal Procedure Code, 1872, s. 197—Power to quash commitment.*—Where the accused could not be found and the witnesses were examined in his absence under s. 327, Criminal Procedure Code, 1872, and he was on arrest committed and put on his trial without any re-examination of the witnesses and pleaded not guilty,—*Held* that, having been committed and having pleaded to the charge, the commitment could not be quashed. *EMPRESS v. SAGAMUR*

[12 *C. L. R.*, 120

7. ——— *Criminal Procedure Code, 1882, s. 215—Defect in law.*—Where a person was committed on a charge of using certain evidence known to be false,—*Held* that the fact that there was not any evidence to connect such person with the use of such false evidence was defect in law sufficient to justify the quashing of the commitment. *EMPRESS v. NAROTAM DAS*

[1 *L. R.*, 6 *All.*, 98

8. ——— *Order for further enquiry and commitment passed simultaneously.*—Where the order of the Sessions Judge amounted to simultaneously directing further enquiry into the alleged offence and to ordering commitment of the accused,—*Held* that the commitment was premature and illegal, and must be set aside. *ADYAN SING v. QUEEN-EMPRESS* . . . 1 *L. R.*, 13 *Calc.*, 121

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Session may try a prisoner so committed and charged by itself. *QUEEN-EMPRESS v. KRISHNABHAT*

[1 *L. R.*, 10 *Bom.*, 319

10. ——— Appellate Court, Powers of, as to commitment—*Criminal Procedure Code, ss. 423, 436, 439.*—The Appellate Court referred to in s. 423 of the Criminal Procedure Code can, in an appeal from a conviction, only order an accused person to be committed for trial when it considers that the accused is triable exclusively by the Court of Session. The meaning of the words in s. 423 (b) of the Criminal Procedure Code, "or order him to be tried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial," is as follows: If on an appeal from a conviction the Appellate Court finds that the accused person, who was triable only by a Magistrate of the first class or by a Court of Session, has, by an oversight or under a misapprehension, been tried, convicted, and sentenced by a Magistrate of the second class, the Appellate Court may in that case reverse the finding and sentence, and order the accused to be re-tried by a Magistrate of the first class or by the Court of Session; and, in like manner, when the appellant, who was triable solely by the Court of Session, has been tried, convicted, and sentenced by a Magistrate of the first class, the Sessions Judge, in disposing of the appeal, is empowered to reverse the finding and sentence, and to order that the accused be committed for trial. *QUEEN-EMPRESS v. SUKHA* . . . 1 *L. R.*, 8 *All.*, 14

11. ——— *Criminal Procedure Code, ss. 423, 439—Sessions Judge, Powers of, as a Court of Appeal.*—It is competent to a Sessions Judge acting as a Court of Appeal under s. 423 of the Code of Criminal Procedure, 1882, having reversed the finding and sentence, to order the appellant to be committed for trial to the Court of Session. *Queen-Emress v. Sukha, I. L. R.*, 8 *All.*, 14, dissented from. *QUEEN-EMPRESS v. MAULA BAKSH*

[1 *L. R.*, 15 *All.*, 205

See *QUEEN-EMPRESS v. JAHANULLA*

[1 *L. R.*, 23 *Calc.*, 975

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[1 *L. R.*, 27 *Calc.*, 172  
4 *C. W. N.*, 186

12. ——— *Criminal Procedure Code (1882), s. 423—Power of Appellate Court—Commitment to the Court of Session—Offences triable exclusively by the Court of Session.*—S. 423 of the Criminal Procedure Code is not limited to cases triable exclusively by the Court of Session. An Appellate Court has under that section the power to order an accused person to be committed for trial by the Court of Session in cases which are not exclusively triable by the Court of Session. *Queen-Emress v. Sukha, I. L. R.*, 8 *All.*, 14, dissented from. *Queen-Emress v. Abdul Rahiman, I. L. R.*, 16 *Bom.*, 580, followed. *MISRI LAL v. LACHMI NARAIN BAJPIE*

[1 *L. R.*, 23 *Calc.*, 350

**COMMON, RIGHTS OF—**

See *ENGLISH LAW.*

[1 *L. R.*, 14 *Bom.*, 213

**COMMON, RIGHTS OF—concluded.**

- See INAMDAK . I. L. R., 3 Bom., 147  
 See JURISDICTION OF CIVIL COURT—RENT  
 AND REVENUE SUITS—BOMBAY.  
 [I. L. R., 21 Bom., 684  
 See LIMITATION ACT, s. 27.  
 [I. L. R., 14 Bom., 213  
 See PASTURAGE, RIGHT TO.  
 [I. L. R., 2 Bom., 110  
 See WASTE LANDS.  
 [I. L. R., 19 All., 172

**COMMON ASSEMBLY.**

- Responsibility of members of—  
 See DAMAGES—MEASURE AND ASSESSMENT  
 OF DAMAGES—TORT.  
 [3 B. L. R., P. C., 44  
 See CASES UNDER UNLAWFUL ASSEMBLY.

**COMMON OBJECT.**

- See CHARGE—FORM OF CHARGE—SPECIAL  
 CASES—RIOTING.  
 [I. L. R., 21 Calc., 827, 956  
 I. L. R., 28 Calc., 830  
 3 C. W. N., 605  
 See CHARGE TO JURY SPECIAL CASES—  
 RIOTING . I. L. R., 21 Calc., 955  
 See CHARGE TO JURY—SPECIAL CASES—  
 UNLAWFUL ASSEMBLY.  
 [4 C. W. N., 196  
 See CASES UNDER UNLAWFUL ASSEMBLY.

**COMPANIES ACT (XIX OF 1857).**

- See APPEAL—ACTS—COMPANIES ACT,  
 1857 . . . 6 Bom., A. C., 185  
 See CASES UNDER COMPANY.  
 See CONTRACT ACT, s. 23.  
 [3 Bom., O. C., 45, 159

**COMPANIES ACT (X OF 1860).**

- See CASES UNDER COMPANY.  
 ss. 88, 100.  
 See INSOLVENT ACT, s. 47  
 [8 Bom., O. C., 117

s. 173.

- See INSOLVENT ACT, s. 47.  
 [1 Ind. Jur., N. S. 350, 262  
 2 Ind. Jur., N. S., 17

**COMPANIES ACT (VI OF 1862).**

- See APPEAL—ACTS—COMPANIES ACT, 1862.  
 [I. L. R., 18 All., 215  
 I. L. R., 28 Calc., 844  
 4 C. W. N., 101

**COMPANIES ACT (VI OF 1862)**  
—continued

- See CASES UNDER COMPANY  
 See COSTS—SPECIAL CASES—COMPANIES  
 ACT . . . I. L. R., 14 Calc., 219  
 See MAGISTRATE, JURISDICTION OF—SPE-  
 CIAL ACTS—COMPANIES ACT.  
 [I. L. R., 20 Calc., 676  
 s. 4.  
 See CONTRACT—WAGERING CONTRACT.  
 [I. L. R., 22 Mad., 212

s. 41.

- See PLAINT—FORM AND CONTENTS OF  
 PLAINT—PLAINTIFFS.  
 [I. L. R., 12 Calc., 41

s. 130—Meaning of "Court"—  
*Jurisdiction of District Judge and Subordinate  
 Judge.*—Held that, with regard to a company the  
 registered office of which was at Mussoorie "the

[I. L. R., 17 All., 252

s. 134.

- See PRACTICE—CIVIL CASES—STAY OF  
 PROCEEDINGS . I. L. R., 18 Bom., 65

s. 144.

- See PLAINT—AMENDMENT OF PLAINT.  
 [I. L. R., 17 All., 282

- See PLAINT—FORM AND CONTENTS OF  
 PLAINT—PLAINTIFFS.  
 [I. L. R., 17 All., 282  
 I. L. R., 18 All., 189

ss. 162 and 163.

- See EVIDENCE—CRIMINAL CASES—DEPOSI-  
 TIONS . . . I. L. R., 18 All., 88

s. 169.

- See REVIEW—POWER TO REVIEW.  
 [I. L. R., 18 All., 53

Application under—

- See LETTERS PATENT, HIGH COURT.  
 N.-W. P., CL. 10. I. L. R., 17 All., 488

s. 169—"Re-hearing" *Meaning of*  
*Application to set aside an ex-parte decree*  
*of the Indian Companies Act (VI of 1862) does not*  
*apply to an application to set aside an ex-parte*  
*order. The term "re-hearing" in s. 169 of the Act*  
*means a re-hearing in the merits of an appeal.*  
*PANVATISHANKAR v. ISHTAVALLABH JAGANNATH*  
*[I. L. R., 22 Bom., 225]*

s. 214.

- See LIMITATION ACT, s. 214.

COMPANIES ACT (VI OF 1882)  
—concluded.

## Order under—

See COURT FEES ACT, SCH. II, ART. 11.

[I. L. R., 17 All., 238]

## Proceeding under—

See LIMITATION ACT, ART. 36.

[I. L. R., 18 All., 12]

I. L. R., 19 Mad., 149

s. 215.

See BANKERS

I. L. R., 16 All., 88

## COMPANY.

Col.

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[I. L. R., 6 Bom., 268]

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[I. L. R., 10 Bom., 483]

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## Manager of—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS . . . I. L. R., 21 Calc., 915

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See PLAINT—VERIFICATION AND SIGNATURE . . . I. L. R., 21 Calc., 60

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[I. L. R., 22 Calc., 268]

## Suit by—

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[I. L. R., 12 Calc., 41]

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## COMPANY—continued.

## Suit against—

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS.

[8 W. R., 45]

2 B. L. R., S. N., 6: 10 W. R., 366

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See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT . . . I. L. R., 21 Bom., 273

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## Transfer by old, to new—

See STAMP ACT, 1879, SCH. I, ART. 21.

[I. L. R., 20 Bom., 432]

## 1. FORMATION AND REGISTRATION.

1. Association of artisans for acquisition of gain—*Registration of Association*.—An association of artisans for the purpose of enhancing the price of their work by bringing all the business of the trade into one shop and dividing the prices of the work done amongst the members according to their skill is an association that has for its object the acquisition of gain, and if consisting of more than twenty persons must be registered. *BHIRAJI SABAJI v. BAPU SAJU*

[I. L. R., 1 Bom., 550]

2. Evidence of registration—*Evidence of registration of shareholders*.—The register of shareholders required by s. 14 of Act XIX of 1857 may consist of particulars entered in different books, which taken together substantially contain all the information which the Act requires. If there be a substantial compliance with the requisitions of the Act, the register is not invalidated by reason of slight deviations from its directions or by unimportant omissions or defects in particulars of information specified in s. 14. If the certificate of registration be not forthcoming, the fact of incorporation may be proved *aliunde*. *IN RE ALLIANCE FINANCIAL CORPORATION, BLANEY'S CASE*

[3 Bom., O. C., 108]

3. Suit to recover debts arising from transaction before registration—*Company not authorized to sue by officers*—Act X of 1866.—A society, which came into existence after Act X of 1866, but was not registered until some time afterwards, under the provisions of that Act, sued by some of its officers to recover debts arising out of transactions entered into before registration. Held that such society could not recover in the suits in their present form, as it was not, before registration, an association authorized to sue in the name of an officer. *SENNAY POORASAY HINDU JANONOO-KOOLA NIDHI v. THAYAR AMMAL* . . . 8 Mad., 193

## COMPANY—continued.

1. FORMATION AND REGISTRATION  
—continued.

the memorandum and articles of association with the necessary stamp-fees, and did everything that was

## COMPANY—continued.

1. FORMATION AND REGISTRATION  
—continued.

was nothing to show that such reserve was larger than sound principles of management required. The rules provided for abatements of subscriptions according to a graduated scale, which might be granted or withheld from year to year by the directors according to their opinion as to the condition of the fund. A subscriber to the fund was under no obligation to continue his subscription, but might stop it at pleasure, subject in certain contingencies to forfeiture of the benefit of past payments. Fines were also provided for unpunctuality in payments of subscriptions. It was contended that the subscribers formed an association which required registration under s. 4 of the Indian Companies Act, inasmuch as

carrying on business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, within the meaning of s. 4 of the Indian Companies Act. Where the substantial purpose of an association is not to carry on a business for gain, the fact that gain may accrue incidentally or may arise from merely subsidiary provisions does not make registration necessary. *KRAAL v WHITMER*

[I. L. R., 17 Cal., 788]

consequently the company must be taken to have

incidental or conducive to the attainment of the above objects. By the rules of the said fund, which was not registered under the Indian Companies Act (X of 1860), it was provided that the members should pay subscriptions at the rate of Rs 3-0 per share per

## WEST HOPETOWN TEA COMPANY

[I. L. R., 11 All., 349]

5. ——— Registration of association  
—Companies Act (VI of 1882), s. 4—“Gain”—  
—Mutual Assurance Society.—In 1870 a fund was

**COMPANY—continued.****1. FORMATION AND REGISTRATION**  
—continued.

mensem for seven years from the date of admission, and that at the end of the seven years Rs250 should be paid in full discharge of each share. It was further provided that subscribers should be entitled to borrow money from the said fund at interest, that a reserve fund be formed and distributed once every five years to the subscribers, and that surplus collections be distributed among the subscribers annually. In 1868, defendants' father borrowed money on mortgage from the fund in accordance with the rules, and the amount was admittedly due at the time of suit. The fund was wound up under an order of the High Court, dated 15th September 1877, during the lifetime of defendants' father, who, however, took no active part in those proceedings. It further appeared that on the execution of the mortgage, the defendants' father (the mortgagor) took a lease from the mortgagees of the houses mortgaged, and retained possession of them as tenant. *Held* that the association had for its object the acquisition of gain, and that, as the association consisted of more than twenty members and was not registered, its formation was forbidden by the Indian Companies Act (X of 1866), s. 4, that the mortgage suit; having for its object the carrying out of the illegal purpose of the association, was an illegal transaction; and that the suit must fail. *Held*, further, that the defendants were not estopped from setting up the plea of illegality either by the order of 1877 or by reason of their predecessor in title having attorned to the fund. **MADRAS HINDU MUTUAL BENEFIT PERMANENT FUND v. RAGAVA CHETTI** . . . **I. L. R., 19 Mad., 200**

**7. ——— Illegal association—Companies Act (VI of 1882), s. 4—Business carried on by unregistered association for the purpose of gain—Right of suit.**—Persons more than twenty in number paid each a certain sum monthly to a stakeholder. The sum total of the subscriptions was then paid over as a loan free of interest to one of the subscribers chosen by casting lots, and he was thereupon required to execute a bond with a surety obliging him to continue his monthly subscriptions to the end of the period for which the arrangement was agreed to hold good—that period being as many months as there were subscribers. The bonds in question were executed in favour of the stakeholder and the subscribers. The business was not registered. A suit was brought on one of such bonds to recover the amount payable for subscription on account of the period subsequent to its execution. *Held* that the obligees carried on business which had for its object the acquisition of gain within the meaning of Companies Act, 1882, s. 4, and accordingly constituted an illegal association, and that the suit was not maintainable. **RAMASAMI BHAGAVATHAR v. NAGENDRAYAN**

**[I. L. R., 19 Mad., 31]**

**8. ——— Unregistered association for gain—Companies Act (VI of 1882), s. 4—Illegal contract—Lottery company.**—The prize winners in a lottery in which more than twenty persons took tickets covenanted with the promoters of the lottery to continue their subscriptions in respect of the

**COMPANY—continued.****1. FORMATION AND REGISTRATION**  
—concluded.

successful ticket for two more years in accordance with the arrangement under which the lottery was established. The money not having been paid, the promoters brought a suit on the covenant. *Held* that there was no association of twenty persons for the purpose of gain or at all, and consequently that the plaintiffs were not precluded from suing for want of registration under the Companies Act, s. 4. **PANCHENA MANCHU NAYAR v. GADINHARE KUMARANCHATH PADMANABHAN NAYAR**

**[I. L. R., 20 Mad., 68]****2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.**

**9. ——— Objections outside scope of articles of association—Companies Act, X of 1866, ss. 16 and 208.**—S. 16 of Act X of 1866 does not refer to obligations contracted with a company in accordance with the purpose of its formation other than those directly implied by the articles of association. S. 208 of the Act has no application to companies formed, but not registered after the Act came into force. **PURSEWALKUM HINDU JANABACARA NIDHI v. NARAYANA ACHARY** . . . **8 Mad., 198**

**10. ——— Articles of association, Variation in—Liability of shareholders.**—Where a clause in the articles of association provided that the existing shareholders for the time being should have the option of taking and subscribing for the shares in the additional capital, rateably and in proportion to their respective shares in the existing capital of the company,—*Held* that the clause being imperative, and not merely directory, a deviation from it could not be made, unless with the assent of every shareholder. **EASTERN FINANCIAL ASSOCIATION v. PESTANJI CURSETJI** . . . **3 Bom., O. C., 9**

**11. ——— Material variance between prospectus and memorandum of association—Illegal powers—Shareholders.**—Distinction pointed out between the case of a person who agrees to take shares in a projected company upon the faith of a prospectus, and one who does so upon the faith of a document purporting to be the proposed memorandum of association of such a company. The defendant, on being shown a document purporting to be the memorandum of association of a projected company, signed his name to it as having taken four shares. This document was not registered as the memorandum of association of the company, but another was, which differed from it in omitting, in its 4th clause, the word *yearly* before the word *profits*, on which the company were to pay a certain commission to the secretaries, agents, and treasurers, and in adding to its 6th clause a provision empowering the company by special resolution in general meeting to subdivide the shares. *Held* that the first was not, but the second was, a material variance. *Quare*—Whether the provision empowering the company to subdivide the shares was illegal. But even if it was,—*Held* that the effect of it being practically

## COMPANY—continued.

## 2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—continued.

the company, who contributed the sum of Rs. 100 in the company registered. *In re the Financial Corporation, L. R., 2 Ch. Ap., 713*, commented on. *ANANDJI VISRAM v. NARAIK SPINNING AND WEAVING COMPANY, LIMITED*

[L. R., 1 Bom., 320]

12. ———— *Contributories—Act X of 1866, ss. 6, 11, 18, 22, 36, 37, and 101—Liability of registered shareholders—Appeal from Recorder.*—In June 1865 was projected the Pegu Saw Mills Company, Limited, appellants being amongst the

fore they were not contributories. *COTTON & PEGU SAW MILLS COMPANY* 9 W. R., 539

[3 Hyde, 238]

14. ———— *Share in company, Signification of—Name on register.*—A share in a company signifies a definite portion of its capital, and does not necessarily mean the right of a person whose name

## COMPANY—continued.

## 2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—continued.

is then actually on a register of shareholders. *PARBHUPAS PRANIVANDAS v. RAMLAL BHAGIRATH*

[3 Bom., O. C., 69]

15. ———— *Shareholder whose shares are forfeited, Position of—Contributories.*—A member of a duly registered company whose shares have been forfeited is as much a past member as a

quired to be made by them, in pursuance of the Indian Companies Act, and that the debts, in respect of which he is called upon to contribute, were incurred prior to the date on which he ceased to be member of the company. *IN RE ALLAHABAD TRADING COMPANY*

[1 N. W., Part 6, p. 101; Ed. 1873, 180]

16. ———— *Constituting person a member of company—Companies Act, X of 1866, s. 22—Member of company—“Subscriber of the memorandum”—“Agreement to become a member”—Company not in existence—Rescission—Liability for calls.*—The defendant, amongst others, subscribed (for 101 shares) a copy of the memorandum and articles of association of the plaintiff

presented for registration; but registration was refused, on the ground that the said documents

defendant was not even a true copy, or (ii) by reason of an “agreement to take shares” under the latter part of that section, inasmuch as the agreement there alluded to was an agreement with the company, and the agreement (if any) entered into by the defendant was not, and could not have been, an agreement with the company, the company not being at that time in existence. *Quere*—Whether it is enough to constitute a person a member of a company under

**COMPANY—continued.****2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—continued.**

the earlier part of s. 22 to subscribe a true copy of the registered memorandum of association. **GUZERAT SPINNING AND WEAVING COMPANY v. GIRDARLAL DALPATRAM . I. L. R., 5 Bom., 425**

**17. — Memorandum of association—Effect of signing memorandum—Withdrawal of signature before registration of memorandum—Companies Act (VI of 1882), s. 45.**—A person who signs a memorandum of association for a number of shares becomes absolutely bound to take those shares. The statutory liability, the creation of the agreement, commences with the signature of the memorandum, and is not held in suspense until the memorandum is registered. There is no *locus penitentie* up to the date of registration, and no person who has signed the memorandum can, acting independently of the others, cancel his signature. **RUSTOMJI KARE MACHINE EXCHANGE COMPANY. RUSTOMJI FRAMJI WADIA'S CASE. SHAPURJI BYRAMJI KATRUCK'S CASE . I. L. R., 12 Bom., 311**

**18. — Signing duplicate of memorandum before registration of company—Companies Act (VI of 1882), s. 45—Signature after registration of company, Effect of—Proposal to take shares—Acceptance.**—When a person signs a duplicate of the memorandum of association after the registration of the original memorandum, he does not thereby become a subscriber within the meaning of s. 45 of the Indian Companies Act, VI of 1882. Such signature, however, is equivalent to a proposal to the company to take shares, and if such a proposal is accepted, the person signing is a person who has agreed with the company to become a member within the terms of s. 45, and is liable to calls if entered on the register. **BOMBAY NATIONAL MANUFACTURING COMPANY v. AHMED BIN ESSA KHALIFFA . I. L. R., 14 Bom., 196**

**19. — Member signing unregistered copy of memorandum of association—Companies Act (VI of 1882), s. 45—Agreement to become a member—Proposal—Acceptance.**—On the 13th April 1886, L signed a printed copy of the proposed memorandum of association of a projected company for ten shares, which on the 3rd August was registered as the Imperial Flour Mills Company. On that day, viz., the 3rd August 1886, L received a notice from the secretary of the company, informing him that the company had been duly registered, and requesting him to pay Rs 100 as the deposit on the shares subscribed by him. On the 5th August L replied, stating that he had decided not to take up the shares. On the 6th August the secretary wrote to L, stating that he had already become a shareholder, and could not withdraw. On the 25th September the directors held their first meeting, and resolved that the "shares applied for be allotted, and application and allotment money be called in." On the 1st October the secretary notified to L the allotment of ten shares, and requested him to pay the overdue deposit call of Rs 10 per share and the allotment call

**COMPANY—continued.****2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—continued.**

of Rs 15 per share. L refused to pay, and repudiated his liability in respect of the shares. He contended that he had never become a member of the company. *Held* that the defendant was not a member of the company, and was not liable to the plaintiff's claim. The fact that he had signed the proposed memorandum of association did not make him a member, inasmuch as the document which he had signed was not the document which was registered, nor even a true copy of it. Nor could the defendant be held bound as having agreed to become a member within the meaning of s. 45 of the Indian Companies Act (VI of 1882). The agreement which binds a party under this section must be an agreement with the company itself. The company not being in existence at the date of the defendant's signing the memorandum of association (*viz.*, the 16th April 1886), that signature could amount, at the most, to an application for shares to the promoters, which by reason of its non-withdrawal before the registration of the company on the 3rd August became on that day an application to the company. There could be no acceptance of that application until the company was registered; and the defendant withdrew his application by his letter of the 5th August. The letter written by the company's agents on the 3rd August was not an acceptance. It was only a request for the payment of the deposit on the shares for which the defendant had applied, and which was required as a guarantee for the *bond fides* of the application. Further, the terms of the resolution of the board of directors of the 25th September made it clear that up to that date the defendant's application had not been made a binding agreement by acceptance. His repudiation, therefore, of the 5th August was in time, and he could not be held liable as a shareholder of the company. *Held*, also, that in no case could the defendant have been bound by the letter of the 3rd August written by the agents of the company. That letter was written, not by order of the directors at a meeting duly convened and composed of the proper quorum of four. It was written by the secretary after consulting separately three only of the directors. This was an irregular proceeding, which would not bind the company or the subscribers with regard to the application on the acceptance of shares. The directors did not act as a board, nor was the consent of a quorum obtained. **IMPERIAL FLOUR MILLS COMPANY v. LAMB . I. L. R., 12 Bom., 647**

**20. — Agreement to take shares—Companies Act (VI of 1882), s. 43—Signing duplicate memorandum of association of the registration of company—Effect of such signature only equivalent to a proposal to take shares—Acceptance.**—A, after the Bombay Electrical Company had been registered, signed a duplicate memorandum of association for five shares. He subsequently acted as director of the company, being qualified to act as such by procuring from a member of the company five fully paid-up shares. The shares for which he subscribed were never allotted to him, nor was he registered as holder of them. The company went



## DIGEST OF CASES.

COMPANY—continued.  
2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—continued.

his services could not be pleaded as a payment of the calls on shares, as no definite sum had been found due when the shares were accepted by him. Where the circumstances relied on would, in an action for money due on the shares, be evidence only in support of a plea of accord and satisfaction, it would not be a good defence of "a payment in cash" within the meaning of s. 23 of the Indian Companies Act (VI of 1882), but otherwise, if the circumstances would support a plea of payment. *PARBHOTTMDAS v. ISHWARDAS*. I. L. R., 16 Bom., 181

24. — Shares issued as fully paid up—Companies Act (VI of 1882), s. 23—Rights of a purchaser with notice taking from a purchaser without notice—Contributory.—Twenty shares of the Beyla Spinning, Weaving, and Manufacturing Company, Limited, were originally allotted to A as fully paid-up shares partly for work done and partly for work to be done for the Company. The agreement under which the shares were so allotted was not registered as required by s. 23 of Act VI of 1882. A sold three of these shares to D, who had no notice that they were not fully paid up. D sold the three shares to G, who was the Managing Director of the Company. The Company was wound up by the Court. At the date of the winding up, G was holder of the three shares. In settling the list of contributories, the Court ordered G's name to be placed on the list in respect of the three shares. Though G was not liable as a contributory. Though G was a Managing Director of the Company, and as such must have known that the shares had been issued as fully paid-up shares without complying with s. 23 of Act VI of 1882, he was not on that account estopped from taking advantage of the equitable rule which protects a purchaser with notice taking from a purchaser without notice. *IS B. GULABDAS BHADIAS*. I. L. R., 17 Bom., 672

25. — Contributory—Increase of capital—Illegal issue of shares—Reduction of capital—Companies Act (VI of 1882), s. 13.—The Nawab of the Beyla Spinning, Weaving, and Manufacturing Company, Limited, was registered under the Indian Companies Act (X of 1866). The original capital of the company consisted of Rs. 4,00,000 divided into 1,000 shares of Rs. 250 each. In 1882 the capital of the company was increased by Rs. 1,00,000, divided into 1,000 shares of Rs. 62.5. The resolution to increase the capital was not passed in accordance with the articles of association, i.e., "with the sanction of a special meeting." On the 5th November 1884, a resolution was passed at a general meeting of the company that the shareholders should take up 459 shares of the original capital and 1,027 shares of the increased capital, which were then in the hands of the company, in the proportion of one share to every two shares already held by them. In pursuance of this resolution, the appellants took up several shares of the original capital as well as of the new capital. On 19th October 1885, a general

COMPANY—continued.  
2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—continued.

meeting of the company was held, at which it was resolved that the resolution of the 5th November 1884, and all acts done in connection with it, should be set aside, that the shares taken by the shareholders in pursuance of that resolution should be taken back by the company, and such amounts as had been paid by them on those shares should be credited to their names in the company's books. This was accordingly done, and the shares were transferred to the name of the company. In October 1886, the company was wound up by order of the Court. In settling the list of contributories, the District Judge of Surat held that the appellants were liable, as contributories, in respect of all the shares which they had taken up in pursuance of the resolution of 5th November 1884. On appeal from this decision, *Held* that, with respect to the shares of the original capital, the resolution of the 19th October 1885 was illegal and invalid. It operated, not as an investment by the company of its funds in its own shares, but as an extinguishment of the shares, and such extinguishment was virtually a reduction of the capital, which could not be done without complying with the provisions of s. 13 of the Indian Companies Act (VI of 1882). The holders of such shares were therefore properly placed on the list of contributories. *Held*, also, that the issue of the shares of the new capital was illegal, as the resolution to increase the capital had not been come to in accordance with the articles of association. It was therefore open to the Company to set aside the resolution of 5th November 1884. When it was set aside, the persons who held the new shares ceased to be shareholders, and could not, therefore, be held liable as contributories. *BHIMSHAI v. ISHWARDAS JUGTIWANDAS*. I. L. R., 18 Bom., 152

26. — Liability of the heirs of a deceased contributory—Companies Act (VI of 1882), ss. 61, 126, and 144, cl. (g)—Calls made before the winding up—Limitation—Settlement by Official Liquidator of list of contributories—Reduction of Shares duly issued, cancellation of—Companies Act (VI of 1882), s. 61, Indian Companies Act (X of 1866), corresponding with s. 38 of the English Companies Act of 1862, creates a new liability in the shareholders, and that liability includes contribution, not only in respect of unpaid calls made before the date of the winding up, whether barred by limitation at that date or not. The Official Liquidator need not take out letters of administration to the estate of a deceased shareholder before settling the list of contributories. There is nothing in ss. 126 and 144 requiring the Official Liquidator to place on the list all the persons who may as representatives be liable to contribute in discharge of the liability of a deceased shareholder, under that section, of a person who has been placed on the list as his representative be affected by omission of the Official Liquidator to do so. Directors have no power to cancel shares duly issued to a shareholder at his request and so reduce the capital of the company. *Bhimshai v. Ishwardas Jugtiwandas*, I. L. R., 18

## COMPANY—continued.

## 2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—concluded.

Bom., 152, followed. SORADJI JAMSETJI v. ISHWAR-DAS JUGJIWANDAS. I. L. R., 20 Bom., 654

27. — Suit by Liquidator—Limit-

July 1886. This suit was brought on 10th September 1889, and the defendant contended that the above two items of claim were barred by limitation.

[I. L. R., 17 Bom., 469]

register as the holder of such shares, is not barred by limitation. Where a Memorandum of Association of a company has been registered, a subscriber cannot divest himself of his liability as a member of the company, although his signature to the memorandum may not have been properly attested. The transaction may be irregular, but it is not void. CHHOTALAL CHHAGANLAL v. DALSUKHRAM HARGOVINDAS

[I. L. R., 17 Bom., 472]

## 3. RIGHTS OF SHAREHOLDERS.

29. — Preferential dividend payable to holder of one set of shares—Construction of contract by the company to pay it to the shareholder and to his executor holding the same—Death of the shareholder—"Holder" of shares—Legal title to shares—Meaning of the word "hold"—Administration, effect of.—The good will of a business, which a merchant had carried on, and the capital, property and assets with it, were transferred by him in 1864 to a joint stock limited company, who agreed with him that, in consideration of the transfer by him of property, referred to in the contract as "the fixed assets," one hundred paid-up shares of Rs. 2,500 each, of which any assignment by him during the next five years from the registration of the company should not be recognized by them as valid, should be allotted to him. It

## COMPANY—continued.

## 3. RIGHTS OF SHAREHOLDERS—concluded.

ing brothers, of whom the executor, who proved the will, was one. Administration with the will annexed

TRADING CORPORATION v. SMITH

[I. L. R., 19 Bom., 1  
I. R., 21 I. A., 139]

Affirming decision of High Court in BOMBAY-BURKA TRADING CORPORATION, v. SMITH

[I. L. R., 17 Bom., 197]

## 4. TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

30. — Blank transfer—Right of transferee under blank transfer to registration—Discretion of Directors—Companies Act, 1866, s. 34—Discretion of the Court to refuse to hear the case under s. 34.—The power given to the Court by s. 34 of the Indian Companies Act of 1866 is discretionary, and the Court will not order a transfer to be registered where the alleged transferor is not before the Court, and there is any real doubt as to the validity or bona fides of the transaction. IN THE MATTER OF THE PETITION OF LUCHMER CHUND. LUCHMER CHUND v. BENGAL COAL COMPANY

[I. L. R., 8 Cal., 317]

31. — Refusal of company to register purchase at sale in execution of decree—Mandamus.—Where shares in the East Indian Railway Company belonging to an execution-debtor who had absconded with the share certificates were sold in execution, the transfer being executed by a Judge under the provisions of Act VIII of 1859, s. 267,—Held that, although the Company's deed of attestation, under which their Act of Parliament declared that the company should be regulated, gave to the Board of Directors a power of approval or disapproval of intending shareholders, they had no option as to registering a shareholder

COMPANY—continued.

4. TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES—continued.

who purchased shares in execution; and that they were also bound to grant him, under the circumstances, new share certificates. *REG. v. EAST INDIAN RAILWAY COMPANY* [1 Ind. Jur., N. S., 258: Bourke, O. C., 395

32. Suit to compel Directors to register transfer—Persons entitled to require registration of transfer—Insolvency of shareholder—Official Assignee, right of, to sell shares and obtain transfer.—One of the Articles of Association of the Coorla Spinning and Weaving Company provided that the Board of Directors might decline to register any transfer of shares, unless the transferee were approved by the Board. A shareholder, holding 423 shares, became insolvent, and his shares thereupon vested in the Official Assignee, who sold them. The purchaser required the Official Assignee to transfer the shares into the names of two nominees, viz., 200 shares to the name of one nominee, and 223 shares to the name of the other. The Official Assignee executed the necessary transfer deeds and sent them to the company, with a request that the shares might be transferred accordingly. The proposed nominees were already members of the company and registered holders of shares in it, and no objection was taken to register the transfer, unless the transferees would pledge themselves not to approve a certain change in the mode of remunerating the agents of the company, which the Directors desired to effect, and which they believed would be very advantageous to the company. The transferees refused to pledge themselves in any way as to their future action and brought this suit to enforce registration of the transfer. *Held*, following *Moffatt v. Farquhar*, L. R., 7 Ch. D., 591, that the Directors were bound to register the transfers. It was contended that neither the Official Assignee nor the transferees had any legal right to call on the company to register the transfers. *Held* that, having regard to the provision of the Articles of Association of the company, the Official Assignee was entitled to have the shares registered in the names of his vendees. *KAIKHOSRO MUNCHEJI HEEBAMANECK v. COORLA SPINNING AND WEAVING COMPANY*. I. L. R., 16 Bom., 80

33. Sanction to transfer not obtained from directors—Application for registration by transferee—Refusal of Directors to register—Specific Relief Act I of 1877, s. 45—Companies Act (VI of 1882), s. 58.—G bought some shares in the Bombay Fire Insurance Company and applied to the directors for registration as a shareholder in respect of the shares bought. The directors refused the application, giving no reason for so doing. G now applied to the Court, under s. 45 of the Specific Relief Act and under s. 58 of the Indian Companies Act, for an order compelling the directors to register him as a shareholder. The articles of association of the company provided (*inter alia*) that any shareholder might, with the sanction of the board of directors, sell or dispose of

COMPANY—continued.

4. TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES—continued.

and transfer all or any of his shares to any other person approved by the board who shall not be bound to assign any reason for the withholding of such sanction. *Held* that the application should be refused, for s. 45 of the Specific Relief Act did not apply (there being another "specific and adequate legal remedy"), and under the Companies Act the proper procedure had not been adopted. G was a transferee whose title was not complete, inasmuch as the requisite sanction to the transfer had not been obtained, and, therefore, there was no privity between him and the directors of the company, and he had no right to complain. *IN THE MATTER OF GILBERT FIRE INSURANCE COMPANY*. EX-PARTE GILBERT [I. L. R., 16 Bom., 398

34. Approval of transfer by directors—Such power of approval a fiduciary power—Resolution of directors to approve of future transfers *ultra vires*.—By the articles of association of the New Great Eastern Spinning and Weaving Company transfers of shares in the company were subject to the approval of the directors. On the 18th October 1898 the directors passed a resolution "that up to the time of the next ordinary general meeting the board approve of all transfers of shares made by Dwarkadas Shamji and Ramdas Kessowji (two of the shareholders) or either of them, and . . . will transfer shares standing in the name of Dwarkadas Shamji and in the name of Ramdas Kessowji to their or his transferees without claiming any lien or raising any objection." *Held* that the above resolution was *ultra vires* and not binding on the company. The power conferred on the directors by the articles of association was a fiduciary power to be exercised for the benefit of the company, and could not be exercised until the question of each transfer together with the names of the transferor and the transferee was before them and they had an opportunity of considering each case. *IN RE NEW GREAT EASTERN SPINNING AND WEAVING CO*. EX-PARTE RAMDAS KESSOWJI [I. L. R., 23 Bom., 685

35. Application to compel registration of transfers of shares—Companies Act (VI of 1882), ss. 29, 58, 92—Discretionary power of directors to refuse registration—Articles of association—Interference of the Courts.—Where the directors of a company (the Muir Mills) refused to register the transfer of shares and relied on article 21 of the articles of association, which empowered the directors to "decline to register any transfer of shares to any person of whom they may for any reason disapprove." *Held* (1) that it is not necessary under s. 58 for the applicants to join their vendors in their applications. *Ex-parte Penney*, L. R., 8 Ch., 446, distinguished. *Skinner v. City of London Marine Insurance Company*, L. R., 14 Q. B. D., 882, *London Founders Association v. Clarke*, L. R., 20 Q. B. D., 576, *Paine v. Hutchinson*, L. R., 3 Ch., 388, *Ex-parte Gilbert*, I. L. R., 16 Bom., 398, referred to. *Ex-parte Shaw*, L. R.,

## COMPANY—continued.

## 4. TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES—concluded.

with M (the managing director of the Cawnpore Woollen Mills) and the personal animosity existing between J (the managing director of the Muir Mills) and M, and (3) the desire of the directors (of the Muir Mills) that M should not

## 5. MEETINGS AND VOTING.

## 36. ——— Meeting of shareholders—

to be a shareowner. Poll—Time for taking a

not disqualified by the preceding article or article

## COMPANY—continued.

## 5. MEETINGS AND VOTING—concluded.

No. 17, and who has been duly registered for three months previous to the general meeting, shall be entitled to vote at such meeting, and shall have

## 6. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS.

37. ——— Director—Qualification—Qualification shares not paid for by director, but transferred to him by a third person.—Shares taken as a qualification for a directorship of a company need not be taken from the company. It is enough if they are taken in open market or from a friend within a reasonable time after acceptance of the office. They need not be shares for which the qualifying director has paid. IN RE BOMBAY ELECTRICAL COMPANY. NASSERVANJI DADABHAI KATRUCK'S CASE. I. L. R., 13 Bom., 1

38. ——— Power to appoint solicitor to company—Sue by agents of company to restrain it from carrying into effect a resolution of direc-

appointed agents of the company for twenty-five years, and it was provided that they should have the general control and management of the company. Clause 98 of the articles provided that the said firm,

company and the partners in the firm of M F & Co., their executors, administrators, and assigns, for the time being constituting the partnership firm of M F & Co., whereby it was agreed that the said firm should be agents to the company for twenty-five years to buy and sell, etc., and particularly to exercise all the powers contained in cl. 98 of the articles of association. Messrs. C and B were duly appointed solicitors to the company, and acted as such for a considerable time. Mervanji Framji, one of the members of the said firm of M F & Co., died in the middle of March 1876. The plaintiffs complained that G, one of the shareholders in the com-

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

and on the 8th August 1881 procured the passing of a resolution at a board meeting to the effect that, as *Messrs. C and B*, the company's solicitors, were also the solicitors of the agents, it was desirable, for the interests of the company, that a change should be made, and that *Messrs. H, C, and L*, be appointed solicitors of the company. The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of *G*, of ousting the plaintiffs from their agency, and getting the management of the company for himself; that *Messrs. H, C, and L* had been for a long time the solicitors of *G*, and had been advising him in his designs upon the company and upon the plaintiffs, and they contended that the resolution was a breach of the contract between the company and the plaintiffs, and a violation of the articles of association of the company. The plaintiffs sued *G* and two other directors of the company, and the company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August 1874, and in particular from carrying into effect the resolution appointing *Messrs. H, C, and L* as solicitors for the company, and to restrain them from doing anything inconsistent with the memorandum and articles of association. The defendants contended that the contract of the 26th August 1874 had been determined by the death of *Merwanji Framji*, and that the powers conferred on the agents by cl. 98 of the articles were, subject to the general powers of management, vested in the directors by the articles, and that the case was not one in which an injunction could be granted. *Held* that, having regard to the memorandum and articles of association, the contract was that the firm of *M F & Co.* for the time being should be the agents of the company for twenty-five years, and that the right to sue on the contract by its nature survived to the plaintiffs after the death of *Merwanji Framji*. *Held*, also, that there being no provision either in the articles of association or the agreement of 26th August 1874, that the power thereby conferred on the agents should be subject to the control or assent of the directors, there was no right in the directors to interfere with the agents in the exercise of their powers otherwise than as representing the company in virtue of their general powers of management. *NUSSEWANJEE v. GORDON* . I L. R., 6 Bom., 286

39. — Appointment of partner of director to do work for company as solicitor—Director of public company—Trustee.—Although a director of a public company is always clothed with a fiduciary character in regard to any dealings with property of the company in his capacity of director, the rule that a trustee is not allowed to make a profit of his trust does not apply to such a director, *quod* director only. When a partner of one of the directors of the company did work for the directors as solicitor and there was nothing to show that he had not been duly appointed by the directors, his claim in respect of such work was allowed. Distinction drawn between a trustee and a director of a

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

public company. IN THE MATTER OF PORT CANNING COMPANY, LIMITED . 6 B. L. R., 278

40. — Authority of agent—Corporation—Contract under seal—Companies' Clauses Consolidation Act, 8 & 9 Vic., c. 16, s. 97.—The Scinde Railway Company was incorporated by 18 & 19 Vic., c. 115, for the purpose of making and maintaining railways in India, and for other purposes. This was repealed by 20 & 21 Vic., c. 160, which authorized the company to extend their operations and also their capital, etc. This Act by s. 3 declared the Companies' Clauses Consolidation Act, 1845, to be incorporated with it. By s. 18 the company have a "seal for use in India in lieu of the common seal of the company, and from time to time may vary and renew it, and make regulations for its use; and except as by this Act otherwise expressly provided, every document sealed with such seal, in conformity with such regulations, or in pursuance of any order of the directors, or of any authority given by the company under their common seal, shall be as valid and effectual as if the common seal were affixed thereto." By s. 54, "the company from time to time may appoint and remove such committees, persons or person as the company think fit to act on behalf of the company in India or elsewhere, with respect to the making, maintaining, managing, working, and using of the railways and other works of the company, and the control and conduct of any of the affairs in India or elsewhere of the company; and may delegate to any such committee, persons and person respectively all or any of the powers of the company and of the directors and officers thereof, which the company thinks it expedient that such committee, persons, and person respectively should possess for the purposes of his or their respective appointment." In January 1867, *E* was the agent of the company in India, and he entered, it was alleged on their behalf, into a contract with the plaintiffs for sixty sets of iron-work for low-sided waggons. The plaintiffs' firm did not deal in iron-work, and they had to get the goods manufactured for them in England. The Board of Directors were at the time supplying iron-work for the company. There was nothing to show that *E* had been appointed under the provisions of s. 54 of the Act, 20 & 21 Vic., c. 160, nor was there any evidence of the extent of his power or authority. A specification of the contract differed from it, in that it stated the waggons to be covered waggons, and not low-sided waggons. The contract was not made under seal of the company, nor was the iron-work, the subject of the contract, ever accepted by the company. The defendants admitted that at the date of the alleged contract *E* was the agent of the company in India, but denied that his power extended to the making of such contract; they further stated that the contract, if entered into, had been afterwards cancelled. *Held* by PHEAR, J., that there was no evidence to show that *E* had authority to make the contract. The contract was one which *E* would have had power to make in writing only, under s. 97 of the

## COMPANY—continued.

## 6. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

Companies' Clauses Consolidation Act, had he been appointed under s. 54, 20 & 21 Vic. c. 160; but there was no proof of such appointment. Held on appeal that, assuming that *B* had been appointed under s. 54, with powers as large as in the ordinary course could be conferred upon him under that section, the contract was not one by which, acting as such agent, he had power to bind the company. *STEWART v. SCINDE, PUNJAB, AND DELHI RAILWAY COMPANY*. 5 B. L. R., 195

1st May 1863 the memorandum of association was registered, signed, *inter alia*, by *A* and *M*. On the same day the prospectus was issued, which stated, *inter alia*, that "the company have purchased from the former proprietors for the sum of Rs. 4,00,000 the entire stock of hotel and shop, together with the outstandings on the 30th April 1863, the latter amounting to about Rs. 50,000. The dividend of 10 per cent. per annum for two years is guaranteed to the shareholders." The prospectus was signed by *A* and *M* and another as directors, but the last took no active part. On the same day an agreement was signed by *B*, whereby he agreed, in consideration of Rs. 1,00,000 paid by *A* and *M* as therein mentioned,—*et c.*,

deposited with *A* and *M* 400 fully paid-up shares in

payment towards the guaranteed dividend, to hold the remaining shares or balance of money in trust for *B* absolutely." On the same day another deed, prepared by *A*'s private solicitor, was executed by *B* on one part and *A* and *M* on the other, which, after reciting an agreement by *B* with *A* and *M* in April, that if they would assist him in forming such company, for the purchase of Spence's Hotel, and as they

## COMPANY—continued.

## 6. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

mentioned was declared to belong to *B* absolutely, the same surplus should belong to, and be the exclusive property of, *A* and *M* in equal shares: and that if the net profits of the Hotel Company should prove sufficient to pay the whole 10 per cent., then the whole of the 400 shares deposited with *A* and

for this guarantee, he, *B*, covenanted to pay any deficit, and appointed the company his attorneys to realize these shares, and out of the proceeds to pay themselves the deficit, and, subject to this, to hold the shares or the proceeds in trust for him, *B*. Fifty

the agents of the company to effect the purchase, and,

*A* should make over the 50 shares or their value to the company, and account for the interim receipts and profits. *A* and *M* to account for the 400 shares at par value at least, and for dividends and profits thereon, including profits, if any, made by sale at a premium. *A* to account similarly for the 50 shares. *B* to make good his two guarantees after being allowed the benefit of the trust of the 400 shares. *SPENCE'S HOTEL COMPANY v. ANDERSON*

[1 Ind. Jur., N. S., 235]

Held also, on appeal, that *A* and *M* were trustees of the 400 shares for the benefit of the company, and jointly and severally responsible to make them good, and whatever benefit they took under the secret deed

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

they must make good to the company. *A* to be responsible for the 50 shares (but in this respect, and in respect of the details of the accounts between the parties, the decree of the Court below slightly modified). *ANDERSON v. SPENCE'S HOTEL COMPANY*

[1 Ind. Jur., N. S., 378

42.——— *Liability of directors—Companies' Act (VI of 1882), ss. 55, 56—Refusal to allow inspection of register of shareholders.*—Where a person who is entitled under the provisions of s. 55 of the Indian Companies Act, 1882, to obtain inspection of the register of shareholders of a company applies for inspection during business hours and not at a time when inspection is prohibited, either under s. 56 or by reason of any rules framed by the company under s. 55, such inspection must be granted, and even a temporary refusal, based upon grounds of convenience to the company's business, will render a director responsible for such refusal liable to the penalty provided for by s. 55. *QUEEN-EMPRESS v. BEER*

[I. L. R., 20 All., 128

43.——— *Liability of directors for negligence in management—Employment of agent by directors—Acquiescence of shareholders—Liability of estate of deceased director—Banker, Who is a.*—The plaintiffs' company went into liquidation early in the year 1879, in consequence of losses sustained by the failure of Nursey Kessowji & Co., which firm had been the bankers of the said company. The said firm had stopped payment on the 26th December 1878, having then in its hands the sum of Rs. 80,250-14-1, belonging to the company. In this suit the official liquidators of the company sought to recover that sum from the defendants, who had been directors of the company, and a further sum of Rs. 2,48,670-14-0 as damages sustained by the company through the fraud and gross negligence of the defendants in permitting Nursey Kessowji, the agent of the company, to deal with certain shares for his own purposes. The first four defendants were the directors of the company; the fifth defendant was the assignee of the estate of Nursey Kessowji, whose firm of Nursey Kessowji & Co. had become insolvent. The plaintiffs' company was registered on the 31st July 1878, and by the memorandum and articles of association the said Nursey Kessowji was appointed secretary, treasurer, and agent of the company for a period of twenty-five years, upon the terms and conditions contained in an agreement annexed to the articles of association, whereby it was (*inter alia*) provided that Nursey Kessowji should deposit with such banker or bankers as the directors for the time being should appoint all the moneys due from him to the said company and exceeding in amount at any one time the sum of Rs. 5,000. On the 6th August 1878, the directors of the company appointed the firm of Nursey Kessowji & Co. to be the bankers of the company. It was further alleged by the plaintiffs that, immediately after the registration of the company, the directors and Nursey Kessowji began to borrow money upon the credit of the com-

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

pany far in excess of the legitimate wants of the company, and to pay over the money so borrowed to the firm of Nursey Kessowji & Co., to be used by that firm in speculative business; that the said loans were obtained by the directors, not *bond fide* for the purposes of the company, but for the purposes of supplying funds to the firm of Nursey Kessowji & Co., to enable it to carry on its business. At the end of the year 1878 the sum paid over by the directors to the firm of Nursey Kessowji had, by reason of such borrowing, amounted to the sum of Rs. 80,250. The plaintiffs alleged that the said loans were wholly unnecessary; and they charged the directors with gross negligence in raising the said loans or permitting them to be raised; and in permitting the moneys so borrowed to remain in the hands of the firm of Nursey Kessowji & Co., to be applied by that firm to its own purposes. As to the Rs. 2,48,670-14-0, the plaintiffs alleged that certain unallotted shares of the total value of Rs. 93,750 had been left in the hands of the directors to be disposed of, the proceeds of which were to be applied in making certain payments due by the company; that instead of applying these shares to such purposes, the directors had filled up the said shares in the name of Nursey Kessowji, and authorized him to mortgage the same, in order to raise funds; that the said Nursey Kessowji had accordingly dealt with the said shares, and had applied the proceeds thereof to his own purposes. The plaintiffs charged the directors with fraud and gross negligence as to these shares, and claimed to recover Rs. 2,48,670-14-0 in respect thereof from the defendants. The defendants alleged that they had acted *bond fide* in all matters connected with the company; that they had always believed the firm of Nursey Kessowji & Co. to be in a solvent condition; and had no reason to mistrust its management of the affairs of the company. One of the defendants (No. 3) died after the institution of the suit, and his sons were made parties. His representatives and Kessowji Naik (defendant No. 1) also claimed to set off against the plaintiffs' claim certain payments made by them as guarantors for the company. *Held* (1) that one of the directors knew as a fact that the agent was not in a solvent condition; and that the other directors, in the circumstances of the case, ought to have ascertained his financial condition. (2) Directors are responsible for the management of their company where, by the articles of association, the business is to be conducted by the board with the assistance of an agent. They cannot divest themselves of their responsibility by delegating the whole management to the agent, and abstaining from all enquiry. If he proves unfaithful under such circumstances, the liability is theirs, just as much as if they themselves had been unfaithful. (3) That the directors had not used fair and reasonable diligence in the management of the company's affairs, and were liable to refund the money entrusted by them to the agent, Nursey Kessowji, without proper knowledge as to whether it was needed, and without any subsequent investigation of a serious character with respect to its disposal. Such conduct

**COMPANY—continued.****G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.**

amounted to gross negligence. All the directors were

the ground that the misfeasance of a director is a breach of trust, and not a mere personal default. A separate debt cannot be set off against a joint and several debt, and directors cannot set off money due from the company to them against sums which they may be ordered to refund to the liquidators. **NEW FLEMING SPINNING AND WEAVING COMPANY v. KESSOWJI NAIK**. . . I. L. R., 9 Bom., 373

**44. —** Power of directors to deal with profits either by declaring a dividend or by appropriating to reserve fund.—*Power*

nished the amount of dividend which they could otherwise have declared. Some of the shareholders disapproved of the course taken by the directors, and con-

articles, which entrusted to the management of the directors all the business of the company. Nor could the shareholders decide the question as to the amount of dividend. By the articles they agreed that the directors should declare the dividend and only reserved to themselves the power to vote a dividend to which they objected. The remedy of the shareholders, if they were dissatisfied with the directors, was to remove them from office, or to alter the articles of association. **HOMBAY-BURMA TRADING CORPORATION v. DORABJI CHERJI**. . . I. L. R., 10 Bom., 415

defendants simultaneously agreed to re-purchase, for future delivery and payment at a fixed time in July,

**COMPANY—continued.****G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.**

the same 2,000 shares at 20½ per cent. premium. The contracts for the re-purchase were signed by three

same at the fixed time." One hundred and ninety letters of allotment in the names of several persons, and for various numbers of shares, endorsed by the original allottees, and initialled by one of the three directors, were, together with receipts for the first call, handed over to the persons who acted for the plaintiffs by the three directors of the defendants'

sent to the plaintiffs. On the 27th of May all shares upon which the second call was not paid were declared to be forfeited for the benefit of the company. The defendants' company, as stated in the memorandum of association, was established among other objects

the company might think fit. *Held* that the contracts for the purchase of the 2,000 shares being within the scope of the authority of the directors, the

parted with the shares; that the shares were, consequently, not legally forfeited, and the defendants having refused to accept them, and they being then unsalable, the plaintiffs were entitled to recover the full price as damages. **ORIENTAL FINANCIAL ASSOCIATION v. MERCANTILE CREDIT AND FINANCIAL ASSOCIATION**. . . 3 Bom., O. C., 1

**46. —** Purchases of shares by individual directors.—*Liability of directors—Absence of sanction of board.*—J S, an allottee of 25 shares in a company registered under Act XIX of 1857, signed the memorandum and articles of association, and paid the first call on the 25th September 1863, on which he sold the 25 shares to B P, the chairman of the company. The purchase by B P was made in pursuance of an agreement entered into between B P and P H, another director of the company, and two other persons who were members of the firm of B, B. & Co., and then managers of the company, which they accordingly jointly purchased.

**COMPANY—continued.****6. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.**

they must make good to the company. *A* to be responsible for the 50 shares (but in this respect, and in respect of the details of the accounts between the parties, the decree of the Court below slightly modified). **ANDERSON v. SPENCER'S HOTEL COMPANY**

[1 Ind. Jur., N. S., 378]

**42. Liability of directors—Companies' Act (VI of 1882), ss. 55, 56—Refusal to allow inspection of register of shareholders.—**

Where a person who is entitled under the provisions of s. 55 of the Indian Companies Act, 1882, to obtain inspection of the register of shareholders of a company applies for inspection during business hours and not at a time when inspection is prohibited, either under s. 56 or by reason of any rules framed by the company under s. 55, such inspection must be granted, and even a temporary refusal, based upon grounds of convenience to the company's business, will render a director responsible for such refusal liable to the penalty provided for by s. 55. **QUEEN-EMPRESS v. BEEB**

[I. L. R., 20 All., 128]

**43. Liability of directors for negligence in management—Employment of agent by directors—Aquiessence of shareholders—Liability of estate of deceased director—Banker, Who is a.—**

The plaintiffs' company went into liquidation early in the year 1879, in consequence of losses sustained by the failure of Nursey Kessowji & Co., which firm had been the bankers of the said company. The said firm had stopped payment on the 26th December 1878, having then in its hands the sum of Rs. 80,250-14-1, belonging to the company. In this suit the official liquidators of the company sought to recover that sum from the defendants, who had been directors of the company, and a further sum of Rs. 2,48,670-14-0 as damages sustained by the company through the fraud and gross negligence of the defendants in permitting Nursey Kessowji, the agent of the company, to deal with certain shares for his own purposes. The first four defendants were the directors of the company; the fifth defendant was the assignee of the estate of Nursey Kessowji, whose firm of Nursey Kessowji & Co. had become insolvent. The plaintiffs' company was registered on the 31st July 1878, and by the memorandum and articles of association the said Nursey Kessowji was appointed secretary, treasurer, and agent of the company for a period of twenty-five years, upon the terms and conditions contained in an agreement annexed to the articles of association, whereby it was (*inter alia*) provided that Nursey Kessowji should deposit with such banker or bankers as the directors for the time being should appoint all the moneys due from him to the said company and exceeding in amount at any one time the sum of Rs. 5,000. On the 6th August 1878, the directors of the company appointed the firm of Nursey Kessowji & Co. to be the bankers of the company. It was further alleged by the plaintiffs that, immediately after the registration of the company, the directors and Nursey Kessowji began to borrow money upon the credit of the com-

**COMPANY—continued.****6. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.**

pany far in excess of the legitimate wants of the company, and to pay over the money so borrowed to the firm of Nursey Kessowji & Co., to be used by that firm in speculative business; that the said loans were obtained by the directors, not *bona fide* for the purposes of the company, but for the purposes of supplying funds to the firm of Nursey Kessowji & Co., to enable it to carry on its business. At the end of the year 1878 the sum paid over by the directors to the firm of Nursey Kessowji had, by reason of such borrowing, amounted to the sum of Rs. 80,250. The plaintiffs alleged that the said loans were wholly unnecessary; and they charged the directors with gross negligence in raising the said loans or permitting them to be raised; and in permitting the moneys so borrowed to remain in the hands of the firm of Nursey Kessowji & Co., to be applied by that firm to its own purposes. As to the Rs. 2,48,670-14-0, the plaintiffs alleged that certain unallotted shares of the total value of Rs. 93,750 had been left in the hands of the directors to be disposed of, the proceeds of which were to be applied in making certain payments due by the company; that instead of applying these shares to such purposes, the directors had filled up the said shares in the name of Nursey Kessowji, and authorized him to mortgage the same, in order to raise funds; that the said Nursey Kessowji had accordingly dealt with the said shares, and had applied the proceeds thereof to his own purposes. The plaintiffs charged the directors with fraud and gross negligence as to these shares, and claimed to recover Rs. 2,48,670-14-0 in respect thereof from the defendants. The defendants alleged that they had acted *bona fide* in all matters connected with the company; that they had always believed the firm of Nursey Kessowji & Co. to be in a solvent condition; and had no reason to mistrust its management of the affairs of the company. One of the defendants (No. 3) died after the institution of the suit, and his sons were made parties. His representatives and Kessowji Naik (defendant No. 1) also claimed to set off against the plaintiffs' claim certain payments made by them as guarantors for the company. *Held* (1) that one of the directors knew as a fact that the agent was not in a solvent condition; and that the other directors, in the circumstances of the case, ought to have ascertained his financial condition. (2) Directors are responsible for the management of their company where, by the articles of association, the business is to be conducted by the board with the assistance of an agent. They cannot divest themselves of their responsibility by delegating the whole management to the agent, and abstaining from all enquiry. If he proves unfaithful under such circumstances, the liability is theirs, just as much as if they themselves had been unfaithful. (3) That the directors had not used fair and reasonable diligence in the management of the company's affairs, and were liable to refund the money entrusted by them to the agent, Nursey Kessowji, without proper knowledge as to whether it was needed, and without any subsequent investigation of a serious character with respect to its disposal. Such conduct

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

the ground that the misfeasance of a director is a breach of trust, and not a mere personal default. A separate debt cannot be set off against a joint and several debt, and directors cannot set off money due from the company to them against sums which they may be ordered to refund to the liquidators. *NEW FLEMING SPINNING AND WEAVING COMPANY v. KESBOW & NAIR*. I. L. R., 9 Bom., 373

44. ——— Power of directors to deal with profits either by declaring a dividend or by appropriating to reserve fund—*Power*

wise have declared. Some of the shareholders disapproved of the course taken by the directors, and contended (1) that the shareholders of the company had

to themselves the power to vote a dividend to which they objected. The remedy of the shareholders, if they were dissatisfied with the directors, was to remove them from office, or to alter the articles of association. *HOMBAY-BHARMA TRADING CORPORATION v. DORABJI CURSETJI*. I. L. R., 10 Bom., 415

in the defendants' company at 15 per cent. premium, for which they paid in cash Rs. 20,000, and the defendants simultaneously agreed to re-purchase, for future delivery and payment, at a fixed time in July,

## COMPANY—continued

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

the same 2,000 shares at 20½ per cent. premium. The contracts for the re-purchase were signed by three directors of the defendants' company, and on each was a memorandum, initialled by two of them, referring to a list of the "Share Receipts," delivered with the words "we are duly to examine and receive the same at the fixed time." One hundred and ninety letters of allotment in the names of several persons, and for various numbers of shares, endorsed by the original allottees, and initialled by one of the three directors, were, together with receipts for the first call, handed over to the persons who acted for the plaintiffs by the three directors of the defendants'

parted with the shares; that the shares were, consequently, transferred to the plaintiffs. *THE ORIENTAL FINANCIAL ASSOCIATION v. MERCANTILE CREDIT AND FINANCIAL ASSOCIATION*. 3 Bom., O. C., 1

46. ——— Purchases of shares by individual directors—*Liability of directors—Absence of sanction of board.*—J. S., an allottee of 25 shares in a company registered under Act XIX of 1857, signed the memorandum and articles of association, and paid the first call on the 26th September 1863, on which he sold the 25 shares to B P, the chairman of the company. The purchase by B P was made in pursuance of an agreement entered into between B P and P H, another director of the company, and two other persons who were members of the firm of B., B. & Co., and then managers of the company, which they accordingly jointly purchased.

## COMPANY—continued.

## 6. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

and subsequently divided among themselves; *B P* taking for himself two-fifths of the whole, including the 25 shares of *J S*. The fact of the joint purchase was not communicated to the other directors of the company, nor was there any evidence to show that their attention had been called to certain entries in the books of the company relating to *B P* having paid the second call on his two-fifths of the joint purchase. *J S* got no notice to pay the second call, and never applied for or obtained a certificate for the 25 shares; but such a certificate was obtained by *B P* on the 10th of October 1864, certifying that *J S* was the shareholder. *J S* had signed a blank form of transfer and a blank form of request to the directors to transfer, which were undated and without particulars; but *B P* never executed the transfer as transferee, and the shares never were transferred to his name on the register, nor was the sale to him ever brought to the notice of the directors as a board, or to any of his partners, of any portion of the 2,800 shares; and the articles of association required the consent in writing of the directors to every transfer. On application by *J S* that his name should be removed from the list of contributories as framed by the official liquidator, and the names of *B P*'s trustees under Act XXVIII of 1865 substituted therein in respect of the 25 shares,—*Held* that *J S* was not exonerated, under the circumstances, from the duty of obeying the articles of association and the provision of Act XIX of 1857; that the act of an individual director in his private capacity ought not to bind the board, which had never authorized or ratified his conduct; and that the official liquidator, as representing the body of shareholders, rightly insisted upon keeping *J S*'s name on the list of shareholders. *IN RE EAST INDIAN TRADING AND BANKING COMPANY, JAMNADAS SAVAKLAI'S CASE*. 3 Bom., O. C., 113

47. — Purchase by company of its own shares—*Omission to register transfer*—*Contributories*.—A company registered under Act XIX of 1857, and enabled by its memorandum of association to purchase its own shares, purchased seven thousand of them which were in scrip, share certificates having never been issued in respect of them. The letters of allotment indorsed by the allottees and receipts for the first call were made over, at the time of purchase, to the company. No transfers, however, were executed by the allottees, nor were the shares registered by the company in their own name, but they continued to stand in the names of the allottees. Two thousand of the seven thousand shares had been re-sold by the company; and the remaining five thousand were mentioned in a list, kept by the company, of shares purchased by them. On application to the allottees to have their names removed from the list of contributories, as framed by the official liquidator,—*Held* that the company, through its directors, having, as well by the act of purchase as by their subsequent conduct, treated themselves as the owners of the shares, could not be permitted to take advantage of their own neglect, or

## COMPANY—continued.

## 6. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

that of their officers, in not registering the shares in the name of the company, and that the name of the company therefore be substituted as holders of the shares. *IN RE MERCANTILE CREDIT AND FINANCIAL ASSOCIATION. EX-PARTE DALVI*

[3 Bom., O. C., 125]

48. — Purchase of shares in other companies and their own shares—*Trustee shareholders*—*Parties*—*Acquiescence*.—The purchase by the directors of a joint-stock company, on behalf of the company, of shares in other joint-stock companies unless expressly authorized by the memorandum of association, is *ultra vires*. A joint-stock company, even though it be empowered by its memorandum of association to deal in the shares of other companies, is not thereby empowered to deal in its own shares, and a purchase by the directors of the company of its own shares, on behalf of the company, is therefore, under such circumstances, *ultra vires*. A sharer in a joint-stock company can maintain an action against the directors of such company to compel them to restore to the company funds of the company that have by them been employed in transactions that the directors have no authority to enter into, without making the company a party to the suit. Where a shareholder purchased shares in a joint-stock company, knowing at the time that similar companies were in the habit of dealing in their own shares and those of other companies, and believing that the company in question adopted the same practice, but made no enquiry to ascertain whether or not such was the case, nor made any objections to such dealings of the company until it was discovered they had resulted in loss, it was held that he had, by his own conduct, lost his right to hold the directors personally liable in respect of such dealing, and the result was held to be the same whether the said shareholder was beneficially entitled to his shares, or merely a trustee of them for others. *JEHANGIR RASTAMJI MODI v. SHAMJI LADHA*

[4 Bom., O. C., 185]

49. — Misrepresentation in prospectus—*Companies Act, 1866, s. 154*—*Prospectus*—*Liability of directors for misrepresentation*.—*R G*, on the faith of statements in the prospectus of a company, was induced to apply for fifty shares in the company, which were allotted to him, and he paid the deposit money thereon. At the time of issuing the prospectus there were no other members of the company besides the directors. Some of the material statements in the prospectus were untrue to the knowledge of the directors. The prospectus, which was published on the 23rd June 1865, contained the following statements: "Capital, fifty lakhs of rupees in 10,000 shares, of ₹500 each, with power to increase, ₹50 per share to be paid on application, and the balance by calls of ₹100 each, to be made within not less than three months of each other. The first call will not be made within less than three months after the closing of the share list. Of these 10,000 shares, 6,000 will be reserved for

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

who had not signed the articles of association, on receipt of notice from the secretary, requested to be allowed to withdraw his money, forfeiting one-fifth, or to be allowed to hold five shares instead of fifty. The request was refused by the directors, who on 18th July 1866 passed a further resolution that the

IN THE MATTER OF THE INDIAN COMPANIES ACT, 1860. ROMANATH GOSSAIN'S CASE

[3 Ind. Jur., N. S., 296

50. ——— Suit by company for price of shares allotted to defendant—*Misrepresentation by an alleged agent of a company not then in existence—Misrepresentation not alleged in the pleadings—Prospectus, misstatements in, before*

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

be held to be bound by such misrepresentation. In a suit by the plaintiff company to recover money due upon certain shares taken by and allotted to the defendant, the defendant in his pleadings set out and relied upon certain misrepresentations said to have been orally made by one B as the agent of the plaintiff company. At the trial he also sought to rely upon a misrepresentation in the prospectus of the

him and were material to the contract, the defendant would be entitled to rescind the contract and to repudiate the shares in the absence of laches or conduct on his part which would deprive him of that right. *In re Metropolitan Coal Consumers' Association, Karbery's Case, L. R., 1892, Ch. D., 1, followed.* When a person makes a positive assertion

[4 C. W. N., 399

51. ——— Misrepresentation—*Bills of*

National Bank of India the sum of dollars four thousand only, value received, and place the same to account of Nursey Kessowji, Ghisabhoj Pudemay directors. Nursey Kessowji, secretary, treasurer

COMPANY—continued.  
G. POWERS, DUTIES, AND LIABILITIES OF  
DIRECTORS—continued.  
Nursery Spinning and Weaving  
are duly accepted and On the

COMPANY—continued. AND WEAVING  
3. POWERS, DUTIES, AND DIRECTORS—continued.

and agent. The Nursey Spinning and Weaving Company, Limited." The bill was duly accepted and presented for payment, but was dishonoured. On the 6th January 1879, the bank gave notice of dishonour and demanded payment from the company as drawers of the bill. On the 18th January 1879, the *N Co.* was ordered to be wound up, and the bank sent in a claim against the company as drawers of the bill, and subsequently sent in an alternative claim for Rs. 680, being the "amount paid by the bank to, and received by, the company." *Held*, on the authority of *In re the New Fleming Spinning and Weaving Company, Limited, I. L. R., 4 Bom., 275*, that having regard to the form of the bill, the *N Co.* could not be made liable as drawers; but held, also, that the bank was entitled to recover the amount of the bill from the *N Co.* as money received to the use of the bank, on the ground that the directors of the *N Co.*, while acting within their authority, had sold to the bank on behalf of the company, as a bill upon which the company was liable, one upon which the company was not liable, and had, therefore, been guilty of misrepresentation within the meaning of ss. 18 and 19 of the Contract Act. (IX of 1872). IN THE MATTER OF NURSEY SPINNING AND WEAVING COMPANY [I. L. R., 5 Bom., 92]

52. Power of directors, as such, Act to draw bills of exchange—Companies' Act (X of 1866), s. 47—Winding up—Interest on debts subsequently to date of order to wind up—Rules of Bombay High Court of 3rd August 1866—Rule No. 21.—The articles of association of the New Fleming Spinning and Weaving Company, Limited, authorized the directors "to raise or borrow from time to time in the name or otherwise on behalf of the company such sums of money as they from time to time think expedient, either by way of sale or mortgage of the whole or any part of the property of the company, or by bonds, debentures, or promissory notes, or in such other manner as they deem best, and for the purpose of securing the repayment of any money so borrowed with interests, to make and carry into effect any arrangement which they may deem expedient by conveying or assigning any property of the company to trustees or otherwise." *Held* that, though power to borrow money on bills of exchange being in many respects analogous to promissory notes, and promissory notes having been specifically mentioned in the article, the power to raise money by an equally well-known and recognized mode,—viz., by drawing, endorsing, or accepting bills of exchange,—must be deemed to be included in the general words "or in such other manner as they deem best." Three of the directors of the above company, one of whom was the secretary, and agent of the company, entered into the following agreement on the 1st of August 1866, to the effect that the sum of Rs. 10,000 should be raised by drawing bills of exchange on the company, and that the secretary should draw a bill in the name of the company, and that the value of the bill should be Rs. 10,000.

CASES.

COMPANY—continued.

6. POWERS, DUTIES, AND DIRECTORS.

...ing C

CASES.

**COMPANY—continued.**

6. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

...ing Company, Limited directors.  
...to the bank of Bomba  
...drawee, a

COMPANY, DUTIES, AND THE  
6. POWERS, DUTIES, AND THE  
DIRECTORS—continued.

Spinning and Weaving Company, Limited directors.”  
The bill was endorsed by S to the bank of Bombay,  
was duly presented for payment to the drawee, and  
protested for non-payment. Subsequently to the  
date of the drawing of the bill, the New Fleming  
Spinning and Weaving Company, Limited, went into  
liquidation. The Bank of Bombay claimed as en-  
dorsers of the bill to prove against the company as  
drawers. Held that, assuming that companies under  
the Indian Companies Act (X of 1866) are by  
s. 47 not liable on bills of exchange drawn on their  
behalf, the bill in question was not such a bill.  
Whether or not a note or bill must, on the face of it,  
express that it is made, accepted, or endorsed, “by or  
on behalf of or on account of persons acting under their  
authority” is a question of fact which shows that it  
must be on the face of it that which shows that it  
was so made, accepted, or endorsed, and which ex-  
cludes the inference that it was made, accepted, or  
endorsed by or on behalf of or on account of any other  
person. A bill or note may well be in a certain sense on  
behalf of or on account of a company, though there  
is upon its face no reference to the company, even  
in the form of a description of the company, and the com-  
pany, such a bill or note may well be in a certain sense on  
account of the company, but it is not such a bill or note  
between third parties as concerned, a company, even  
Indian Companies Act (X of 1866) in enquiry to ascertain note  
liable on the face of it expresses that it was made any  
or endorsed by, or on behalf of the company until it  
company, or where that fact in loss, it was held  
inference from what the conduct, lost his right to  
self shows. The addition of the words “by or on behalf of  
notes or bills, of their drawers, as held to be the same  
towards the company, was beneficially made for others,  
pany, is not considered to be the same as the company  
does not exclude the supposition that the company  
scribed as directors, etc., they intended to make them-  
selves personally liable to holders of the instrument  
though as between themselves and the company they  
may be entitled to be indemnified for anything they  
may have paid on account of the company in respect  
of such notes or bills. *Dutton v. Marsh, L. R.*  
*Q. B., 361, followed.* Rule No. 24 of the  
dated the 3rd of August 1866, made by the  
Court of Judicature at Bombay, under the  
given by s. 189 of the Indian Companies Act  
(1866), is *ultra vires* so far as it allows in-  
debts or claims subsequent to the debt of the  
to wind up a company to creditors whose de-  
claims do not carry interest. IN THE MATTER  
NEW FLEMING SPINNING AND WEAVING COM-  
[L. L. R., 3 BOM.]

...ld, on appeal, affirming the decision of the  
the company was not liable. In order to  
company liable or note, it must ap-  
the face or note that it was

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

intended to be drawn, accepted, or made on behalf of the company, and no evidence *defers* the bill or note is admissible under s. 47 of the Indian Companies Act (X of 1866). *IN RE NEW FLEMING SPINNING AND WEAVING COMPANY*

[L. L. R., 4 Bom., 275

company  
The  
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of  
w  
pany, therefore, in  
is constituted, and in whatever may be fairly regarded as incidental to, or consequential upon, that trade, is free to enter into any transaction not expressly prohibited by its memorandum of association. *SHAM-NOOBER JUTE FACTORY CO. v. RAM NARAIN CHATTERJEE* . . . I. L. R., 14 Calc., 189

fu  
—  
panies.—The plaintiff company was  
by its memorandum of association its object was declared to be commission agency and general trading in goods and commodities suited for the  
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had carried on speculative business  
companies and had used the funds of the company for this purpose. It was not warranted by the memorandum that their de  
their plaint,  
pany, and the  
defendant the sum of money  
been originally five directors of the company, but at the date of suit two of them were dead, and two had become insolvent. The plaint was filed in April 1890.  
the decision of PARSONS, J.) (1)  
justify  
shares  
complain  
that the directors were  
of the company which they had misapplied by applying them to a purpose which was *ultra vires*.  
*KATHIAWAR TRADING CO. v. VINCENY DITCHEND*  
[L. L. R., 18 Bom., 118

55.

Transaction  
was formed

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

to facilitate trade and also of  
tramways, roads, docks, wharves, and jetties upon the lands so to be acquired; and for all other purposes or conducive to the

resolved to use  
property of the company. They accordingly purchased a large quantity of rice which was husked at the mill, and consigned to several firms in England. P. M. & Co. were appointed agents of the company in Calcutta for the purpose of shipping the rice, under letters from the directors guaranteeing that the company would pay at maturity any re-drafts which might be drawn on P. M. & Co. as their agents in respect of the shipments. Bills of exchange were drawn by P. M. & Co. on the firms to which the respective consignments were made, and these bills were sold in the ordinary course of business in Calcutta. P. M. & Co. realizing the proceeds for the benefit of the company. These bills were honoured by the respective consignees. The rice was sold in England at a considerable loss, and re-drafts for the deficiency were drawn on P. M. & Co. or on the company. The company went into liquidation during these transactions. Some of these re-drafts had been accepted by the company, and others merely registered by the liquidators as claims against the company. Claims were now made on the company by the drawers or endorsees of these re-drafts, but the liquidators declined to pay them, stating that the company had not accepted the consignments of shipments. It had no power to issue bills of exchange or to accept the re-drafts, and therefore the holders of those which had been in fact accepted were in no better position than the holders of those which had not been accepted. *IN THE MATTER OF PORT CANNING COMPANY* . . . 7 H. L. R., 593

56. Promissory notes, Issue of.—Negotiation within ordinary course of business.—Where the articles of association of a limited

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

company stated that the objects for which the company was established were for the purchase of the business of an hotel-keeper, confectioner, and provisioner, the future working and carrying on of the said business, and the doing of all such other things as were incidental or conducive to the attainments of the above objects, it was held that the directors had power to bind the company by the issue of negotiable securities in the ordinary course of business. Where a note, which had been taken by the company as a security from two judgment-debtors of the company, was endorsed by the company to a third party, and discounted by him, and was on the due date, not having been taken up by the makers, renewed by the company,—*Held* that such negotiation of the note by the company was within the ordinary course of the business of the company. Also held upon the facts that the power of the company to issue negotiable securities was well exercised, and that the company had due notice of dishonour by the makers. CHOOIN-LAL SEAL v. SPENCE'S HOTEL COMPANY

[I. B. L. R., O. C., 14]

57. — Liability of company for loan to secretary, treasurer, and agent—Principal and agent—Undisclosed principal—Election—Contract Act (IX of 1872), ss. 230, 233, 234.—By the memorandum and articles of association of the New Fleming Spinning and Weaving Company N K was appointed secretary, treasurer, and agent of the company, with power to raise or borrow from time to time, in the name or otherwise on behalf of the company, such sums of money as he might think expedient by bonds, debentures, or promissory notes, or in such other manner as he might deem best; and for the purpose of securing the repayment of any money so borrowed, to make any arrangement which he might deem expedient by conveying or assigning away property of the company to trustees or otherwise. N K was also secretary, treasurer and agent of three other mill companies in Bombay. On the 31st October 1878 the directors passed the following resolution:—"That the unallotted shares be filled up in the name of Nursey Kessowji, Esq., secretary, treasurer, and agent, who is empowered to mortgage them at a fair rate of interest to enable him to obtain funds for the use of the company." On the 11th November 1878 P advanced a sum of Rs. 1,00,500 upon the terms contained in a Gujarati writing of that date, and signed by N K. In this document N K acknowledged the receipt of the money, for which 335 shares in the New Fleming Spinning and Weaving Company were duly handed over as security, and he agreed to repay it within three months. The last clause in the agreement stated that it was "duly agreed to and approved by him (N K) and his heirs and representatives." As an additional security, P, when advancing the loan, obtained from K N (father of N K) a guarantee in the following terms:—"To Thuker Purmanundass Jivandass. Written by Sha Kessowji Naik. To wit,—This day Sha Nursey Kessowji has received from you Rs. 1,00,500, namely, one lakh and five hundred, having deposited by way

## COMPANY—continued.

## G. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—continued.

of security 335, namely, three hundred and thirty-five 'shares' of 'The New Fleming Spinning and Weaving Company, Limited.' If your said money cannot be paid with interest by the expiration of the time, and you should sustain any kind of loss in (respect of) that, I am duly to pay the same. As to that, I am not to raise any obstacle or objection. In case it should be necessary, I am to fill up and duly deliver to you an 'indemnity bond' on stamped paper through your vakeel (solicitor). This writing is duly agreed to and approved by me and my heirs and representatives. Bombay, the 11th of November in the English year 1878." On the evening of the day on which the loan was made,—viz., 11th November 1878,—but without the knowledge of K N, it was agreed between N K and P that the time for the repayment of the loan should be extended to six months. In December 1878 N K became insolvent, and on 28th December 1878 a petition was presented to the High Court to wind up the New Fleming Spinning and Weaving Company. On the 30th December P, through his solicitors, wrote a letter to the company, stating that N K had obtained a loan from him of Rs. 1,00,500 on behalf of the company, and enquiring whether the fact appeared in the company's books. To this letter he received a reply signed by "K N, director," stating that the loan appeared in the books in P's name. On the 17th January 1879, an order was made for the winding up of the New Fleming Spinning and Weaving Company, and on the 4th February 1879 P gave notice on the official liquidators of the company of his claim against the company for the money advanced by him on the 11th November 1878. In March 1869 he filed a suit against K N to enforce his guarantee, but was unsuccessful, the Court holding that, by extending the period of the loan to six months, the agreement of the 11th November 1878 had been materially varied without K N's knowledge, and that K N was consequently discharged. On the 24th April 1879 P filed his affidavit in support of his claim against the company. The company resisted the claim. *Held* (1) that the directors had power, under the memorandum and articles of association, to authorize N K to borrow money on behalf of the company, and that they had done so, and with that object had entrusted him with the unallotted shares. (2) That when P advanced the loan to N K, he was led to believe that N K was obtaining it on behalf of the four mill companies of which he was secretary, treasurer, and agent, but that P was not aware and was not informed for which of the said companies the loan was obtained, and that the money was in fact advanced to N as to an agent acting on behalf of an undisclosed principal. (3) That P, when he discovered that the money was obtained for the New Fleming Spinning and Weaving Company, was entitled to claim against the company and to rank as a creditor of the company for the amount advanced to N K with interest from the date of the loan,—viz., 11th November 1878,—to the date of the presentation of the petition to wind up the company. PURMANUNDASS v. COR-MACK

I. L. R., 6 Bom., 328



## COMPANY—continued.

## 7. WINDING UP—continued.

Court of Chancery as a foreign judgment, and will not allow the liability of a defendant sued upon such order to be disputed, unless it be shown that the Court had no jurisdiction to make the order; or that the defendant had no notice of it, or that it is not in its nature a final order. *LONDON, BOMBAY, AND MEDITERRANEAN BANK v. HOERMASJI PESTANJI FRAMJI*. 8 Bom., O. C., 200

See *LONDON, BOMBAY, AND MEDITERRANEAN BANK v. BURJORJI SORABJI LITWALLA*. [I. L. R., 9 Bom., 346]

66. ——— Winding up under supervision of Court—Order for dissolution of company—Voluntary winding up—Official liquidator—Companies Act, VI of 1882.—As a general rule, a winding-up of a company under supervision of the Court should be terminated in the same way as a purely voluntary winding-up, i.e., under ss. 186 and 187 of the Companies Act, VI of 1882. Although, under s. 195 of the Companies Act, VI of 1882, the Court has power to make an order dissolving a company in the course of winding-up, subject to its supervision, such cases must be exceptional and can only occur when the Court has deemed it proper to carry on the winding-up under supervision in a manner such as clearly to approximate to a winding-up by the Court. The ordinary rule is not conducted and it is reasonable that it should be so; as generally, a winding-up under supervision is not conducted under so intimate a control of the Court as to put the Court in a position to judge of the correctness of the liquidators' action and the completeness of the winding-up. So far as the Court does not interfere, a winding-up under supervision remains essentially a voluntary winding-up; but the Court in a winding-up under supervision has full authority to interfere and to exercise to any extent the power which it might have exercised if an order had been made for winding up the company by the Court. The words "official liquidator" in s. 160 of the Companies Act, VI of 1882, do not include the liquidators in a winding-up under supervision. Motion for an order for the dissolution of a company wound up under supervision of the Court refused. *IN RE CARWAR COMPANY*. [I. L. R., 6 Bom., 640]

67. ——— Voluntary liquidation—Companies Act (VI of 1882), s. 177—Liability to be sued—Execution of decree.—Where a company has gone into a voluntary liquidation, it can still be sued for debts due by it incurred prior to liquidation, although the fact that there are liquidators may be material if execution of the decree is sought. *KOTHANDAPANI v. SOMASUNDRAM*. [I. L. R., 15 Mad., 97]

68. ——— Proceeding with suit—Companies Act (VI of 1882), s. 136—Proceeding to enforce execution of decree—Sanction of the Court—Suit or other proceeding.—The language of s. 136 of the Companies Act (VI of 1882) shows that proceedings in execution are regarded as distinct from the suit for the purpose of that section, therefore the leave given to proceed with a suit is not

## COMPANY—continued.

7. WINDING UP—continued.  
authority for proceedings taken in execution of the decree in the suit authorized. *ISHVARDAS JAGJI VANDAS v. DHANJISHA NASARVANJI*. [I. L. R., 16 Bom., 644]

69. ——— Stay of proceedings—Jurisdiction of High Court, Calcutta, to wind up company at Bombay.—A bank was registered at Bombay only as an unlimited company under Act XIX of 1857, and carried on business at Bombay and Calcutta. At a meeting held before Act X of 1866 came into force, it was resolved that the company be wound up voluntarily under Act XIX of 1857, which resolution was confirmed after Act X of 1866 came into operation, and more than a month after the original resolution. Held that these resolutions were informal; that the company was not winding-up under either Act; and that an action against it by a creditor could not be stayed. *Semble*—That an action will not be stayed against a company which is being wound up voluntarily under Act X of 1866. And held that a company registered at Bombay only as before mentioned cannot be wound up by the High Court in Calcutta. *IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND EAST INDIA BANK*. [1 Ind. Jur., N. S., 330]

70. ——— Order of Chancery Court in England—Stay of actions in India.—Where a company was being wound up by the Court of Chancery in England, all actions brought against it in this country were ordered to be stayed. *PEITSCHE v. COMMERCIAL BANKING CORPORATION*. [1 Ind. Jur., N. S., 363]

71. ——— Order of Chancery Court in England—Suit against company in India.—A suit may be brought in the Courts in India against a company that is being wound up under "The Companies Act, 1862 (25 & 26 Vic., c. 89, s. 87)," without the leave of the Court of Chancery being first obtained. *Semble*—The High Court will, in the exercise of its general power, stay the proceedings in a suit against such a company where the circumstances are such as to render it proper to do so. *BANK OF HINDUSTAN, CHINA, AND JAPAN v. PREMCHAND RAICHAND HABIBHAI v. PREMCHAND RAICHAND*. [5 Bom., O. C., 83]

72. ——— Leave to proceed to execution, Order for—Stay of execution.—Where leave had been given to certain creditors to proceed to execution in a suit against a company, while proceedings for the winding-up of the company were pending, but before the leave to proceed to execution made,—Held that the leave to proceed to execution was not necessarily affected by the winding-up order. *IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND SYLHET AND CACHAR TEA COMPANY*. [2 Ind. Jur., N. S., 123]

73. ——— Act XIX of 1857 s. 72—Civil Procedure Code, 1859, s. 288.—In an application, under s. 288 of the Civil Procedure Code, to execute an order of a District Court for the

## COMPANY—continued.

## WINDING UP—continued.

already been actually executed by the  
of property of the defendants, although the sum  
decreed may not have been realized by a sale, there  
is no longer a suit or action to be stayed within the  
meaning of s. 72 of Act XIX of 1857. **NARAYAN  
SHAMJI v. GUJARAT TRADING COMPANY**

[3 Bom., O. C., 20

74. ——— Notice of appeal—*Extension  
of time for appeal—Indian Companies Act (X of  
1866), s. 141—Practice.*—Notice of an appeal against  
any order or decision made or given in the matter of  
the winding-up of a company by the Court must,  
under s. 141 of Act X of 1866, be given to the  
Court after the order or

circumstances being shown. **S. S. BARAWAK AND HINDUSTAN BANKING AND TRADING  
COMPANY. LALLAH BARROOMUL v. OFFICIAL  
LIQUIDATOR**

[L. L. R., 4 Calc., 704; 3 C. L. R., 581

75. ——— *Companies Act,  
VI of 1882, ss. 169, 214—Practice—Winding-up.*—  
Notice of an appeal from any order or decision  
made or given in the matter of the winding up of a

LOAN AND TRADING COMPANY

76. ——— Notice of proceeding—  
*Service of notices and orders—Suit against contributory—Contributory in India to English company—Last known address or place of abode—Rule 63 of the rules of 1862 of the High Court, Bombay.*—  
The London, Bombay, and Mediterranean Bank, a  
joint-stock company, registered under the English  
Companies Act, 1862, was ordered to be wound up by  
an order of the Court of Chancery in England in  
1866, and by a subsequent order of the said Court  
made in the winding-up of the bank, it was ordered  
that service of any notice, summons, order, or  
other proceedings in these matters might be effected  
by putting such notice, etc., into any post office,  
either in England or at Bombay, duly addressed  
to such contributories, being past members accord-  
ing to their respective last known addresses or  
places of abode. By a final balance order dated 5th  
June 1879, it was ordered by the Court of Chancery  
in England that the persons named in the schedule  
to the said order, being contributories as past mem-  
bers of the said bank, should within four days after

## COMPANY—continued.

## 7. WINDING UP—continued.

the various orders and notices to such persons  
in the winding-up of the bank prior to the balance  
order of the 5th June 1879 had been sent by post to  
the defendant, addressed to him at No. 30, Panasvadi,

the company contained therein had not arisen as a  
Chancery contained therein had not arisen as a  
the defendant  
suit must fail  
law, always  
that a person  
have due  
notice, he is  
order obtained in his absence is made the ground of a  
suit in any Court governed by English principles.  
The Court of Chancery in England had not in this  
case so called the defendant before it as to enable it  
in his absence to pronounce a definitive order against  
him or to bind him in the Court of his domicile,  
although he was included in the order of the Court of  
Chancery. It was held that the defendant frequently

alleged contributory, and so that the  
service there. **LONDON, BOMBAY, AND MEDITERRANEAN BANK v. GOVIND RAMCHANDRA**

[L. L. R., 5 Bom., 223

77. ——— Suit against contributory—  
*Service of notice and orders—Contributory in  
India to English company.*—The defendant was  
sued as a contributory on the B list of shareholders  
liable in the winding up of the London, Bombay, and  
Mediterranean Bank. The Bank was an English  
Joint Stock Company registered under the English

## COMPANY—continued.

## 7. WINDING UP—continued.

On the 1st March 1879, the winding-up of the *F. S. & W. Co.* was ordered to be continued under the supervision of the Court, and *J*'s suit was at the same time stayed. *J* then endeavoured to have the arbitration revived. In this he was unsuccessful, the submission not having been filed in Court, and the arbitration being held to be already dead and past revival. The suit subsequently came on to be heard and was dismissed, on the ground that s. 175 of the Act made an arbitration and an award a condition precedent to any suit. *J* then called on the liquidators to nominate an arbitrator, and enter on a fresh arbitration. This the liquidators doubted whether they could legally do, and therefore they now petitioned the Court for its order and direction in the matter. They submitted that *J* had never acquired the rights of a dissentient shareholder under s. 175 by reason of the insufficiency of his notice, and that, in any case, one arbitration having been already entered upon and determined, *J* could not now call upon them to enter on a fresh arbitration. *Held*, following *In re Union Bank of Kingston-upon-Hull, L. R., 13 Ch. D., 509*, that *J*'s notice of dissent of the 5th August was in itself an insufficient notice under the provisions of s. 175 of the Indian Companies Act, 1866, inasmuch as it did not contain the requisition to the liquidators required by the latter part of that section, and that, consequently, it was open to the liquidators to have treated *J* as disentitled to the rights of a dissentient shareholder under that section. *Held*, further, that it was within the power of the liquidators to waive such informality in the notice on behalf of the company, and that they had in fact done so, and that *J* was consequently entitled to the rights of a dissentient shareholder under that section. *Held*, further, that the rights of a dissentient shareholder, under that and the following sections, who had elected to have the value of his interest in the company decided by arbitration, were not limited to a single reference to arbitration, and were not extinguished by the expiry, without an award being made, of the time fixed by such reference for making an award; that in such a case, unless otherwise disentitled, the dissentient shareholder was entitled to a second reference to arbitration for the purpose of arriving at a definite result by means of an award, which was the object contemplated by those sections of the Act. *IN RE FLEMING SPINNING AND WEAVING COMPANY. JEHANGIR GUSTADJI v. JOOSUF HAJI AHMED*

[I. L. R., 7 Bom., 494]

## (b) DUTIES AND POWERS OF LIQUIDATORS.

83. — Power of liquidators to compromise under sanction of the Court—*Act X of 1866, s. 174*.—Under s. 174 of the Indian Companies Act, the Court has power to sanction compromises of calls, debts, and liabilities before the list of contributories has been settled, or the competence of the shareholders has been ascertained. The Privy Council will be reluctant to interfere with the discretion of Courts having jurisdiction to sanction a

## COMPANY—continued.

## 7. WINDING UP—continued.

compromise by the liquidators of a company winding up under s. 174 of the Indian Companies Act, where all the facts have been placed before the Court in India, and there is no reason to suppose that the proceedings for a compromise have been tainted with fraud. *BANK OF HINDUSTAN, CHINA, AND JAPAN v. EASTERN FINANCIAL ASSOCIATION*

[3 B. L. R., P. C., 8; 12 W. R., P. C., 27  
13 Moore's I. A., 15]

84. — Power of provisional liquidator to make advances—*Mortgagees for advances to indigo factory*.—Where it was shown that the bank was first mortgagee of certain indigo concerns, and had advanced money to the planter for the purpose of carrying on the cultivation and manufacture up to the time of the winding-up, and it was still necessary that further sums should be advanced for the completion of the cultivation and manufacture, and that under the circumstances it would be clearly for the benefit of the creditors that such advances should be made,—*Held* that the provisional liquidator, supposing the winding-up of the bank and his appointment by the Court in India had not been *ultra vires*, would have been authorized by the Court to make the required advances. *IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866*

[1 Ind. Jur., N. S., 335]

85. — *Mortgages for advances to indigo factory—Companies Act, 1866, ss. 116, 174—Sub-mortgage by liquidator of lien of company on indigo crop*.—Where a bank at the time of its failure were mortgagees of an indigo crop for the season's outlay on which they had advanced sums of money, and it was found that a further sum was necessary to complete the season's cultivation and manufacture of the crop which would otherwise be lost, an application that the provisional liquidator should be allowed to borrow the money required from third persons, assigning to them the mortgage lien held by the bank on the crop on trust to pay themselves in the first place and afterwards to pay the surplus proceeds to the bank, was refused as not being sanctioned by the provisions of s. 116 and s. 174 of the Companies Act, 1866. The Court had no power to sanction such an arrangement, which would be altering in a material degree the footing on which a security held by the bank stood, and interposing a new trust between it and its debtor. *IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND OF AGRA AND MASTERMAN'S BANK*

[1 Ind. Jur., N. S., 350]

86. — Powers of liquidator after dissolution of company—*Companies Act (VI of 1882), s. 197—Promissory note, Suit on*.—Suit on a promissory note of the defendant in favour of a company: the note was payable to the company or order. The company had gone into liquidation, and a liquidator had been duly appointed. The plaintiffs had purchased, together with certain other assets of the company, the note sued on, but did not obtain the liquidator's endorsement of the note until after the dissolution of the company was completed.

## COMPANY—continued.

## 7. WINDING UP—continued.

*Held* that the liquidator had no power to endorse the note to the plaintiffs. **RAMACHANDRA RAU v. KANDASAMY CURTI** . I. L. R., 18 Mad., 498

87. Letters of administration to estate of deceased shareholder—Omission to put on list of contributories all persons liable as representatives of deceased shareholders.—The official liquidator need not take out letters of administration to the estate of a deceased shareholder before settling the list of contributories. There is nothing in ss. 126 and 144 of the Companies Act (VI of 1882) requiring the official liquidator to

liquidator to do so. **SORABI JAMSETJI v. ISHWAR-DAS JUGHWANDAS** . I. L. R., 20 Bom., 654

88. Voluntary liquidation—Liquidator, borrowing powers of—Assets—Principal and agent—Election—Subrogation—Companies Act (VI of 1882), ss. 144 (f), 177 (g).—Case in which it was held that a liquidator of a company being voluntarily wound up had power to borrow for the purposes of winding up, including the working of steamers and docks, on the credit of the assets of the company without security, written or otherwise, and that the loan in question was within his powers and was in fact made to the company, though the liquidator also made himself personally liable. *Per PETHERAM, C.J.*—*Held* that a person contracting with an agent may look directly to the principal unless by the terms of the contract he has agreed not

THE MATTER OF GANGES STEAM TRG COMPANY.  
EX-PARTE DELHI AND LONDON BANK

[I. L. R., 18 Calc., 31

89. Application by official liquidator for sanction to sale of company's property—Lease—Covenant against assignment—Covenant not applying to assignments other than by act of parties—Companies Act (VI of 1882), s. 144—Act IV of 1882 (Transfer of Property

## COMPANY—continued.

## 7. WINDING UP—continued.

proposed sale would be in contravention of the covenant. *Held* that the covenant did not apply to assignments by operation of law or assignments authorized by statute. Ss. 10 and 12 of the Transfer of Property Act (IV of 1882) relate only to transfers by act of parties. **IN THE MATTER OF WEST HORETOWN TEA COMPANY** . I. L. R., 12 All., 163

90. Duty of liquidator—Fiduciary of creditor appointed liquidator.—A person who has been appointed liquidator of a company ought not, after such appointment, to continue to act as valid of a creditor, whose right to prove against the company is in dispute in the liquidation. **IN THE MATTER OF WEST HORETOWN TEA COMPANY**

[I. L. R., 9 All., 180

## (c) COSTS AND CLAIMS ON ASSETS.

an order for its being so wound up. The petitioning creditor is entitled to his costs as a first charge on the assets of the company, subject to any prior liens on the estate. **IN RE NABOB HADJI TEA COMPANY** . 3 B. L. R., Ap., 11

92. Distribution of assets—Companies Act (XIX of 1857), s. 73.—Where a

[1 Ind. Jur., N. S., 304

93. Loan society—Member withdrawing from association—Notice of withdrawal.—One of the articles of association of a registered loan society provided that a member who has received no loan may withdraw from the association and receive the amount at his credit in calls minus the arrears, if any, and interest due thereon on giving one month's notice, such withdrawals to be paid from the first available funds. The society went into voluntary liquidation. By an extraordinary resolution it was resolved that the assets be rateably divided among the shareholders who had already withdrawn and those who were still

papers, and that a copy be posted at the society's



## COMPANY—continued.

## 7. WINDING UP—continued.

*Held* that the liquidator had no power to endorse the note to the plaintiffs. **RAMACHANDRA RAU v. KANDASAMI CHETTI** . I. L. R., 18 Mad., 498

87. ——— Letters of administration to estate of deceased shareholder—*Omission to put on list of contributories all persons liable as representatives of deceased shareholders.*—The official liquidator need not take out letters of ad-

**DAS JUGTIWANDAS** . I. L. R., 20 Bom., 654

88. ——— Voluntary liquidation—*Liquidator, Borrowing powers of—Assets—Principal*

**PETHERAM, C.J.**—*Held* that a person contracting

**THE MATTER OF GANGES STEAM TCG COMPANY. EX-PARTE DELHI AND LONDON BANK**

[I. L. R., 18 Cal., 31

89. ——— Application by official liquidator for sanction to sale of company's

property of the company overrides a private contract against assignment made by the company. A covenant in a lease to a company provided that the

## COMPANY—continued.

## 7. WINDING UP—continued.

lessors should not "assign, underlet, or part with the possession of any part of the said premises unless with the express consent in writing of the said lessors or their assigns." The company having gone into liquidation, and the official liquidator having applied, under s. 141 (c) of the Indian Companies Act, for sanction to sell the company's property, it was objected on behalf of the lessors' assigns that the proposed sale would be in contravention of the covenant. *Held* that the covenant did not apply to assignments by operation of law or assignments authorized by statute. Ss. 10 and 12 of the Transfer of Property Act (IV of 1882) relate only to transfers by act of parties. **IN THE MATTER OF WEST HOPETOWN TEA COMPANY** . I. L. R., 12 All., 193

90. ——— Duty of liquidator—*Valid of creditor appointed liquidator.*—A person who has been appointed liquidator of a company ought not, after such appointment, to continue to act as *vikil* of a creditor, whose right to prove against the company is in dispute in the liquidation. **IN THE MATTER OF WEST HOPETOWN TEA COMPANY** [I. L. R., 9 All., 180

## (c) COSTS AND CLAIMS ON ASSETS.

an order for its being so wound up. The petitioning creditor is entitled to his costs as a first charge on the assets of the company, subject to any prior liens on the estate. **IN RE NARON HANI TEA COMPANY** . 3 B. L. R., Ap., 11

92. ——— Distribution of assets—*Companies Act (XIX of 1857), s. 73.*—Where a company is being wound up under Act XIX of 1857, and its assets are collected and distributed under the 73rd section of that Act, all creditors take *pro rata*. **IN THE MATTER OF ACT XIX OF 1857 AND GANGES STEAM NAVIGATION COMPANY**

[1 Ind. Jur., N. S., 304

93. ——— Loan society—*Member withdrawing from association—Notice of withdrawal.*—One of the articles of association of a registered loan society provided that a member who has received no loan may withdraw from the association and receive the amount at his credit in the society minus the arrears, if any, and interest thereon on giving one month's notice. The society went into liquidation. The liquidator called the assets in and the society was wound up. The society was wound up under the provisions of the Companies Act, 1857. The liquidator was asked to pay the amount due to the member who had withdrawn. The liquidator refused to pay the amount, saying that the member had not given notice of withdrawal. The member claimed that the notice was given. The liquidator said that the notice was not given. The court held that the member was entitled to the amount. **IN THE MATTER OF THE GANGES STEAM NAVIGATION COMPANY**

## COMPANY—continued.

## 7. WINDING UP—continued.

office. *Held*, affirming the judgment of SHEPHERD, J., that these members who had given notice of withdrawal under the article quoted above were entitled to be paid out of the assets of the society in priority to the other members. *ADIPURNAM PILLAI v. D'SENA* [I. L. R., 19 Mad., 85]

94. ———— *Claims on assets—Precedence of judgment-debt due to Secretary of State—Stay of execution of judgment-debt.*—A judgment-debt due to the Crown is in Bombay entitled to the same precedence in execution as a like judgment-debt in England, if there be no special legislative provision affecting that right in the particular case. Under similar circumstances, a judgment-debt due to the Secretary of State in Council for India is in Bombay entitled to the like precedence, and the reason is that such debt is vested in the Crown, and when realized falls into the State treasury. The nature of the cause of action in respect of which the judgment was recovered does not affect the right of the Crown or of the Secretary of State in Council for India to priority. As the Crown is not, either expressly or by implication, bound by the Indian Companies Act (X of 1866), and as an order made under that Act for the winding-up of a company does not work any alteration of property, such an order does not enable the Court to stay the execution of a judgment-debt due to the Crown or to the Secretary of State in Council for India. It is a principle recognized by the laws of many countries that claims of the Crown or State are entitled to precedence,—e.g., the Hindu, Roman, and French codes, the laws of Spain, the United States of America, Scotland, and England. *SECRETARY OF STATE IN COUNCIL FOR INDIA v. BOMBAY LANDING AND SHIPPING COMPANY* . . . . . 5 Bom., O. C., 23

95. ———— *Secured and unsecured creditors—Application of English law where Indian Act is silent—Rule of justice, equity and good conscience.*—There being no provision in the Indian statute law by which on the winding-up of a company, secured creditors are entitled to any preference over unsecured creditors, in such proceedings the rule of English law—that secured creditors can only prove for the balance of their debts after deducting the value of their securities—should prevail as being consonant . . . . . good conscience. *Waghela . . . . . I. L. R., 11 Bom., 551; L. R., 14 I. A., 89*, referred to. *MUSSOORIE BANK v. HIMALAYA BANK*

[I. L. R., 16 All., 53]

96. ———— *Right of servants to prove preferentially to other creditors—Wages of captain and crew.*—Where a steam tug company was being wound up under the Indian Companies Act, 1866, it being admitted that the vessels were in the habit of going to sea,—*Held* that the captains and crews were entitled to rank preferentially and to be paid their wages in full, in priority to the claims of other creditors. *Semble*—They would be similarly entitled if the vessels plied substantially in tidal waters, whether plying actually on the open sea or

## COMPANY—continued.

## 7. WINDING UP—continued.

not. *Held*, also, that, in the absence of any contract or custom to the contrary, the captains and crews were monthly servants of the company, and were entitled to be paid only for the month in which they were dismissed. *Held*, also, that servants of companies generally had no right to prove in preference to other creditors, or to be paid in full, or in priority to them. But where *A* by his contract was to be paid R1,000 on any breach of its terms,—*Held* that he was entitled to prove for R1,000. *IN RE THE INDIAN COMPANIES ACT, 1866, AND OF CALCUTTA STEAM TUG ASSOCIATION, AND IN RE EASTERN STEAM TUG COMPANY*

[2 Ind. Jur., N. S., 17]

But see *IN THE MATTER OF AGRA AND MASTERMAN'S BANK* . . . . . 1 Ind. Jur., N. S., 352

where, however, the order was made under s. 46 of the Insolvent Act.

97. ———— *Wages of labourers—Beng. Acts III of 1863 and VI of 1865.*—The wages of labourers employed under Bengal Acts III of 1863 and VI of 1865 are leviable out of the land, and form a primary charge upon it, into whosever hands it may pass. Therefore such labourers are entitled to their wages in full against a company which is being wound up; and purchasers of the land from the company are entitled to set off against the purchase-money payments made by them to such labourers on account of wages due to them by the company previous to the purchase. *IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND SOUTHERN CACHAR TEA COMPANY*

[2 Ind. Jur., N. S., 180]

98. ———— *Salary of servant—Proof of claims.*—*A* had been engaged as assistant to a company for three years under articles of agreement, which contained no provision for his dismissal, except in case of *A*'s failure to perform his covenants or for misconduct. Before the expiration of the three years the company was ordered to be wound up under the Indian Companies Act, 1866. At or about the time of filing the petition to wind up, notice had been given to *A* that his services were no longer required. Since then *A* had been unable, though he had done his best, to obtain service elsewhere. *A*'s period of contract had since expired. *B* also had been similarly engaged, but had received no such notice, and was still continuing in the company's service. His period of contract had not yet expired. In a proceeding in proof of claims of creditors against the company,—*Held* that *A* was entitled to his salary to the end of the period of three years. *B* was also entitled to his salary to the end of the period of his contract, or should that happen first, till the company came to an end. *IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND SEENSAUGOR TEA COMPANY* 2 Ind. Jur., N. S., 257

99. ———— *Unpaid wages of servants—Priority—Indian Companies Act, VI of 1862.*—Under the Indian Companies Act, VI of 1862, the claim of servants of a company, in respect of

## COMPANY—continued.

## 7. WINDING UP—continued.

unpaid wages, has no priority to other debts due by the company. *IN RE PARELL MILLS COMPANY*

[I. L. R., 10 Bom., 211

100. ————— *Companies Act*

IN THE MATTER OF THE INDIAN COMPANIES ACT, 1882, AND IN THE MATTER OF T. F. BROWN & CO.

[I. L. R., 14 Calo., 218

the cost of each side should be paid as a first charge out of the estate. *IN THE MATTER OF WEST HOPETOWN TEA COMPANY* . I. L. R., 11 All., 349

## (d) LIABILITY OF OFFICERS.

Be fully and adequately set out in an affidavit or affidavit. *IN RE JEHANGIR KARANI & CO. MOHAMMAD RUSTOMJI DASAR v. PESTONJI EDALJI DHARWAR* . I. L. R., 19 Bom., 88

103. ————— *Auditor—Misfeasance—Damages—Remoteness of loss—Limitation Act (XV of 1877), sch. II, art. 35.*—An auditor of a company to which Act VI of 1882 applies, who is duly appointed by a general meeting of the company

## COMPANY—concluded.

## 7. WINDING UP—concluded.

necessary that the loss to the company in respect of which compensation is asked for should be the direct, and not a remote and more or less speculative, consequence of the misfeasance or neglect of duty on the part of the director or other officer of the company

*NELL v. HIMALAYA BANK* . I. L. R., 18 All., 12

104. ————— *Substitution of representatives of deceased respondent as parties—*

[I. L. R., 18 All., 168

## "COMPASS MAP," MEANING OF—

— "Compass map" generally means the revenue survey's map. *BEITTS v. MAHOMMED ISMAIL CHOWDHRY* . 25 W. R., 521

## COMPENSATION.

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(a) FOR LOSS OR INJURY CAUSED BY OFFENCE . . . . . 1443

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*See COSTS—SPECIAL CASES—GOVERNMENT.* [Marsh., 91

*See CASES UNDER LAND ACQUISITION ACT, ss. 35, 39.*

*See CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE—COMPENSATION FOR IMPROVEMENTS.*

## 1. CIVIL CASES.

1. ————— *Release of attached property—Civil Procedure Code, 1859, s. 83—Compensation*

**COMPENSATION—continued.****1. CIVIL CASES—concluded.**

under s. 88, Act VIII of 1859, can only be awarded, on the application of the defendant, by the Court which disposes of the case, and cannot be given by another Court in whose custody certain property belonging to the defendant has been found and attached at the instance of the plaintiff. **HUBO SOONDERY DOSSEE v. BUNGSEE MOHUN DOSS**

[3 W. R., Mis., 28]

**2. ——— Excessive attachment—Civil Procedure Code, 1859, s. 88.**—Where a suit was for Rs. 3,000, and the plaintiff, who was declared entitled to Rs. 77, without sufficient grounds attached the defendant's property to the amount of Rs. 3,000, the defendant was held entitled to compensation. **MAHOMED REZOODDEN v. HOSEIN BUKSH KHAN**

[6 W. R., Mis., 24]

**3. ——— Claim made by defendant for compensation for arrest—Civil Procedure Code (1882), s. 491—Leave to appear and defend—Cross claim in summary suit—Set-off—Practice.**—In a summary suit, if a defendant has been arrested before judgment and claims compensation for such arrest under s. 491, he is entitled on that ground to apply for leave to defend the suit, and, if a *prima facie* case is made out, leave to defend should be given. (2) Under the Civil Procedure Code (Act XIV of 1882), a cross claim made by a defendant against a plaintiff cannot, in ordinary cases, be set up as a defence, except when it arises out of the very transaction sued upon and is in the nature of a set-off; but the special cross claim provided for by s. 491 of the Code, *viz.*, a claim for compensation for arrest on insufficient grounds, may under that section be taken into account in any suit, and the amount awarded as compensation be awarded in the decree, and thus *pro tanto* be a defence to the plaintiff's claim in the suit. **ROULET v. FETTERLE**

[I. L. R., 18 Bom., 717]

**2. CRIMINAL CASES.****(a) FOR LOSS OR INJURY CAUSED BY OFFENCE.**

**4. ——— Order that portion of fine should be paid as compensation—Criminal Procedure Code, 1861, s. 44.**—The accused were convicted of the theft of some bullocks and fined. Under s. 44 of the Criminal Procedure Code, the Magistrate directed that the fines, if collected, should be paid to a witness as compensation for having to return the bullocks which he had purchased to the complainant. *Held* that this order was bad. The sale to the witness was not "the offence complained of" within the meaning of s. 44. **ANONYMOUS**

[7 Mad., Ap., 13]

**5. ——— Award of portion of fine in theft where property is recovered.**—Where loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award portion of the fine inflicted on the accused as amends to the owner of such property, although

**COMPENSATION—continued.****2. CRIMINAL CASES—continued.**

the stolen property is recovered and restored to the owner. **REG. v. YESSAPPA BIN NINGAPPA**

[5 Bom., Cr., 41]

**6. ——— Nature of compensation—Loss to person injured—Damages.**—The compensation awarded, under s. 44 of the Code of Criminal Procedure, to the person injured, in consideration of the loss which he has suffered, corresponds to damages awarded in civil proceedings. **QUEEN v. BALJOO KOORMEE**

5 W. R., Cr., 78

**7. ——— Proof of loss or damage—Criminal Procedure Code, 1861, s. 44.**—On a reference by a Sessions Judge, an order made by a Magistrate under s. 44 of the Criminal Procedure Code, 1861, awarding compensation to the complainant out of a fine inflicted for causing hurt reversed, as there was no evidence on the record to show that loss was caused or that any special damage of a pecuniary nature resulted to the complainant from the offence. **REG. v. SAMSEN BABAJI**

3 Bom., Cr., 43

**8. ——— Compensation between co-defendants—Criminal Procedure Code, s. 44.**—A Magistrate has no power to take property from one defendant and give it to another defendant. **ANONYMOUS**

4 Mad., Ap., 28

**9. ——— Injury by negligence of accused—Award from fine imposed on person negligently digging pit whereby another person was injured.**—An award of compensation to the widow of a person who died in consequence of a fall into a pit, negligently dug by the accused, from the fine imposed on the latter, is illegal. **REG. v. SHIABASAPPA**

[7 Bom., Cr., 73]

**10. ——— Death caused by rash and negligent act—Criminal Procedure Code, s. 545—Compensation to widow of deceased.**—An order that the amount of a fine imposed on one convicted of causing death by a rash and negligent act be paid as compensation to the widow of the deceased is illegal. **IN RE LUTCHMAKA**

I. L. R., 12 Mad., 352

**11. ——— Death caused by negligence—Criminal Procedure Code (Act X of 1882), s. 545—Compensation to widow.**—A Magistrate imposed a fine in addition to a sentence of imprisonment on a conviction for the offence of causing death by a rash and negligent act and gave compensation to the widow of the deceased out of the fine imposed. *Held* that compensation could not be given to the widow under Criminal Procedure Code, s. 545. **YALLA GANGULU v. MAMIDI DADI**

[I. L. R., 21 Mad., 74]

**12. ——— Heirs of person suffering by offence—Criminal Procedure Code, 1861, s. 44.**—Compensation under s. 44 of the Code of Criminal Procedure cannot be awarded to any one excepting the person who has directly suffered by the offence. It cannot be given to the heirs of a person who has been killed. **QUEEN v. LALL SINGH**

[10 W. R., Cr., 30]

## COMPENSATION—continued.

## 2. CRIMINAL CASES—continued.

fine as compensation to a person who has purchased the stolen property. **QUEEN v. REDDON**  
[I. L. R., 6 Mad., 289]

Procedure, s. 303, means that the compensation awarded by the Magistrate is to be taken into consideration by the Court in a subsequent civil suit, not that it is to be afterwards deducted from the damages awarded. **LOVE v. AINSWORTH** 22 W. R., 338

**EMPERESS v. NAKARAY VAMAHU**  
[I. L. R., 23 Bom., 439]

[I. L. R., 23 Bom., 711]

18. ——— **Cattle Trespass Act, 1871.**

ful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded in a matter under s. 21 of the Cattle Trespass Act. **IN THE MATTER OF KETABDI MENDEL**

[3 C. L. R., 507]

19. ——— **Illegal seizure and detention of cattle—Costs of prosecution—Court Fees Act, s. 31.**—A Magistrate, having under

## COMPENSATION—continued.

## 2. CRIMINAL CASES—continued.

of the cattle. **HUSSAIN v. SANJEVI**  
[I. L. R., 7 Mad., 346]

against two persons under that section, which does not specify the proportionate amount payable by each, is good. **IN THE MATTER OF NEAZ v. MONSON**  
[I. L. R., 14 Cal., 175]

21. ——— **Illegal seizure of**

cattle, but rather one of them, as an offence, that offence were present, and the accused should have been charged with and tried for that offence. **Held**, further, that the sentence of imprisonment in default of payment of the compensation was not warranted by law. Compensation may be levied as a fine, and the ordinary mode of levying fines is laid down in s. 356 of the Code of Criminal Procedure. The law nowhere provides that fines may be levied by means of imprisonment. **PARTAO RAI v. ARJU MIAN**  
[I. L. R., 23 Cal., 139]

**QUEEN-EMPERESS v. LAKSHMI NAKARAY**  
[I. L. R., 19 Mad., 238]

22. ——— **Offence, whether mere breach of contract amounts to an—Criminal Procedure Code (Act V of 1898), ss. 4, cl. (a), 250—Act XIII of 1859, s. 2.**—A mere breach of contract is not, under the first part of s. 2 of Act XIII of 1859, an offence within the meaning of the term in s. 4 of the Criminal Procedure Code, and no compensation can, therefore, be legally awarded under s. 250 of the Code in respect of such breach. **IN THE MATTER OF THE PETITION OF RAM SAREF BHASKAR**  
[4 C. W. N., 253]

## COMPENSATION—continued.

## 2. CRIMINAL CASES—continued.

## (b) TO ACCUSED ON DISMISSAL OF COMPLAINT.

23. ——— Compensation to accused—Power to award compensation without hearing evidence.—*Held* that it was not competent to the Magistrate to order compensation to the accused under s. 270, Act XXV of 1861, without hearing evidence. *BILASHI v. MAKHOOL*

[2 B. L. R., S. N., 15; 10 W. R., Cr., 61]

24. ——— False case of theft—Criminal Procedure Code, 1861, s. 270.—Compensation is not allowable in false cases of theft. *JUNOORUN v. GURDHAREE RAM*

[3 W. R., Cr., 70]

*CHIDI CHOWDER v. BHOWANY*

[1 W. R., Cr., 1]

*QUEEN v. GOGUN SEIN* . . . 2 W. R., Cr., 57

*JALIL MUNSHI v. FARNAM HOSSEIN*

[8 W. R., Cr., 55]

*DHURAI NOSHYO v. HUBEI NOSHYO*

[7 W. R., Cr., 12]

*CHOOTOO DHOON BHAREONIA v. ABDUL MEAH*

[7 W. R., Cr., 40]

*GUNAMANEE v. HAREE DATTA*

[18 W. R., Cr., 8]

But see *KALI CHURN LAHIRI v. SHOSHIEE BHOSUN SANYAL* . . . 23 W. R., Cr., 17

25. ——— Defamation.—Nor in a case of defamation. *ASSABUDDIE KHAN v. BALOO KHAN* . . . 1 W. R., Cr., 6

26. ——— Penal Code, s. 374.—But only in cases under Ch. XV of the Criminal Procedure Code, and therefore not in a case under s. 374 of the Penal Code. *RATEBAH v. PHOKONDEE* . . . 5 W. R., Cr., 1

27. ——— S. 270 of the Code of Criminal Procedure applies only when a complaint of an offence, triable under Ch. XV of the Code, is dismissed. *ANONYMOUS*

[6 Mad., Ap., 49]

*QUEEN v. LALLOO SINGH* . . . 8 W. R., Cr., 54

where it was held the section did not apply to cases of mischief committed on land and house-breaking by night, though both contain an element of criminal trespass to which the section does apply.

28. ——— Amount of compensation.—Rs 50 is the measure of compensation awardable from any complainant, irrespective of the number of accused persons. *QUEEN v. LALLOO SINGH* . . . 8 W. R., Cr., 54

29. ——— Wrongful confinement.—Compensation cannot be awarded in a case of wrongful confinement. *JHARU v. BAHAR ALLY*

[7 W. R., Cr., 11]

*AZGUR HOWLADAR v. ASABUDDIN*

[17 W. R., Cr., 1]

## COMPENSATION—continued.

## 2. CRIMINAL CASES—continued.

30. ——— House-breaking.—Nor in a case of house-breaking by night. *DHURA NOSHYO v. HUBEI NOSHYO* . . . 7 W. R., Cr., 12

31. ——— Fines—Power of Subordinate Magistrates.—Subordinate Magistrates of the second class have no power to award fines to accused as compensation for frivolous and vexatious prosecutions. *REG. v. JELLAPA DIN MUDAKAPPA*  
[1 Bom., 181]

32. ——— Frivolous and vexatious case—Causing hurt.—In a trial for causing hurt, the Subordinate Magistrate awarded compensation to the defendant for a frivolous and vexatious complaint under s. 270 of the Code of Criminal Procedure. *Held* that the section did not apply to such a case. *ANONYMOUS* . . . 5 Mad., Ap., 40

33. ——— Cases in which summons on complaint issues—Criminal Procedure Code, 1861, s. 270.—Amends, under s. 270 of the Code of Criminal Procedure, are awardable only in cases triable by the Magistrate in which a summons on complaint shall ordinarily issue. *REG. v. RAMJI VALAD DAI* . . . 5 Bom., Cr., 12

34. ——— Fine—Criminal Procedure Code, 1861, Ch. XIV.—A fine cannot be awarded as compensation in a case falling under Ch. XIV of the Code of Criminal Procedure, 1861. *QUEEN v. NJANUND* . . . 3 W. R., Cr., 60

35. ——— Award on dismissal of vexatious complaint—Criminal Procedure Code, 1861, s. 270.—Under s. 270 of the Criminal Procedure Code, a Magistrate dismissing a complaint as frivolous or vexatious can only award a sum not exceeding Rs 50 to the accused by way of compensation, and cannot impose it by the way of fine; nor can he directly sentence the complainant to imprisonment in default of payment. *QUEEN v. GOPAI*  
[2 N. W., 430]

36. ——— Failure to prove case—Criminal Procedure Code, 1861, s. 270.—The High Court refused to interfere with the order of a Magistrate fining complainants under s. 270 of the Code of Criminal Procedure, when it appeared, after due enquiry by the Magistrate, that the complainants laid claim to large jummans in a chur, without possessing any documents to prove their rights. *IN THE MATTER OF MOTHOO GHOSH* . . . 11 W. R., Cr., 10

37. ——— Unfounded charge of being person of bad repute—Criminal Procedure Code, 1861, s. 270.—A Magistrate is not authorized, under s. 270 of the Criminal Procedure Code, to award compensation from the complainant to the accused in respect of an unfounded charge brought against such accused of being a person of bad character or repute. *QUEEN v. BAL KISHEN*  
[2 N. W., 447]

38. ——— Offences other than under Penal Code.—The power of Magistrates to award compensation to accused persons against whom frivolous and vexatious complaints have been

**COMPENSATION—continued.****2. CRIMINAL CASES—continued.**

made is not confined to complaints brought under the provisions of the Penal Code. *QUEEN v. TURNER* [4 N. W., 94]

**39.** *Veraxious charge—Criminal Procedure Code, 1861, s. 270.*—Where a complainant prefers three charges of three distinct offences, two of which are offences triable under Ch. XV and one under Ch. XIV of the Code of Criminal Procedure, a Magistrate may award amends to the accused under s. 270 of the Code, if he considers the charge with reference to the case under Ch. XV to have been veraxious. *MOPHOOGHODUN GHOSH alias MADHUB CHUNDER GHOSH v. JOYRAM HAZRAH* [13 W. R., Cr., 39]

**40.** *Veraxious charge—Criminal Procedure Code, 1861, s. 270.*—Where a judicial officer from over-anxiety for the due administration of justice in his Court makes a mistake in taking steps against parties whose conduct appears to obstruct the Court of Justice, somewhat too hastily and without due circumspection, it is not to be presumed that he had acted veraxiously in the sense of s. 270 of the Criminal Procedure Code, or otherwise than in perfect good faith, so as to justify an award of compensation to the person who was prosecuted by his directions. *ANONYMOUS CASE* [15 W. R., 506]

instituted "upon complaint" of the Criminal Procedure Code, and therefore in such a case an order awarding compensation made under that section is illegal. IN THE MATTER OF THE COMPLAINT OF ISKRI ISHREE v. BAKSHI [I. L. R., 8 All., 96]

**42.** *Criminal Procedure Code, s. 250—Veraxious complaint.*—The provisions of s. 250 of the Code of Criminal Procedure may be applied in summon-cases, whether tried summarily or not. *QUEEN-EMRESS v. BASAVA* [I. L. R., 11 Mad., 143]

**43.** *Criminal Procedure Code, veraxious Criminal action under s. 110 of the Code.*—If a person has been discharged or acquitted, that person is not applicable to an application made to a Magistrate solely with a view to his taking proceedings under s. 110 of the Code. *QUEEN-EMRESS v. LAKHPAT* [I. L. R., 15 All., 363]

**44.** *Imprisonment in default of payment of compensation—Distress—Sentence, Legality of.*—The operation of s. 600 of the Code of Criminal Procedure is restricted to cases instituted by "complaint" as defined in the Code

**COMPENSATION—continued.****2. CRIMINAL CASES—continued.**

or upon information given to a police officer or a Magistrate, and consequently that action has no application to a case instituted on a police report or on information given by a police officer. *Quare*—Whether under the section a Magistrate has power to make an order for imprisonment in default of payment of the compensation awarded? A police constable arrested a person before a Magistrate with an

for the levying of a fine. *DUNOACHARAN SADRU KHAN* [I. L. R., 21 Cal., 870]

**45.** *Penal Code, ss. 193 and 211—Sanction to prosecute and award of compensation in default of payment.*—A Magistrate cannot award compensation to a person who has been prosecuted by his directions.

to him for offences under s. 220 of the Criminal Procedure Code. *QUEEN-EMRESS v. BASAVA* [I. L. R., 11 Mad., 143]

**46.** *Order for imprisonment in default of payment of compensation.*—Although compensation awarded under a CO of the Code of Criminal Procedure is recoverable as if it were a fine, it is not competent to a Magistrate, immediately upon ordering a complainant to pay compensation, to direct that he should in default be sentenced to imprisonment. *QUEEN-EMRESS v. PUNNA* [I. L. R., 18 All., 66]

**47.** *Compensation for frivolous and veraxious complaints.*—A Magistrate cannot award compensation to a person who has been prosecuted by his directions for making a frivolous and veraxious complaint in order at the same time that in default of payment of the compensation the person against whom the order is made suffer imprisonment. *QUEEN-EMRESS v. PUNNA*, I. L. R., 18 All., 66, approved. *MASJID v. MASIK CHAND* [I. L. R., 19 All., 73]

## COMPENSATION—continued.

## 2. CRIMINAL CASES—continued.

48. *Compensation for vexatious complaint—Compensation where the complainant is a police officer.*—S. 560 of the Criminal Procedure Code, 1882, does not authorize a Magistrate to pass an order for compensation to be paid by the complainant to the accused, where the complaint is instituted by a police officer. *Ramjeevan Koormi v. Durgacharan Sadhu Khan, I. L. R., 21 Calc., 979, followed. QUEEN-EMPERESS v. SAKAR JAN MAHOMED* [I. L. R., 22 Bom., 934]

49. *Sanction to prosecute for false charge under s. 211, Penal Code.*—A Magistrate, in acquitting a person accused on a charge of theft which he found to be false and malicious, awarded compensation to each of them to be paid by the complainant. Subsequently one of the accused applied for and obtained sanction to prosecute the complainant for bringing a false charge under Penal Code, s. 211, and certain of his witnesses for the offence of giving false evidence under s. 193. *Held* that the order granting sanction was not illegal as regards the complainant by reason of the previous award of compensation. *ADIKKAN v. ALAGAN* [I. L. R., 21 Mad., 237]

50. *Sanction to prosecute and award of compensation—Criminal Procedure Code (Act V of 1898), s. 250 and s. 476—Magistrate, Discretion of.*—It is an improper exercise of his discretion by a Magistrate to award compensation to the accused under s. 250 of the Criminal Procedure Code, and also to direct or sanction the prosecution of the complainant under s. 211 of the Penal Code for bringing a false charge. *Shib Nath Chong v. Sarat Chunder Sarkar, I. L. R., 22 Calc., 586, followed. Queen v. Rupan Rae, 6 B. L. R., 296: 15 W. R., Cr., 9, referred to. BACHU LAL v. JAGDAM SAHAI* . . . I. L. R., 28 Calc., 181

51. *Dismissal in default of appearance.*—Where a Magistrate dismissed a complaint in default, under s. 259, Code of Criminal Procedure, and fined the complainant under s. 270, the fine was remitted and ordered to be refunded. *RAM CHURN DEY v. JANULL* [17 W. R., Cr., 6]

52. *Amount of compensation—Criminal Procedure Code, 1869, s. 270.*—Since the passing of Act VIII of 1869, a Magistrate may, under s. 270, in a case in which more than one person has been accused, award compensation not exceeding Rs 50 to each person. IN THE MATTER OF THE PETITION OF BHAYROO LALL [14 W. R., Cr., 75]

53. *Alteration of charge to bring offence under Ch. XV of Code—Criminal Procedure Code, 1861, s. 270.*—When on a complaint being preferred to a Magistrate of an offence not coming within Ch. XV of the Code of Criminal Procedure, the Magistrate alters it so as to bring it under Ch. XV, he cannot award compensation to the accused under s. 270 of the Criminal Procedure Code, the offence originally complained of

## COMPENSATION—continued.

## 2. CRIMINAL CASES—continued.

not being one for which compensation can be awarded. *REG. v. GURNINGAPA* 7 Bom., Cr., 58

54. *Alteration of charge to bring offence under Ch. XV of Code—Held* that, where a Magistrate is dealing with a charge which he has the power to dispose of finally under Ch. XV of the Code of Criminal Procedure, although the charge, as originally laid, fell under Ch. XIV, he has a discretion to inflict a fine under s. 270 of that Code. *HOTHOOB LALOONG v. HINDOO SINGH MOUZ* . . . 10 W. R., Cr., 49

55. *Cattle Trespass Act, 1871, s. 20—False complaint.*—A complaint was made against certain persons under s. 20 of the Cattle Trespass Act of 1871, charging them with having illegally seized and detained the complainant's cattle. The Assistant Magistrate who heard the complaint found it to be false, and he ordered the complainant to pay Rs 20 compensation to the accused and in default to suffer simple imprisonment for 21 days. On application to the High Court, *Held* that the order was illegal, and must be set aside. IN THE MATTER OF KALA CHAND v. GUDADHUR BISWAS [I. L. R., 13 Calc., 304]

56. *Cattle Trespass Act, 1871, s. 20—F frivolous complaint—Compensation—Cattle Trespass Act, Ch. V—Complaint of illegal seizure, not complaint of offence—Criminal Procedure Code, s. 250.*—The illegal seizure of cattle under colour of the Cattle Trespass Act, 1871, not having been constituted an offence under that Act or otherwise, an award of compensation, under s. 250 of the Code of Criminal Procedure, to the accused on such complaint is illegal. *PITTOHI v. ANKAPPA* [I. L. R., 9 Mad., 102]

57. *Cattle Trespass Act, s. 20—Criminal Procedure Code, s. 4 (a), s. 250—Illegal seizure of cattle under the meaning of Trespass Act, not an offence within the meaning of the Code of Criminal Procedure.*—In a case instituted upon complaint made under s. 20 of the Cattle Trespass Act, the Magistrate acquitted the accused, and, being of opinion that the complaint was vexatious, directed the complainant to pay compensation to the accused as under s. 250 of the Code of Criminal Procedure. *Held* that the act complained of was not an offence within the meaning of the Code of Criminal Procedure, and that the order awarding compensation was illegal. *KOTTALANADA v. MUTHAYA* [I. L. R., 9 Mad., 374]

58. *Criminal Procedure Code (1882), s. 560—F frivolous and vexatious complaint—Cattle Trespass Act (IX of 1871), s. 20—Complaint of wrongful seizure of cattle—“Offence.”*—A complaint of an offence within the meaning of the Code of Criminal Procedure, it is not competent to a Court to act under s. 560 of the Code and award compensation to the persons against whom the complaint is made. *Pitchi v. Ankappa, I. L. R., 9 Mad., 102, Kottalanada v. Muthaya, I. L. R.,*

## COMPENSATION—continued.

## 2. CRIMINAL CASES—continued.

8 *Mad.*, 374, *Kalachand v. Gudadhar Biswas*,  
*I. L. R.*, 13 *Cal.*, 304, and *Nedaram Thakur v.*  
*Joonab*, *I. L. R.*, 23 *Cal.*, 248, referred to. *ME-*  
*GHAI v. SREOVIK* . . . *I. L. R.*, 18 *Al.*, 353

59. ————— *Cattle Trespass*  
*Act*, 1871, s. 20—Fine or imprisonment in default  
of payment.—It is not lawful to pass a sentence of  
fine or of imprisonment in default of payment of the  
compensation awarded in a matter under s. 20 of the  
*Cattle Trespass Act* (1 of 1871). *IN THE MATTER*  
*OF KILABDI MURDUL* . . . 2 *C. L. R.*, 507

60. ————— *Dismissal of*  
*charge—Criminal Procedure Code*, 1882, s. 245  
(1872, s. 211)—Order of acquittal.—An order for  
compensation against a complainant may be made on  
an order of acquittal under s. 211 of the *Criminal*  
*Procedure Code*. *MONA SREIKH v. ISHAN BARDHAN*  
*(I. L. R., 6 Cal., 581)*

61. ————— *Dismissal of*  
*charge after hearing evidence—Criminal Proce-*

*der v. Ambu*, *I. L. R.*, 5 *Mad.*, 381, followed.  
*QUEEN-EMPRESS v. PANDU VALAD GOPALA*  
*(I. L. R., 10 Bom., 199)*

62. ————— *Failure to sub-*

*QUEEN v. RUPAN RAI*  
*(3 B. L. R., 393; 15 W. R., Cr., 0)*

63. ————— *Trial in original*  
*Court—Criminal Procedure Code*, 1872, s. 209.—  
The special provisions of s. 209 of Act X of 1872 as  
to award of compensation to a complainant are appli-  
cable only in the case of original trials under  
Ch. XVI of the *Criminal Procedure Code*, 1872.  
*ANONYMOUS* . . . 8 *Mad., Ap.*, 7

64. ————— *Acquittal after*

65. ————— *Acquittal after*  
*trial of charge—Criminal Procedure Code*, 1872  
s. 209.—The fact that the accused has been tried and  
acquitted is no bar to the award of compensation

## COMPENSATION—continued.

## 2. CRIMINAL CASES—continued.

under s. 209 of the *Code of Criminal Procedure*, 1872  
*NUMBER v. AMBU* . . . *I. L. R.*, 5 *Mad.*, 381

66. ————— *Criminal Pro-*  
*cedure Code* (1882), s. 560—Separate charges and

sation was set aside on the ground that s. 560 could  
only operate when there was a complete discharge or  
acquittal. *MUKTI DEWA v. JHOTU SANTHA*

*(I. L. R., 24 Cal., 53)*  
*I. C. W. N.*, 17

as the complainant, and he, having acted judicially, was  
not liable to the penalty provided in s. 209 of the  
*Criminal Procedure Code*. *IN RE KESHAV LAKSH-*  
*MAN* . . . *I. L. R.*, 1 *Bom.*, 175

68. ————— *Complainant—*  
*Complaint—Criminal Procedure Code* (Act X of  
1882), ss. 250, 560—*Criminal Procedure Code*  
*Amendment Act* (IV of 1891), s. 2—*Penal Code*  
(Act XLV of 1860), s. 186.—Where a Civil Court

before the *Magistrate* on the *complaint*  
*HEARTY CHUNDER NATH v. JARED ALI BISWAS*  
*(I. L. R., 20 Cal., 491)*

69. ————— *Complaint of*  
*Assault—Summons for assault—Discharge of accused.*  
—Where the complaint, and the proof adduced to  
support thereof, showed that the accused persons, if  
guilty at all, were guilty of offences not triable under  
Ch. XVI of the *Code of Criminal Procedure*, 1872,  
and the Magistrate issued a summons to answer

## DIGEST OF CASES.

( 1456 )

**COMPENSATION—concluded.****2. CRIMINAL CASES—concluded.**

a charge for assault under s. 352 of the Penal Code and, after examining the witnesses for the complainant, discharged the accused and awarded compensation to the accused under s. 209 of the Code of Criminal Procedure, 1872.—*Held* that the order awarding compensation was illegal. *SOMER v. QUEEN*. I. L. R., 8 Mad., 313

**70.** ———— *Complaint taken cognizance of by Magistrate—Criminal Procedure Code, 1882, s. 250—Complaint to police.*—Under s. 250 of the Code of Criminal Procedure, compensation cannot be awarded when the complaint has been made to the police, the Magistrate has taken cognizance of the case upon receiving a charge sheet against the accused sent in by the police. *QUEEN-EMPRESS v. POLAYARAFU*. I. L. R., 7 Mad., 563

**71.** ———— *Complaints under special law—Criminal Procedure Code, 1861, s. 270.*—S. 270 of the Code of Criminal Procedure does not apply to complaints under a special law, but only to complaints triable by the Magistrate and punishable under the Penal Code with imprisonment for a period not exceeding six months. *QUEEN v. ABDUL AZEEZ KHAN*. 14 W. R., Cr., 38

**72.** ———— *Order for compensation to complainant under Act XIII of 1859—Breach of contract.*—An order directing compensation under Act XIII of 1859 is illegal. Such portion of the money advanced to the defendant as had been appropriated to the fulfilment of the contract, or as could justly be set off against a part fulfilment of the contract, ought not to be ordered to be refunded. *ANONYMOUS*. 4 Mad., Ap., 68

**73.** ———— *Effect of award of compensation on dismissal of complaint—Right of suit.*—The compensation or award which a Magistrate, who dismisses a complaint as frivolous or vexatious, is empowered in his discretion to award to an accused person, does not deprive the latter of any right of suit in the Civil Court which he may possess. *ADRAM v. HURBULLUB*. 2 N. W., 58

**74.** ———— *Recovery of amount when not paid—Distress warrant—Criminal Procedure Code, 1872, s. 209.*—A Magistrate in making an order for compensation under s. 209, Code of Criminal Procedure, is bound, if the amount be not paid, to proceed to the recovery of it by distress and sale of the moveables of the person ordered to pay; but if such person admits he has no goods, and thereupon waives the right to have the amount levied by distress, the Magistrate may proceed to imprison him in the civil jail. The warrant of distress cannot have currency simultaneously with the imprisonment. *BISHESHWAR SHANU v. BISHWAMBHUR SIRCAR*. [23 W. R., Cr., 65

**COMPLAINANT.**

*See COMPENSATION—CRIMINAL CASES—To ACCUSED ON DISMISSAL OF COMPLAINT*. I. L. R., 1 Bom., 175  
[I. L. R., 20 Calc., 481

*See CONVICTION*. 22 W. R., Cr., 32  
*See OATHS ACT*, ss. 8, 9, 10, 11.  
[I. L. R., 13 Bom., 389

**1.** ———— *Person giving information to police of murder—Criminal Procedure Code, 1861, s. 360.*—Where a person gave information to a Magistrate and the police of murder having been committed, and subsequently, on the charge having been dismissed, petitioned the Sessions Judge to have the matter re-investigated.—*Held* that he was not a complainant within the meaning of s. 360 of the Criminal Procedure Code, 1861. *REG. v. FATECHAND VASTACHAND*. 5 Bom., Cr., 85

**2.** ———— *Contempt of authority of public servant—Criminal Procedure Code, 1872, s. 210.*—In cases of contempt of lawful authority of a public servant, the complainant referred to in s. 210 of the Code of Criminal Procedure is the public servant whose authority has been resisted, and without whose sanction no criminal proceedings can be instituted against the offender, and not the person injured by the resistance. *IN RE MUSE ALI ADAM*. [I. L. R., 2 Bom., 653

**3.** ———— *Complaint of bigamy by a person "aggrieved"—Criminal Procedure Code, s. 198—Penal Code (Act XLV of 1860), s. 494.*—Where the wife of a lunatic was prosecuted for bigamy on the complaint of the lunatic's brother,—*Held* that the complainant, merely as brother of the lunatic, was not a "person aggrieved by such offence" within the meaning of s. 198 of the Criminal Procedure Code (X of 1882), and that the complaint could not be entertained. *QUEEN-EMPRESS v. BAI RUKSH-MONI*. I. L. R., 10 Bom., 340

**4.** ———— *Complaint by the husband—"Person aggrieved"—Criminal Procedure Code (Act V of 1898), s. 198—Penal Code (Act XLV of 1860), s. 494.*—The husband is a "person aggrieved" within the meaning of s. 198 of the Criminal Procedure Code upon whose complaint the Court should take cognizance of an offence under s. 494 of the Penal Code. *Queen-Emress v. Rukshmoni, I. L. R., 10 Bom., 340*, and *In the matter of Ujjala Bewa*, 1 C. L. R., 523, referred to. *DEPUTY LEGAL RE-MEMBRANCE v. SARNA KAHMI*. [I. L. R., 26 Calc., 336

*CHELLAM NAIDU v. RAMASAMI*. [I. L. R., 14 Mad., 379

**5.** ———— *Witness refusing to answer—Criminal Procedure Code, 1882, s. 485—Penal Code, s. 179.*—*Semble*—A complainant is not a witness punishable for refusal to answer under s. 485 of the Code of Criminal Procedure or under s. 179 of the Penal Code. *IN RE GANESH NARAYAN SATHE*. [I. L. R., 13 Bom., 600

**COMPETENT COURT.**

*See CASES UNDER RES JUDICATA—COMPETENT COURT.*

## COMPLAINT.

Col.

1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES . . . 1457
2. POWER TO REFER TO SUBORDINATE OFFICERS . . . 1467
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See CASES UNDER DISCHARGE OF ACCUSED.

## 1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

1. ——— Cognizance of offence—*Criminal Procedure Code, ss. 191, 202, 203—Magistrate, Power of—“May take cognizance of.” Meaning of—*

summons to the accused, or order an enquiry under s. 202, or dismiss the complaint under s. 203. *UMESH ALI v. SAFFER ALI* . . . I L R. 13 Calc., 334

2. ——— Cognizance of offence without complaint—*Power of Magistrate—Offence under Penal Code or special Act.—To give a Magistrate special Act.* *QUEEN v. PANDA LALL MOOKERJEE* [19 W. R., Cr., 4

3. ——— *Issue of warrant—Power of Magistrate.*—A Magistrate, not being the Magistrate of the district, nor in charge of a division of the district, is not competent to issue warrants for the arrest of persons against whom no complaint has been preferred to him, nor any charge made by the police. *QUEEN v. DOORBAO SINGH* . . . 3 N. W., 317

4. ——— *Power of Magistrate—Information of third person.*—A Magistrate may take cognizance of a case on the information of a third person without any complaint by the party injured. *IN RE RAMCHETAN NEGROO* [9 W. R., Cr., 3

5. ——— Trial without complaint—*Illegal conviction—Railway Act, 1853.*—A conviction and sentence by a Magistrate, P.P., under the Railway Act, reversed; there being no complaint made

## COMPLAINT—continued.

## 1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—continued.

before the Magistrate, as required by the Code of Criminal Procedure. *REG. v. LARKINS*

[4 Bom. Cr., 4

6. ——— *Case referred from Civil Court.*—A Magistrate, P.P., has no jurisdiction without complaint to take up a case referred by the Civil Court to the District Magistrate and sent by him for trial. *REG. v. DITCHARD KURHAL*

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8. ——— *Accused voluntarily appearing.*—Where an accused person appears voluntarily before a Magistrate to answer a charge, the want of a complaint on oath, necessary for the

9. ——— *Conditions under which a Magistrate may proceed with an investigation or trial without a complaint upon oath considered, and cases bearing on the question reviewed and explained.* *REG. v. SADA SHIRAPPA PUNDURANG GUPPA* . . . 5 Bom. Cr., 29

ment, nor had the Deputy Collector put in the written statements, upon which he desired to proceed either with his written complaint or at the time of his examination by the Magistrate. *Held* that the complaint was bad, and the case should not be allowed to proceed in its present form. The Magistrate was bound to require from the complainant the written statements on which the proceedings were founded and also to ascertain from him the particular statement or statements on which the accusation was made. *DEEPA DAS BARNET v. UMESH CHANDRA SIK* [I L R., 27 Cal., 27

## COMPLAINT—continued.

## 1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—continued.

10. ————— *Illegal conviction and sentence—Memorandum sanctioning the prosecution—Stamp Act, X of 1862, s. 3.*—Conviction and sentence under s. 3 of Act X of 1862 (Stamp Act) reversed, as no complaint had been made to the trying Magistrate. A memorandum, under the signature of the Collector, sanctioning the prosecution, so as to not be accepted in the place of a complaint, so as to authorize the issuing of a summons. *REG. v. BAI DIVALE* 5 Bom., Cr., 48

11. ————— *Offence charged not proved, but different offence shown—Fresh complaint.*—Where a complaint laid before a Magistrate, F.P., by certain Government employés, accused the prisoner of criminal breach of trust of their wages, but from the evidence adduced it appeared that the offence of which the prisoner was guilty was criminal breach of trust of Government money, it was held that the Magistrate, of Government money, it was held that the Magistrate, had power to frame a charge against and convict the prisoner of the latter offence without a fresh complaint being made to him. *REG. v. DHONDU RAMCHANDRA* 5 Bom., Cr., 100

12. ————— *Offence disclosed in course of proceedings not triable by Magistrate without complaint—Criminal Procedure Code, 1872, s. 142.*—A complaint was made to a Magistrate accusing a certain person of having taken or kept the wife of the complainant. In the course of the proceedings it appeared that the wife had committed bigamy (s. 494, Penal Code). The Magistrate, without a further complaint, committed the woman alone for trial by the Court of Session. Held that the Magistrate had acted within his jurisdiction, s. 142 of the Code of Criminal Procedure being designed to prevent a Magistrate from enquiring without complaint into a case connected with marriage, but when a case is properly before the Magistrate, he may proceed against any person implicated. *IN THE MATTER OF UJJALA BEWA* 1 C.L.R., 523

13. ————— *Offence charged under particular section of Penal Code—Power of Magistrate to apply any other section applicable.*—A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint, but may apply any section which he thinks applicable to the case, so long as the parties are not misled, and the proper procedure is observed. He may re-call an order which he may to be wrong, and substitute any other which he may think right under the law. *KALIDASS BHUTTA CHARJEE v. MOHENDRONATH CHATTERJEE* [12 W. R., Cr., 40

14. ————— *Case referred by Civil Court—Criminal Procedure Code, s. 273—Power to refer.*—The various modes in which civil proceedings can be instituted under the Code of Criminal Procedure pointed out. Where a Civil Court makes over a case to a Magistrate for investigation, the Magistrate ought to examine the complainant and reduce the examination into writing, which should be signed by the Magistrate and the complainant.

## COMPLAINT—continued.

## 1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—continued.

S. 273, Code of Criminal Procedure, only empowers a superior Magistrate to refer cases to a Subordinate Magistrate when the complaint is made to himself or before a police officer, but not cases where he himself takes cognizance of an offence. *BHUGOBAN CHUNDER PODDAR v. MOHUN CHUNDER CHUCKERBUTTY* [12 W. R., Cr., 49

15. ————— *Case irregularly sent by Civil Court—Investigation without complaint—Civil Procedure Code, 1861, s. 68.*—Although a Civil Court acted irregularly in sending to the Magistrate for investigation a case of using or attempting to use false evidence when no suit was pending in that Court, yet as the Court had given its sanction to the prosecution of the offence, Held that it was in the competency of the Magistrate, under s. 68 of the Code of Criminal Procedure, even without a charge or complaint, to proceed to investigate, and, if necessary, to commit for trial to the Sessions Court. *QUEEN v. DOORGA NATH ROY* [8 W. R., Cr., 9

16. ————— *Criminal Procedure Code (1882), ss. 58, 190, 191—Cognizance taken by a Magistrate under s. 190, sub-s. (1), cl. (c)—Jurisdiction of Magistrate to hold a preliminary inquiry not thereby ousted.*—Held that the fact of a Magistrate having taken cognizance of a case under s. 190, sub-s. (1), cl. (c), of the Code of Criminal Procedure does not disqualify such Magistrate from holding a preliminary inquiry and committing the case to the Court of Session. *QUEEN-EMPRESS v. ABDUL RAZZAK KHAN* [1 L. R., 21 All., 109

See *QUEEN-EMPRESS v. FELIX* [1 L. R., 22 Mad., 148  
and *JAGAT CHANDRA MAZUMDAR v. QUEEN-EMPRESS* 1 L. R., 28 Calc., 786  
[3 C. W. N., 491

17. ————— *Previous enquiry—Criminal Procedure Code, 1872, s. 146.*—The previous enquiry provided for by s. 146 before a complaint is taken up ought not to be made after the accused has been brought before the Court under a warrant. *RAMKANT SIRCAR v. JADUB CHUNDER DASS* [21 W. R., Cr., 44

18. ————— *Authorization to proceed with case—Form of complaint, Irregularity or defect in.*—A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorized to make a commitment, though the complaint or authorization be contained only in a letter from the Judge of that Court to the Magistrate of the district, sent with the record of the case, notwithstanding an irregularity or defect of form in recording the complaint. The complaint or authorization of the Court before which, or against the authority of which, an offence mentioned in Ch. XI of the Code of Criminal Procedure is alleged to have been committed is a sufficient warrant for commencement of criminal proceedings.

**COMPLAINT—continued.****1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—continued.**

*Queen v. Mahim Chandra Chuckerbutty*, 3 B. L. R., 4 Cr., 67, overruled. *Queen v. Narayan Naik*  
[5 B. L. R., F. B., 880]

S. C. IN THE MATTER OF NARAYAN NAIK  
[14 W. R., Cr., 34]

20. ————— *Code of Criminal Procedure (Act V of 1898), s. 190 (1) (c)—Jurisdiction*

*Queen v. Narendrakrishna Chakravarti*  
[4 C. W. N., 367]

21. ————— *Co-accused—Punishment of some, if sufficient ground for refusal to try others who did not appear at the first trial—Further enquiry—Code of Criminal Procedure (Act V of 1898), ss. 190, 437.—If several persons commit an offence, a Magistrate cannot consider the punishment of some of them to be sufficient in regard to others and refuse to summon the rest of the accused. A Magistrate having taken cognizance of an offence has jurisdiction to hold judicial proceedings in respect of all persons who, the evidence discloses, are the offenders. *Bishen Dattal Rai v. Chandi Khan* . . . . . 4 C. W. N., 560*

22. ————— *Criminal Procedure Code (Act V of 1898), ss. 190, 191—Cognizance of a case taken upon an anonymous communication—Transfer of case.—Where a Magistrate took cognizance of a case on an anonymous communication and the accused applied for a transfer on the ground that the case came within the provisions of cl. (c) of s. 190 of the Code of Criminal Procedure, the Court directed that the case be transferred to the file of another Magistrate for trial. IN THE MATTER OF HARI NARAYAN BISWAS*

[3 C. W. N., 65]

23. ————— *Act XXV of 1861, s. 68—Private information.—A belief founded on private and anonymous information is not knowledge within the meaning of s. 68 of the Criminal Procedure Code. IN THE MATTER OF MOHESH CHANDER*

**COMPLAINT—continued.****1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—continued.**

*BANERJEE. Queen v. Purna Chandra Banerjee. Queen v. Kali Sinker*  
[4 B. L. R., Ap., 1: 13 W. R., Cr., 1]

judicially received and recorded. IN THE MATTER OF THE PETITION OF SURENDRA NATH ROY. *Queen v. Surendra Nath Roy*  
[5 B. L. R., 274: 13 W. R., Cr., 27]

25. ————— *Power of Court to act on police report—Subordinate Magistrate—District Magistrate.—A Subordinate Magistrate is competent to act on a police report, but it is not proper for a District Magistrate to pass an order directing proceedings to be taken on the police report unless he has withdrawn the whole matter from the Court of such Subordinate Magistrate. *Mora Sison v. Mahabir Sison* . . . . . 4 C. W. N., 243*

26. ————— *Code of Criminal Procedure (Act V of 1898), s. 190, cl. (c)—Proceedings against one not originally accused without investigation or evidence on acquittal of accused—Deputy Commissioner as Magistrate and Revenue Officer—Judicial and executive functions, distinction between—Magistrate, orders by, to his subordinate and matters, validity of—High Court.*

**COMPLAINT—continued.****1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—continued.**

The Deputy Commissioner, who is also a Revenue Officer, did not act in his latter capacity as a mere complainant, but as a Magistrate acting under s. 190, cl. (c), Criminal Procedure Code, and as such his order is subject to revision by the High Court.

SHAHIRAM v. QUEEN-EMPRESS

[4 C. W. N., 825]

**27.** *Criminal Procedure Code (Act X of 1882), s. 191—Cognizance of an offence on suspicion—Penal Code (Act XLV of 1860), s. 211—Police report—False charge, prosecution for, without first enquiring into truth of original complaint.*—A person having laid an information before the police, the police reported the case as false; the informant then appeared before a Magistrate, asking that his case might be investigated, and his witnesses summoned. This application was refused, and the Magistrate, after perusing the police report, passed an order directing him to be prosecuted under s. 211 of the Penal Code. *Held* that the application to the Magistrate was "a complaint", within the meaning of s. 191 of the Criminal Procedure Code into which the Magistrate was bound to have enquired. A Magistrate may take cognizance under s. 191 of the Criminal Procedure Code of an offence brought to his notice by a police report which affords ground for a suspicion that an offence has been committed; but as a matter of sound judicial discretion, a Magistrate should not so proceed and direct that the person suspected be tried until some person aggrieved has complained, or until he has before him a police report on the subject based on an investigation directed to the offence to be tried, and in cases of alleged false charges, until it is clear that the original charge has been either heard and dismissed or abandoned. And before the order to prosecute for the false charge is made, the person who made the original charge should be offered an opportunity of supporting it or abandoning it.

QUEEN-EMPRESS v. SHAM LALL

[I. L. R., 14 Calc., 707]

**28.** *Criminal Procedure Code, ss. 4, 530, and 537—Third class Magistrate taking cognizance of case on receipt of a yadast from a Revenue Officer and convicting accused without examining complainant.*—A Revenue Officer sent a yadast to a third class Magistrate charging a certain person with having disobeyed a summons issued by the Revenue Officer. The third class Magistrate thereupon tried and convicted the accused under s. 174 of the Penal Code. The District Magistrate referred the case on the ground that the conviction was bad under s. 530 (k) of the Code of Criminal Procedure. *Held* that, as the yadast amounted to a complaint within the meaning of s. 4, although the complaint was not examined on oath as required by s. 200, the conviction was not illegal.

QUEEN-EMPRESS v. MONU

[I. L. R., 11 Mad., 443]

**29.** *Criminal Procedure Code, ss. 4, 198, and 200—Charge of defamation not made in complaint, but added in subsequent*

**COMPLAINT—continued.****1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—continued.**

*examination.*—A charge of defamation not contained in the complaint presented to the Magistrate, but added subsequently by the Magistrate upon statements made by the complainant in his examination under s. 200 of the Criminal Procedure Code, whether of his own accord or in consequence of suggestions from the Magistrate, is not a legal "complaint" made by an aggrieved person within the meaning of ss. 4 (a) and 198, so as to enable the Magistrate to take cognizance of the offence. *Queen-Empress v. Kallu, I. L. R., 5 All., 233*, referred to. *QUEEN-EMPRESS v. DEOKINANDAN I. L. R., 10 All., 39*

**30.** *Criminal Procedure Code, 1882, ss. 203, 243—Who may institute complaint.*—As a general rule, any person having knowledge of the commission of an offence may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. The exceptions to this rule, of which ss. 195 and 198 of the Criminal Procedure Code are examples, are exceptions created by statute. There is nothing in the Code showing an intention to confine prosecutions to the persons directly injured. *IN RE GANESH NARAYAN SATHE I. L. R., 13 Bom., 600*

**31.** *Criminal Procedure Code, 1882, s. 191 (c)—Criminal Procedure Code (Act X of 1872), s. 140 (c)—By whom a complaint of an offence may be made.*—The complaint upon which, under s. 191 (c) of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence may be made by any member of the public acquainted with the facts of the case, not necessarily by the person aggrieved by the offence to which the complaint relates. *In re Ganesh Narayan Sathe, I. L. R., 13 Bom., 600*, followed. *FARZAND ALI v. HANUMAN PRASAD*

[I. L. R., 18 All., 465]

**32.** *Criminal Procedure Code, s. 198—Defamation of a wife—Complaint by husband.*—When a married woman is defamed by the imputation of unchastity, her husband is a person aggrieved, upon whose complaint the Magistrate may take cognizance of a complaint under Criminal Procedure Code, s. 198. *CHEGGAM NAIDU v. RAMASAMI I. L. R., 14 Mad., 379*

DEPUTY LEGAL REMEMBRANCE v. SARNA KARMI

[I. L. R., 28 Calc., 336]

**33.** *Criminal trespass—Mischief—By whom complaint of offence may be made—Penal Code, ss. 426 and 441.*—The words "any person in possession" in s. 441 of the Penal Code do not mean only "a complainant in possession." Certain persons were prosecuted under ss. 426 and 447 of the Penal Code (Act XLV of 1860) for committing mischief and criminal trespass by entering upon a certain field which was in the possession of the complainant's tenants and destroying the seed sown therein. The defence raised was an *alibi*; it was also contended on behalf of the accused that the field belonged to one of them, and that the complainant had no title whatever to it. The Magistrate who

## COMPLAINT—continued.

## 1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—continued.

in possession," there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. *Queen v. Kalinath Nag Chowdhry*, 9 W. R., Cr., 1, *Chandi Persad v. Evans*, 1 L. R., 23 Cal., 123, *Iswar Chandra Karmakar v. Sital Das Mitter*, 3 B. L. R., Ap., 62, and *In re Ganesh Narayan Saikhe*, 1 L. R., 13 Bom., 590, referred to. *QUEEN-EMPERESS v. KRISHNAIAI JETKRIANNA*

[1 L. R., 21 Bom., 536]

34. ————— Power of Magistrate to issue warrant or entertain case—Criminal Procedure Code, 1862, s. 66 (a) and ss. 68 and 155.—In cases in which the police cannot arrest without a warrant, a warrant cannot be legally issued

himself or on the report of a police officer, under s. 66 (a) of the Criminal Procedure Code or not. The report of a police officer referred to in the above section means, not any communication made by a police officer, but the formal report drawn up under s. 155 of the Criminal Procedure Code, in cases in which the police may arrest without warrant. *REG. v. JAFAR ALI*. 8 Bom., Cr., 113

title to the mouzah where the complainants lived. Thereupon the Magistrate compelled the complainants to appear, took down the evidence of some of them, received a counter-complaint from the third party

compelled the complainants to go on with their case: and

## COMPLAINT—continued.

## 1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—continued.

that, under the circumstances, the evidence given was not judicial evidence. IN THE MATTER OF THE PETITION OF DUKHUN PAHAN

[34 W. R., Cr., 32]

37. ————— Omission to take

38. ————— Omission of examination of complainant on oath—Dismissal of complaint—Criminal Procedure Code (Act X of 1862), ss. 197, 200, 202, 203—Complaint against a public servant.—Upon receipt of a petition of complaint it is the duty of a Magistrate, as directed by s. 200 of the Criminal Procedure Code (Act X of 1862), to examine the complainant on oath. Until he has done so, it is not competent for him to dismiss the complaint under s. 203 of the Code. It is an irregular proceeding on the part of a Magistrate, in place of examining the complainant on oath, to call on the person complained against to submit a report as to the truth or otherwise of the allegations made against him. If an investigation into the subject-matter of the complaint is considered necessary, it should be conducted according to the provisions of s. 202, either by the Magistrate himself or by some properly qualified officer. A complaint against a public servant such as the Chairman of a Municipality must be dealt with in exactly the same manner as any other complaint, and the consideration of the question as to the applicability of s. 197 of the Criminal Procedure Code to the case should be postponed until after the complainant has been examined on oath in accordance with the law. *SATTA CHABAN GHOSH v. CHAIRMAN, UTTERPARA MUNICIPALITY*

[3 C. W. N., 17]

39. ————— Necessity for examination of complainant—Dismissal of complaint—Order for judicial inquiry or report without examining complainant, legality of—Penal Code (Act XLV of 1860), s. 211—Code of Criminal Procedure (Act V of 1893), ss. 202, 203, and 376.—Where a Magistrate, after having examined the complainant and without hearing the witnesses or dismissing the complaint, ordered the complainant to be prosecuted under s. 211 of the Penal Code,—Held that the Magistrate's order

**COMPLAINT—continued.****1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—concluded.**

was without jurisdiction. Where a complainant, whose complaint had been reported false by the police, complained to the Magistrate and asked him to try the complaint, and the Magistrate did not examine the complainant himself, but made over the case to a Subordinate Magistrate for judicial enquiry or report,—*Held* that the Magistrate had no authority for this procedure. A complainant must be examined by the Magistrate who receives the complaint, or by some Magistrate to whom he has transferred the case. When a complainant has been examined, he is entitled to have the person accused brought before the Magistrate, and it is only when the Magistrate has reason not to believe the truth of the complaint from his examination that this can properly be refused and an investigation held. **MAHABO SINGH v. QUEEN-EXPRESS**

[1 L. R., 27 Cal., 921]

**2. POWER TO REFER TO SUBORDINATE OFFICERS.**

**40. Case originating with District Magistrate—Criminal Procedure Code, 1861, s. 68.**—A case originating with a Magistrate of the district must, under s. 68 of the Code of Criminal Procedure, be disposed of by the Magistrate himself, and cannot be referred to a Subordinate Magistrate. **QUEEN v. HOSSEIN MANJEE**

[9 W. R., Cr., 70]

**IN THE MATTER OF THE PETITION OF DHUNPUT SINGH** . . . . . 19 W. R., Cr., 30

**41. Irregularity in recording complaint—Complaint not reduced to writing—Act X of 1872, ss. 144, 44, and 233—Criminal Procedure Code (Act XXV of 1861), ss. 66, 273, 426, and 439—Irregularity in commencing proceedings.**—Under s. 66 of the Code of Criminal Procedure, the examination of the prosecutor should be reduced to writing, and signed by him. When a complaint is made before a Magistrate, but not reduced to writing, he cannot, under s. 273 of the Code of Criminal Procedure, refer the case to a Deputy Magistrate for trial. Ss. 426 and 439 do not apply to a case where the prosecution is not commenced by a complaint, as directed in the Code. A conviction with such irregularity cannot stand good, merely because the amount of punishment would have been the same if proper proceedings had been instituted. **QUEEN v. MAHEM CHANDRA CHUCKERBUTTY**

3 B. L. R., A. Cr., 67

**42. Complaint not reduced to writing or signed.**—On receipt of a petition from the complainant, the Magistrate, without examining him, and reducing his examination into writing and obtaining his signature thereto, or appending his own signature as Magistrate, referred the petition to a Deputy Magistrate for trial. The Deputy Magistrate tried and convicted the accused. On a reference from the Sessions Judge, on the ground that the proceedings were irregular under s. 66, Act XXV of 1861, and that therefore the

**COMPLAINT—continued.****2. POWER TO REFER TO SUBORDINATE OFFICERS—continued.**

order of the Deputy Magistrate was without jurisdiction,—*Held* that the petition was sufficient, and that the Magistrate was justified in making over the petition to a Deputy Magistrate, who had the full powers of a Magistrate for enquiry and trial. **QUEEN v. UMESCHANDRA CHOWDRY**

[5 B. L. R., 180: 14 W. R., Cr., 1]

**43. Non-compliance with provisions of Code.**—A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of s. 66, Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case, the Magistrate took it up and tried it himself. *Held* that non-compliance with the provisions of s. 66 made the subsequent proceedings void. **QUEEN v. GIRISH CHANDRA GHOSH**

[7 B. L. R., 513: 18 W. R., Cr., 40]

**44. Non-compliance with provisions of Code—Criminal Procedure Code (Act XXV of 1861), ss. 66, 67—Act VIII of 1869, s. 66 (b)—Act X of 1872, ss. 144, 147, and 42.**—A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of s. 66 of Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate not authorized to receive complaints without reference from the District Magistrate, who tried and convicted the offender. *Held per KEMP, J.*, that non-compliance with the provisions of s. 66 of Act XXV of 1861 made the subsequent proceedings void. *Held per AINSIE, J.*, that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under s. 66 (b) of Act VIII of 1869, and that the subsequent proceedings therefore were valid. **IN THE MATTER OF ISWAR CHUNDER KOER v. UMESH CHUNDER PAL** . . . . . 8 B. L. R., 19

**45. Omission to examine complaint—Act XXV of 1861, ss. 66 and 273—Act X of 1872, ss. 144 and 44—Reference by District Magistrate to Subordinate Magistrate.**—A District Magistrate is not bound, on receipt of a complaint, to examine the complaint under s. 66 of Act XXV of 1861 before referring the complaint to a Subordinate Magistrate for disposal. The examination of the complainant by the Magistrate to whom the case has been referred is sufficient. **QUEEN v. HARU** . . . . . 9 B. L. R., F. B., 148

**S. C. BHUGOBUT CHURN SEIN v. SIAM ALI. IN RE RAM CHUNDER GHUTTUCK, AND IN RE HARU**

[18 W. R., Cr., 18]

**46. Reference to Subordinate Magistrate before reducing examination of complainant to writing—Criminal Procedure Code, 1861, s. 66.**—The Magistrate of the district, on a complaint being presented to him, has no power to refer the petition to a Subordinate Magistrate for trial until he has himself reduced the examination of the petitioner into writing, in accordance with the

**COMPLAINT—continued.****2. POWER TO REFER TO SUBORDINATE OFFICERS—continued.**

provisions of s. 66 of the Criminal Procedure Code.  
**QUEEN v. BHIKAREE** . . . 4 N. W., 88

47. ——— *Code of Criminal Procedure (Act V of 1898), ss. 202, 203, 476—Dismissal of complaint—Judicial enquiry—Era-*

the case to be false, the District Magistrate sanctioned the prosecution of the complainant for an offence under s. 211, Penal Code. *Held* that the

That the District Magistrate, to whom the complaint

complainant was, therefore, not made according to law. **HUDNATH MAHATO v. EMPRESS**

[4 C. W. N., 305]

48. ——— Reference for enquiry and report—*Criminal Procedure Code, ss. 4, 202, 350.*—A Magistrate, upon complaint made, having issued process and examined witnesses in support of complaint, ceased to exercise jurisdiction. His successor, on taking up the case, referred the complaint to the

process issued. **SADAGOPACHARYA v. RAGAVACHARYA** . . . I. L. R., 9 Mad., 282

49. ——— Reference to

officer. He is bound to receive the complaint, and, after examining the complainant, to proceed according to law. **IN RE JANKIDAS GURU SITARAM**

[I. L. R., 13 Bom., 161]

50. ——— *Criminal Procedure Code (1882), s. 202—Reference of cases by Magistrate to the police for enquiry.*—A Magistrate

**COMPLAINT—continued.****2. POWER TO REFER TO SUBORDINATE OFFICERS—concluded.**

can send a case for enquiry by the police under Criminal Procedure Code, s. 202, only when for reasons stated by him he distrusts the truth of the complaint. In cases where the accused is a member of the police force, it is generally better that the inquiry should be prosecuted by a Magistrate. **QUEEN-EMPRESS v. KANAYIA PILLAI**

[I. L. R., 20 Mad., 387]

**3. WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT.**

51. ——— Withdrawal of complaint—*Act XXV of 1861, s. 270—Act X of 1872, s. 210.*—Offences punishable under the Penal Code with more than six months' imprisonment are not triable under Ch. XV of the Code of Criminal Procedure, and consequently do not fall within the provisions of s. 271 of that Code. **ANONYMOUS CASE**

[4 B. L. R., F. B., 41; 12 W. R., Cr., 69]

52. ——— *Criminal Pro-*

[I. L. R., 5 Mad., 378]

53. ——— *Criminal Procedure Code, 1898, s. 248—"Complainant."*—A complaint having been made to the police, the latter caused charges to be preferred under ss. 143 and 504

Magistrate to withdraw the charges under s. 248 of the Code of Criminal Procedure. The Magistrate permitted the withdrawal and directed the accused to be set at liberty. *Held* that the order was bad, there being no "complainant" in the case, and that consequently the Magistrate, in purporting to act under s. 248, had exceeded his powers. **QUEEN-EMPRESS v. CHENCHAYYA** . . . I. L. R., 23 Mad., 626

54. ——— *Withdrawal for want of prosecution—Criminal Procedure Code, 1861, Ch. XIV.*—Cases instituted and tried under Ch. XIV of the Criminal Procedure Code cannot be struck off the file at the request of the complainant, or for the want of prosecution on his part. The Magistrate must proceed in such cases in the manner prescribed by the chapter, notwithstanding the complainant may desire to withdraw his complaint. **QUEEN v. JUDROOF UGHADE** . . . 3 N. W., 341

55. ——— *Effect of withdrawal—Acquittal.*—The withdrawal of a complaint by the complainant operates as an acquittal, and the High Court has no authority to entertain the matter



## COMPLAINT—continued.

## 4. DISMISSAL OF COMPLAINT—continued.

68. — Delay in prosecution after sanction—*False charge*.—Sanction was given by the Magistrate for the institution of criminal proceedings against the defendant for having made a false charge against the complainant. The Magistrate dismissed the complaint on the ground that the complainant had taken no step to prosecute for three months after the sanction was obtained. *Held* that the Magistrate had power to dismiss the complaint. ANONYMOUS . . . 8 Mad., Ap., 15

69. — Refusal of complainant to

71. — Criminal Proce-

DASS . . . 22 W. R., 40

[4 Mad., Ap., 41

73. — *Order made in absence of parties*.—When an order for adjournment was not made in the presence of the parties, the dismissal of the complaint, because the complainant did not appear on the day fixed, was held to be illegal. ANONYMOUS . . . 8 Mad., Ap., 6

tion, charged with having obstructed the road, and the complainant never appeared.—*Held* that the Deputy Magistrate ought to have dismissed the complaint. QUEEN v. BHOLA NATH BANERJEE

[7 W. R., Cr., 31

75. — *Criminal Procedure Code (Act V of 1893), ss. 369, 432 and 217—Warrant-case, "Dismissal for default"*—*Pres-*

## COMPLAINT—continued.

## 4. DISMISSAL OF COMPLAINT—continued.

s. 247 of the Code of Criminal Procedure for summons cases only. RAM COOMAR v. RASKIES (4 C. W. N., 23

76. — Presence of wit-

plainant, discharge the accused. QUEEN v. DASOO MANJEE . . . 11 W. R., Cr., 59

77. — *Illegal adjournment*.—The Deputy Magistrate's order dismissing a case for default (after repeated unnecessary adjournments and after the accused was put on his defence) upon a day to which no legal adjournment was made, was set aside as illegal. MAHOMED ALUM v. AUL

[18 W. R., Cr., 68

78. — *Discharge of accused*.—In answer to a reference from a Sessions Judge, the Court were of opinion that in a case where the accused has been duly summoned or arrested under a warrant, and is present to meet any charge, and the complainant and his witnesses negligently fail to appear against him, if it be not shown to the Magistrate that the case is one in which he ought to adjourn the enquiry under s. 224, Code of Criminal Procedure, the accused person ought to be discharged; but also held that the question did not arise under the circumstances of the case, and the case must go back to the Magistrate for investigation. TAKI MAHOMED MANDAL v. KUSHYA NATH RAI . . . 7 B. L. R., 7

[15 W. R., Cr., 63

QUEEN v. ABDUL BISWAS . . . 7 B. L. R., 8 note

But see QUEEN v. BHAGABATI SATTHAN

[7 B. L. R., 9 note

S. C. NUNDAL SOOTRODOR v. BHAGIRUTTY SOOTRAN . . . 10 W. R., Cr., 31

79. — Postponement

witnesses which was considered necessary by the Magistrate, and they failed to appear, an order by the Magistrate dismissing the case for want of sufficient evidence was held to be legal. QUEEN v. BIDRU GHOSH

[7 B. L. R., 9 note; 13 W. R., Cr., 27

80. — *Criminal Procedure Code, 1852, s. 247*.—A case having been transferred from the file of one Magistrate to that of another, was on the day fixed called on for hearing, but the complainant not appearing, the case was dismissed

## DIGEST OF CASES.

( 1475 )

## COMPLAINT—continued.

4. DISMISSAL OF COMPLAINT—continued. under s. 217 of the Criminal Procedure Code. It appeared that the complainant and his witnesses, though not in attendance in the Magistrate's Court, were present in another Court in the same Court-house, being under the impression that his case had been transferred to the Magistrate of that Court. Held that the complainant having been present in the Court-house, the provisions of s. 217 of the Code of Criminal Procedure had been improperly applied.

ROMANATH BAI v. BENARI BOU BAGDI  
[13 C. L. R., 303]

81. Criminal Procedure Code, 1892, s. 217—Acquittal—Absence of prosecutor when case called on—Subsequent appearance on same day.—A Magistrate, before acquitting a person under the provisions of s. 217 of the Code of Criminal Procedure, is not bound to wait until the Court is about to close for the day. KUTIVANT v. PARI MAKDI  
I. L. R., 7 Mad., 358

## (b) POWER OF, AND PRELIMINARIES TO, DISMISSAL.

82. Power to dismiss case—Irregularity in dismissal—Transfer of case by Magistrate to Deputy Magistrate.—S T brought a charge of theft against B before a Magistrate. The case was made over to the Deputy Magistrate, whose suggestion the Magistrate ordered for bringing a false charge; and the Magistrate, while declaring that the plaintiff should be summoned for bringing a false charge; and the Magistrate, while declaring that he would not encourage charges of "false complaint," said that the injured party might swear an information if she chose. S T then petitioned to be allowed to call witnesses in support of her charge of theft, and objected to the police proceedings. The Magistrate recorded the following order:—"The case has been dismissed, and the accused, Mrs. B, has received permission to prosecute the woman S T for false charge; the present petition may be put in defence in that case." Held that the order of the Magistrate must be quashed—(1) because he had no jurisdiction, the case having been made over to the Deputy Magistrate; (2) because the order above was not a judicial dismissal of the case. Case remanded for trial of the original charge as brought by S T.

[3 B. L. R., Ap., 151]

83. Dismissal by one Court after transfer to another—Criminal Procedure Code (Act V of 1898), s. 203.—Held that a Deputy Commissioner had no power to pass an order of dismissal under s. 203 of the Criminal Procedure Code (Act V of 1898) in a case which he had transferred to an Extra Assistant Commissioner and which was at the time pending in the Court of the latter.

KUTAB ALI v. EMPRESS  
3 C. W. N., 490

## COMPLAINT—continued.

4. DISMISSAL OF COMPLAINT—continued. referred to the police for report, and complainant had notice to appear on 6th November to hear the report. On 31st October the Assistant Magistrate dismissed the case upon the report of the police officer without giving complainant an opportunity to show cause against the dismissal. His order was set aside by the High Court, and he directed to conform to Circular 5A., dated 7th September 1868. BULLEE SINGH v. KANAI CHOWDHRY  
17 W. R., Cr., 2

85. Report of police officer who is an accused person—Criminal Procedure Code (Act X of 1852), ss. 200-203, 237.—Ss. 200 to 203 of the Criminal Procedure Code must be read together, and a Magistrate dismissing a complaint under the provisions of s. 203 on any one of the three grounds—viz. (1) if he, upon the statement of the complainant, reduced to writing under s. 200, finds no offence has been committed; (2) if he distrusts the statement made by the complainant; and (3) if he distrusts that statement, but his distrust is not sufficiently strong to warrant him in acting upon it, except upon a further enquiry as provided for in s. 232—must record his reason for so doing, for, if such reasons were not recorded, it would be impossible for the High Court, exercising its revisional powers under s. 437 of the Criminal Procedure Code, to consider whether the discretion of such Magistrate has been properly exercised. It was never contemplated that a Magistrate should call for a report from an accused person under s. 202 for the purpose of ascertaining the truth of the complaint. If such accused happened to be an officer subordinate to the Magistrate, where, therefore, a complaint was made against a police officer, and complainant's statement was duly recorded, and the Magistrate acting under the provision of s. 202 called for a report from such police officer, and acting upon that report dismissed the complaint under s. 203,—Held that he had acted illegally, and that his order made under the last-named section should be set aside, and the case proceeded with according to law from the time at which the complaint was made and the complainant's statement so recorded. BAIDYA NATH SINGH v. MUSPRATT  
I. L. R., 14 Cal., 141

86. Failure to show in Magistrate's opinion any criminal offence—Act XXV of 1861, s. 180.—Act X of 1872, s. 146—Powers of Magistrate.—The accused was charged before a Deputy Magistrate with an offence under s. 431, Penal Code. The Deputy Magistrate examined the complainant, took bail from the accused, but refused to examine the complainant's witnesses, although present, and delayed the investigation unnecessarily for a long time. The Magistrate of the district then called for the proceedings, and having looked at them considered that there was no case for the interference of the Criminal Courts, and discharged the prisoner, although he was present and under bail. Held that the Magistrate was not only competent, but bound to discharge the prisoner, if his conclusion that no offence was made out was correct. But held, also, that the Magistrate's conclusion was wrong, and that the act complained of, if true, did

**COMPLAINT—continued.****4. DISMISSAL OF COMPLAINT—continued.**

The Magistrate, without recording the complaint under s. 63 of the Code of Criminal Procedure, sent

examination of the complainant before he could, under s. 180, dismiss the complaint. **DELLAL BEWA v. BHUSAN SHAHA** 3 B. L. R., A. Cr., 63

See **QUEEN v. HARRAKCHAND NOWLAKA**. [8 W. R., Cr., 13]

**DINONATH GORE v. SARODA MOOKHOPADHYA** [7 W. R., Cr., 47]

**QUEEN v. RAMNATH** 7 W. R., Cr., 45

**SATYA CHARAN GROSE v. CHAITHMAN UTTERPARA MUNICIPALITY** 3 C. W. N., 17

IN THE MATTER OF NIRMONY BHUTTACHARJEE [16 W. R., Cr., 68]

for proceeding.

88. ————— Examination of

Criminal Procedure. **RANGASWAMI GOUNDEN v. SABAPATHY GOUNDEN** 4 Mad., 103

89. ————— Examination of complainant—Refusal to hear complaint—Criminal Procedure Code, 1872, s. 144.—A complaint of theft of coconuts valued at one anna and eight pice was made to a third class Magistrate, who returned the petition to the complainant, with an endorsement that he should obtain redress from the Village Magistrate. Held, under s. 144, Criminal Procedure Code, 1872, he was bound to hear the complaint. **ANONYMOTA** [7 Mad., Ap., 31]

90. ————— Examination of complainant—Criminal Procedure Code (Act XXV of 1861), s. 67—Act X of 1872, s. 147—Dismissal without enquiry.—Where Magistrate removed a case from the file of the Joint Magistrate to his own after complaint had been made and warrants issued by the Joint Magistrate upon the footing of the complaint and thereupon suspended the warrant and dismissed

**COMPLAINT—continued.****4. DISMISSAL OF COMPLAINT—continued.**

the complaint without hearing it in due course of procedure.—Held that it was an improper proceeding; he ought to have proceeded with the case from the stage at which it was when he removed it. IN THE MATTER OF THE PETITION OF RASHOO PAIRIRAR

[10 B. L. R., Ap., 28; 19 W. R., Cr., 23]

take the examination of the complainant. **QUEEN v. RAMCHURN** 3 N. W., 273

High Court would not interfere under s. 434.

**QUEEN v. FORQU SHAH** [3 B. L. R., S. N., 6; 10 W. R., Cr., 49]

93. ————— Examination of complainant—Omission to examine complainant—Order for prosecution for false charge under s. 211, Penal Code—A charge of burglary and theft

plainant, that the case should be struck out and that proceedings should be instituted against the com-

he should be of opinion that the charge was false, the appellant might be proceeded against under s. 211 of the Penal Code. IN THE MATTER OF BHOOT BHAGUT 4 C. L. R., 134

IN THE MATTER OF RUSICK LALL MULLICK [7 C. L. R., 353]

94. ————— Criminal Procedure Code, s. 203—"Examining"—Written complaint attested by complainant on oath—Irregularity—Criminal Procedure Code, s. 337—Where a deposition in the shape of a complaint is made orally or in writing and is sworn to, the requirements of s. 203 of the Criminal Procedure Code in regard to the examination of the complainant are sufficiently satisfied. Held, therefore, where a Magistrate dismissed a complaint of criminal breach of trust without examining the complainant on oath, but after the complainant had sworn to the truth of the matters alleged in the complaint, that the provisions of s. 203

## COMPLAINT—continued.

4. DISMISSAL OF COMPLAINT—continued.  
 had been sufficiently complied with, and, if not, that the irregularity was covered by the terms of s. 537.  
 QUEEN-EMPRESS v. MURPHY [I. L. R., 9 All, 686]

## COMPLAINT—continued.

4. DISMISSAL OF COMPLAINT—continued.  
 charge before dismissing the complaint. A bare assertion by an accused charged with committing theft of a proprietary right in the alleged stolen property, is no reason for a Magistrate to refuse to entertain the charge of theft. QUEEN v. KALI CHARAN MISSEER 7 B. L. R., Ap., 55  
 S. C. RUNGOO SINGH v. KALI CHARAN MISSEER [16 W. R., Cr., 18]

95. — Criminal Procedure Code, 1882, s. 203—Magistrate's discretion—Nature and extent of such discretion—"Sufficient ground," Meaning of—Complainant's motive.—A Magistrate cannot dismiss a complaint under s. 203 of the Code of Criminal Procedure (Act X of 1882), until he has examined the complainant to see whether there is *prima facie* evidence of a criminal offence. In exercising his discretion under s. 203, the Magistrate ought not to allow himself to be influenced by a consideration of the motive by which the complainant may have been actuated in moving in the matter, nor by any other consideration outside the facts which are adduced by the complainant in support of his complaint. IN THE MATTER OF THE PETITION OF GANESH NARAYAN SATHI [I. L. R., 13 Bom., 590]

96. — Dismissal without enquiry.—A charge of theft should be enquired into before deciding it to be false or taking steps under s. 211, Penal Code. IN THE MATTER OF BISHOO BARIK [16 W. R., Cr., 77]

97. — Criminal Procedure Code, 1872, s. 147.—A charge of theft was preferred by the petitioner on the 7th October 1878, before the police, who thereupon instituted enquiries which subsequently resulted in their finding the charge unproved. Meanwhile, on the 15th October, the charge was repeated in a complaint before the Magistrate of the District, who directed the complainant and his witnesses to attend on a particular day, but subsequently, without having examined them or the complainant, referred the matter to the Sub-Deputy Magistrate. That officer having reported the charge to be false, the Magistrate, on the 9th November, wrote upon the police report, which had meanwhile, on the 26th October, been submitted to him, the following direction, viz., "show as false". On the 19th November a counter-prosecution under ss. 211, 182 and 500 of the Penal Code was sanctioned, and eventually, on the 22nd May 1879, resulted in the petitioner being convicted. While the counter-prosecution was pending, the petitioner, on the 22nd April, applied to the Magistrate to proceed with his complaint according to law, but was informed that his complaint was dismissed. On the following day the Magistrate recorded the following order:—"Dismissed in accordance with my decision recorded in the police report under s. 147 of the Code of Criminal Procedure." Held that the complaint had been improperly dismissed and that the order of the Magistrate, dated 23rd April, 1879, must be set aside. ERAD ALI v. NUSUBUN NISSA BIBEE 4 C. L. R., 534

98. — Dismissal without hearing evidence.—A Magistrate ought to hear evidence in support of a

99. — Dismissal without hearing evidence—Criminal Procedure Code (Act XXV of 1861), s. 270—Act X of 1872, s. 209.—On the day fixed for hearing a complaint of trespass and assault made against three persons named, the complainant appeared with his witnesses, and the defendants also appeared; and on one of them being found to be a child of 8 years of age, the Magistrate dismissed the case without taking any evidence. Held, the Magistrate was in error, and should not have dismissed the case merely because one defendant was a child. He should have followed the procedure laid down in ss. 265 and 266. BILASH v. MAHROO [2 B. L. R., S. N., 15: 10 W. R., Cr., 61]

100. — Examination of complainant's witnesses—Recording reasons—Penal Code, s. 211, Charge under.—A Deputy Magistrate was held to have acted irregularly in dismissing a complaint, and directing the trial of the complainant under s. 211 of the Penal Code, without recording his reasons for doing so, and without examining all the witnesses tendered by the complainant, or allowing a reasonable time for the attendance of such of the witnesses as were not present. QUEEN v. HEEBA LALL GHOSE [13 W. R., Cr., 37]

NISSAR HOSSEIN v. RANGOLAM SINGH [25 W. R., Cr., 10]  
 IN THE MATTER OF GANGOO SINGH [2 C. L. R., 389]

101. — Examination of complainant's witnesses—Criminal Procedure Code, 1869, ss. 193, 249.—S. 193 of the Code of Criminal Procedure applies to cases under Chap. XV of that Code, and a Magistrate cannot examine of a case under that chapter without examining the witnesses called for the prosecution. KISHORE SAHAI v. MUNGHER SAHAI 16 W. R., Cr., 48  
 So also under the Code of 1872.  
 JITAN KHAN v. DURGA SINGH [20 W. R., Cr., 59]

102. — Examination of complainant's witnesses—Criminal Procedure Code, 1861, s. 66.—A Magistrate cannot refuse a summons to a complainant, even in a case in which the charge might have been laid at the police in the first instance, but is bound, under s. 66 of the Code of Criminal Procedure, to examine the complainant on oath and pass orders in the case. AMEER MAHOMED v. BRASS [14 W. R., Cr., 36]

**COMPLAINT—continued.****4. DISMISSAL OF COMPLAINT—continued.**

103. — *Examination of complainant's witnesses—Criminal Procedure Code, 1861, s. 67*—*Per GLOVER, J.*—Where the Criminal Procedure Code makes it necessary for a Magistrate, before dismissing a charge, to examine both the complainant and his witnesses, it supposes that there has been already a *prima facie* case made out; and where the complainant makes out

case at once. *ISSER CHUNDER GHOSH v. PRARI MONUS PALIT* . . . 18 W. R., Cr., 39

*SREENATH MUNDLE v. SREERAM RAJPUT*  
[24 W. R., Cr., 83]

104. — *Examination of complainant's witnesses.*—A Magistrate is bound, before he discharges an accused person under s. 215 of the Criminal Procedure Code, to examine all the witnesses, and should not refuse to examine witnesses simply because their evidence will be to the same effect as that already taken for the prosecution. *EMPRESS v. HEMATULLA*

[I. L. R., 3 Cal., 389]

105. — *Examination of complainant's witnesses—Discharge of accused without examining all the witnesses.*—Before a Magistrate discharges an accused person under s. 215 of Act X of 1872, he is bound, under that section, to examine all the witnesses named for the prosecution. *EMPRESS v. HEMATULLA*, I. L. R., 3 Cal., 389, followed. *EMPRESS OF INDIA v. KASBI*

[I. L. R., 3 All., 447]

*QUEEN v. PARASURAMA NAICKAR*  
—[I. L. R., 4 Mad., 329]

*ANONYMOUS CASE* . . . 8 Mad., Ap., 5

But see *JELDHAIR SINGH v. SHUNKER DOTAL*  
[23 W. R., Cr., 9]

the complainant, and is not entitled to acquit the accused on a consideration of the complainant's statement alone. *QUEEN-EMPRESS v. SINHAIB GORNDAN*

[I. L. R., 20 Mad., 388]

107. — *Review of proceedings—Criminal Procedure Code, ss. 203, 437*—A complaint was made, before a Magistrate of the first class, of an offence punishable under a 323 of the Penal Code. The Magistrate recorded a brief statement by the complainant, but did not ask him if he had any witnesses to call. An order was passed directing that "a copy of the petition of complaint

**COMPLAINT—continued.****4 DISMISSAL OF COMPLAINT—continued.**

should be sent to the police-station, calling for a report

he direct any local investigation to be made by a police-

*QUEEN-EMPRESS v. PURAN*  
[I. L. R., 9 All., 85]

**(c) EFFECT OF DISMISSAL.**

having been passed before the trial commenced, amounts to a discharge without trial, and does not bar the complaint from being again preferred. *ANONYMOUS* . . . 4 Mad., Ap., 8

*ANONYMOUS* . . . 9 Mad., 8

109. — *Dismissal of complaint for default in appearance of complainant—Presidency Magistrate's Act (IV of 1877), s. 121—Institution of fresh proceedings.*—An order of dismissal under s. 124 of Act IV of 1877 does not operate as an acquittal. *EMPRESS v. THOMPSON*

[I. L. R., 9 Cal., 523; 8 C. L. R., 109]

110. — *Criminal Procedure Code (Act V of 1898), ss. 247, 437. Institution of complaint in absence of complainant in a summons case—Acquittal of one of two accused who alone was present—Power to revise proceedings.*—The dismissal of a case and the acquittal of one of two accused under s. 247, Code of Criminal Procedure, on the ground of complainant's absence and purporting to be a termination of all proceedings relating to

*v. UMOR MAHOMED SULIKH* . . . 4 C. W. N., 318

111. — *Dismissal of summary case—Acquittal—Criminal Procedure Code, 1872, s. 212.*—The dismissal of a case in which a summons issued in the first instance amounts to an acquittal of the accused, against whom, after such an acquittal, no further proceedings in respect of the same act can

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**COMPLAINT—continued.**

4. **DISMISSAL OF COMPLAINT—continued.**  
be taken under a different charge. **IRFAN BISWAS**  
**v. JINNU T BIBE** . 25 W. R., Cr., 63

112. **Dismissal after hearing evidence—Further proceedings—Acquittal—Criminal Procedure Code, 1872, s. 147.**—The further proceedings allowed by the Code of Criminal Procedure, s. 147, can only be taken in cases where the complainant has been alone heard, and not where he has had the advantage of having his witnesses heard. In the latter case a dismissal would amount to a verdict of acquittal against the accused parties, and render a second trial on the facts impossible.  
**NITYANUNDO BUR v. KALA CHAND BUR**  
[24 W. R., Cr., 75]

113. **Dismissal without proper exercise of discretion—Criminal Procedure Code, 1872, s. 205—Acquittal.**—A woman accused a man of seduction under promise of marriage, and asked for maintenance for their illegitimate child. The Deputy Magistrate summoned the man; but on the day appointed for hearing neither the complainant nor the woman appeared, and the complaint was dismissed. Subsequently the woman petitioned, representing her inability to attend on the day appointed owing to causes beyond her control. The Deputy Magistrate, without enquiring into the allegation, held that his dismissal of the complaint operated like an acquittal. Held that the Deputy Magistrate, though competent to dismiss the complaint, ought to have exercised some discretion, more particularly under the circumstances detailed by the prosecutrix, and that the section (Act X of 1872, s. 205) contemplated such an exercise of discretion.  
**TAZOONNISSA v. WASSIL** . 24 W. R., Cr., 64

114. **Dismissal in exercise of judicial discretion—Criminal Procedure Code, 1872, s. 212—Acquittal.**—Where the Magistrate dismissed a case in the exercise of a judicial discretion, such dismissal by s. 212, Act X of 1872, has the effect of an acquittal of the accused person. The Court has no jurisdiction to entertain any application to interfere with the acquittal of an accused person, except the application be made either by Government or under the sanction of Government. IN THE MATTER OF THE PETITION OF BAGRAM  
[19 W. R., Cr., 52]

115. **Dismissal after adjournment for evidence—Non-attendance of witnesses—Criminal Procedure Code, 1872, ss. 208, 212.**—The dismissal of a complaint under s. 208 operates as an acquittal by reason of s. 212, Code of Criminal Procedure. **EASTERN BENGAL RAILWAY COMPANY v. KALIDASS DUTT**. 23 W. R., Cr., 63

116. **Dismissal on finding of not guilty—Criminal Procedure Code, 1872, s. 220 (1882, s. 258)—Acquittal.**—An order dismissing a complaint under s. 220 of the Code of Criminal Procedure, amounts to an acquittal. IN THE MATTER OF JADUBAR MOOKERJEE . 5 C. L. R., 359

117. **Dismissal on finding no offence proved—Criminal Procedure Code, 1882,**

**COMPLAINT—continued.**

4. **DISMISSAL OF COMPLAINT—concluded.**  
s. 253 (1872, ss. 215, 216; 1861, 69, s. 250)—**Acquittal.**—A discharge under s. 250 of the Criminal Procedure Code, 1861, does not amount to an acquittal. **QUEEN v. HUBBERSHAD** . 4 N. W., 23

118. **Issue of warrant of arrest and not taking proceedings under it—Power of District Magistrate to order proceedings against persons against whom warrant was issued—No final order of dismissal.**—Where there is evidence in any trial before a Subordinate Magistrate against certain persons that they have committed some offence, and the Subordinate Magistrate does not think it necessary to proceed against them, the District Magistrate cannot direct proceedings to be taken against them unless a final order of dismissal or discharge has been made, and he considers such order to be an improper one. Nor can he direct proceedings to be taken against such persons if they have not been before the Court unless he has removed the case for trial to his own Court by an express order. **MOUZI SINGH v. MAHABIR SINGH** . 4 C. W. N., 242

**5. REVIVAL OF COMPLAINT.**

119. **Revival of proceedings—Criminal Procedure Code (1882), s. 203—Final disposal of case—Jurisdiction of Magistrate.**—Where an original complaint is dismissed under s. 203 of the Criminal Procedure Code, a fresh complaint on the same facts before the same Magistrate cannot be entertained, so long as the order of dismissal is not set aside by a competent authority. **Nilratan Sen v. Jogesh Chundra Bhuttacharjee, I. L. R., 23 Calc., 983, followed. KOMAL CHANDRA PAL v. GOVE CHAND AUDHIKARI** . I. L. R., 24 Calc., 288 [1 C. W. N., 185]

**SIMBHOO RAM LALL v. KARI HAZARI**  
[3 C. W. N., 760]

120. **Right of appeal—Criminal Procedure Code (1882), ss. 423 and 439—Presidency Magistrate, Jurisdiction of.**—Where a complaint was dismissed by an Honorary Magistrate, and an application was made to a Presidency Magistrate on the same facts and materials for a fresh summons, Held that as an Honorary Magistrate has co-ordinate jurisdiction with a Presidency Magistrate, there was no right of appeal to the Presidency Magistrate from the order of the Honorary Magistrate. The proper course would be to apply to the High Court under ss. 423 and 439 of the Criminal Procedure Code to set aside the order and direct a re-trial. **Nilratan Sen v. Jogesh Chundra Bhuttacharjee, I. L. R., 23 Calc., 983, approved; Virankutti v. Chiyamu, I. L. R., 7 Mad., 557; and Opoorba Kumar Sett v. Probod Kumary Dassi, 1 Calc. W. N., 49, discussed. GRISH CHUNDER ROY v. DWARKADASS AGARWALLAH** [I. L. R., 24 Calc., 528 1 C. W. N., 370]

121. **Fresh complaint after dismissal—Criminal Procedure Code (1882), s. 203—Final disposal of case—Application of**

## COMPLAINT—continued.

## 5. REVIVAL OF COMPLAINT—continued.

s. 537 of the Criminal Procedure Code.—Where an

CHAMBER . . . I. L. R., 23 Calc., 983  
[1 C. W. N., 58]122. ——— A conviction in such a complaint, if entertained, is bad in law as being without jurisdiction. *KAMAL CHANDRA PAL v. GOUB CHAND ADHIKARI*[I. L. R., 24 Calc., 288  
1 C. W. N., 185]

123. ——— Complaint of offences under ss. 152 and 500 of the Penal Code (Act XLV of 1860)—Necessary sanction not obtained—Withdrawal of complaint—Discharge

investigated. The order stopping the proceedings would be legal only if the accused had been acquitted by a Court of competent jurisdiction, which was not the case, as the Magistrate could not take cognizance of the charge under s. 182 of the Penal Code, without a sanction having been previously obtained. As to the charge under s. 500 of the Penal Code, the proper procedure in respect of it was that prescribed for warrant cases. The only

SUDIN . . . I. L. R., 23 Bom., 711

124. ——— Criminal Procedure Code (1882), s. 203—Subsequent complaint arising out of the same matter.—When a competent tribunal has dismissed a complaint, another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it. *Niratan Sen v*

## COMPLAINT—continued.

## 5. REVIVAL OF COMPLAINT—continued.

*Jogesh Chandra Bhattacharye, I. L. R., 23 Calc.,*referred to. *QUEEN-EMPEROR v. ADAM KHAN*  
[I. L. R., 23 All., 103]

125. ——— Revival of complaint after discharge—Power of Presidency

arbitration was irregular. Held that the order of 24th July discharging the accused was improper; that the provisions of ss. 436 and 437 of the Criminal Procedure Code were not applicable to Presidency Magistrates who, therefore, can revise a complaint even after discharge; that the High Court has ample powers under the Charter Act, if not under the Code, to revise an order reviving a complaint after discharge; and that in this particular case the Presidency Magistrate had exercised a proper discretion in reviving the complaint. *OPORBA KUMAR SETH v. PROBOD KUMAR DASGI*

[1 C. W. N., 40]

*See CHARGOBALA DABER v. BARENDRA NATH MOZOOMDAR* . . . I. L. R., 37 Calc., 126

126. ——— Criminal Procedure Code, 1882, ss. 203, 437 and s. 4 (a)—Magistrate's order to stay proceedings against accused—Revival of proceedings by setting aside

and reviving the proceedings against the accused. Held that the order staying proceedings, whether the petition on which it was made was a complaint

a complaint, and, therefore, it was not competent to the successor in office to set aside such order of his predecessor. *Kamal Chandra Pal v. Goub Chand Adhikari, I. L. R., 24 Calc., 294; 1 C. W. N., 155; Niratan Sen v. Jogesh Chandra Bhattacharye, I. L. R., 23 Calc., 953; 1 C. W. N., 57*

**COMPLAINT—continued.****5. REVIVAL OF COMPLAINT—continued.**

followed. An order not authorised by law cannot be allowed to stand whether it is for the ends of justice or not. The original order of the Magistrate staying proceedings could not be set aside unless the Crown took steps authorised by law to set it aside. *In the matter of Guru Charan Aich*, 1 C. W. N., 650 followed. *INDERJIT SINGH v. THAKUR SINGH* [2 C. W. N., 290]

**127.** ——— *Criminal Procedure Code, 1898, s. 203—Power of Presidency Magistrate to revive a case dismissed on non-appearance of complainant.*—The Code of Criminal Procedure (Act V of 1898) contains no provision which empowers a Presidency Magistrate to revive a case which he had dismissed for default in appearance of the complainant, whether the order of dismissal was proper or not. *RAM COOMAR v. RAMJEE*. 4 C. W. N., 26

**128.** ——— *Code of Criminal Procedure (Act X of 1882), ss. 259, 369, 439—Warrant case—Discharge of accused—Presidency Magistrate, Power of—Revival of complaint.*—A Presidency Magistrate, when he has once discharged the accused, under s. 259 of the Code of Criminal Procedure (Act X of 1882), has no jurisdiction to revive the case, and therefore no jurisdiction to transfer it, and the Bench to which it was transferred had consequently no jurisdiction to hear it. *DAMINI DASSI v. HURRY MOHAN MOOKERJEE* [4 C. W. N., 46]

**129.** ——— *Power of Sessions Court to direct further enquiry—Criminal Procedure Code, 1861, s. 67 (1872, s. 147).*—A Court of Session had power to direct a Magistrate to enquire into a complaint dismissed by him under s. 67 of the old Code of Criminal Procedure, or the corresponding section of the Code of 1872. *ANONYMOUS* [7 Mad., Ap., 16]

**130.** ——— *Striking out offence on list reported—Criminal Procedure Code, 1872, s. 147.*—A person made a complaint to the police that the accused had enticed away his wife (a non-cognizable offence) and committed theft (a cognizable offence). The police enquired into the latter offence only, and, finding no *prima facie* case made out, reported to that effect to a Magistrate, who directed that that offence be expunged from the list of reported offences. *Held* that, under the circumstances, there had been no dismissal of the complaint in respect of the former offence, and that there was no bar to the complaint into that offence being taken up and proceeded with. *GOVERNMENT OF BOMBAY v. SHIDAPA*. I. L. R., 5 Bom., 405

**131.** ——— *Dismissal of warrant case not compoundable—Revival of prosecution—Discharge under Criminal Procedure Code, 1872, s. 215.*—A warrant case of a nature not compoundable under s. 214 of the Penal Code was “dismissed” on the parties coming to an amicable settlement. *Held* that the “dismissal” was equivalent to a discharge under s. 215 of the Code of Criminal Procedure, and the composition did not affect the revival of the

**COMPLAINT—concluded.****5. REVIVAL OF COMPLAINT—concluded.**

prosecution, if that should otherwise be thought necessary or expedient. *REG. v. DEVAMA* [I. L. R., 1 Bom., 64]

**COMPOSITION-DEED.**

*See DEBTOR AND CREDITOR.*

[I. L. R., 16 Mad., 85]

**COMPOUNDING OFFENCE.**

*See COMPLAINT—REVIVAL OF COMPLAINT.* [I. L. R., 1 Bom., 64]

*See CASES UNDER CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—COMPOUNDING CRIMINAL OFFENCES.*

*See FALSE CHARGE.*

[I. L. R., 11 Calc., 79]

*See GUARANTEE.*

[I. L. R., 11 Bom., 566]

*See MALICIOUS PROSECUTION.*

[I. L. R., 3 Mad., 6]

**1.** ——— *Screening an offender—Penal Code, s. 214.*—The accused agreed to give R10 to S in consideration of his not giving evidence against K, who was charged with the offences of house-breaking by night and theft in a building. S gave evidence against K, who was, however, acquitted. The accused was charged under Penal Code, s. 214, but was acquitted. *Held* that the acquittal was right. S. 214 of the Penal Code presupposes the actual commission of an offence, or the guilt of the person screened from punishment. *QUEEN-EMPRESS v. SAMINATHA*. I. L. R., 14 Mad., 400

**2.** ——— *Adultery—Withdrawal of charge.*—Where the husband of a woman with whom the accused was alleged to have committed adultery professed himself unwilling to proceed with the prosecution and the Assistant Judge thereupon ordered the accused to be discharged, the Court, in the exercise of its discretion, declined to interfere. *REG. v. RAMLOJERIO*. 5 Bom., Cr., 27

**3.** ——— *Withdrawal of charge.*—The power given to Magistrates to permit complainants to withdraw their complaints is confined to cases falling for disposal under Chap. XV of the Criminal Procedure Code. Consequently a charge of adultery cannot be withdrawn by a complainant with the Magistrate's consent. *QUEEN v. GUMBHEER*. 2 N. W., 234

**4.** ——— *Penal Code, s. 497—Appeal.*—N charged T with having committed adultery with his wife. On enquiry into the charge by the Magistrate, the case was committed to the Sessions Court for trial, when T was convicted. T appealed to the High Court. After conviction, N and his wife were reconciled, and N at the hearing of the appeal asked for leave to compound the offence. *Held* that at that stage of the case sanction could

**COMPOUNDING OFFENCE—continued.**

not be given to withdraw the charge. *EMRESS OF INDIA v. THOMPSON* . I. L. R., 2 All, 339

5. ——— Assault—*Penal Code, s. 214—Act irrespective of intention.*—The offence of assaulting a man and intentionally causing grievous

[8 N. W., 302]

duty to have anticipated any such intention. The offence to merely contemplated legislation. IN THE MATTER OF THE PETITION OF RAJNAR HUSAIN v. HARBANS SINGH . I. L. R., 3 All, 283

7. ——— Criminal breach of trust—*Penal Code, ss. 213, 214, 406.*—The offence of criminal breach of trust, under s. 406 of the Penal Code, cannot, under the terms of ss. 213 and 214 of the same Code, be lawfully compounded. IN THE MATTER OF A REFERENCE FROM THE CHIEF PRESIDENCY MAGISTRATE . 6 C. L. R., 392

REG. v. MUTHAYAN . I. L. R., 1 Mad., 101

8. ——— Criminal misappropriation—*Penal Code, s. 404.*—An offence under s. 404 of the Penal Code is not one of the class of offences that may be compounded. ANONYMOUS CASE [7 Mad., Ap., 34]

[I. L. R., 1 Mad., 101]

10. ——— House-trespass—*Criminal Procedure Code, 1882, ss. 248, 259—Case sent up*

229, and professing to act under s. 437 of the

**COMPOUNDING OFFENCE—continued.**

Criminal Procedure Code, directed the Deputy Magistrate to send up the parties and proceed regularly with the case. Held that ss. 248 and 259 had no

11. ——— Hurt—*Voluntarily causing hurt—Penal Code, s. 323—Criminal Procedure Code, 1872, s. 168.*—The offence of voluntarily causing hurt under s. 323 of the Penal Code is one which may lawfully be compounded, and the withdrawal from the prosecution in such a case is therefore permissible under s. 168 of the Criminal Procedure Code, 1861. REG. v. JETHA BHALA 10 Bom., 68

12. ——— *Penal Code,*

offence of voluntarily causing grievous hurt cannot, accordingly, be compounded. REG. v. JETHA BHALA, 10 Bom., 68, disapproved. REG. v. RAHIMAT [I. L. R., 1 Bom., 147]

13. ——— Kidnapping.—The offence of kidnapping can be lawfully compounded. QUEEN v. GOPAL MOHUN MITTER . 22 W. R., Cr., 23

14. ——— Mischief—*Criminal Procedure Code (Act X of 1882), s. 345—Mischief done to the private property of a village Mahār.*—The accused was charged with mischief for causing damage to crops which were the private property of a village Mahār. The Magistrate refused to allow

the public or even of the Mahār community generally IN RE MOTIRAM

[I. L. R., 23 Bom., 839]

15. ——— Wrongful restraint.—The causing of wrongful restraint to another may lawfully be compounded. MUTHOORAYATH BHOOMICK v. KENARIM KENGEAR . 7 W. R., 33

## COMPOUNDING OFFENCE—continued.

16. *Requisites for composition of offence valid in law—Criminal Procedure Code (Act X of 1882), s. 345—Onus of proof—Wrongful restraint and confinement of coolies employed on tea garden.*—Where an accused person alleges that an offence with which he is charged has been compounded so as to take away the jurisdiction of the Criminal Courts to try it, the onus is on him to show that there was a composition valid in law. *M*, a European British subject, charged with the compoundable offences of wrongful restraint and wrongful confinement of coolies employed on a tea garden of which he was the manager, pleaded that the Magistrate had no jurisdiction to try the cases, as they had been compounded by the complainants. The alleged compromise consisted of a Bengali paper, signed by the coolies, stating that they "made razinama" (compromise) "of the case of their own accord," and a paper in English signed by *M*, these papers being given to the District Superintendent of Police, who had investigated the complaints, and who stated that he asked the coolies as to the contents of the Bengali paper, and they said that they had signed it voluntarily and stated its purport, and that one of them said in the presence of the others that it was a razinama. *G*, one of the coolies, also wrote on the paper the words in Uriya, "I will not carry on the case." The Bengali paper was written by the Darogah of the police station in presence of *M*. The paper signed by *M* was as follows:—"I hereby agree with these Ganjam people that there shall be no legal proceedings of any kind taken against them with the exception of those who have not completed their agreements. Those whose agreements have not been completed, proceedings will be taken against them on 22nd May, if they have not returned to the garden before then." Neither of the papers were explained to *G* so as to make them intelligible to him, for though the Bengali paper was read out, *G* did not understand that language. *G* was one of the coolies who had completed his agreement with *M*. *Held per PRINSEP, J.*—The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification to act as an inducement for his desiring to abstain from a prosecution; here there was no forbearance on the part of *M* to proceed against *G*, who had served out the term of his engagement, and therefore, there was no consideration for the agreement to compound. Having regard, moreover, to the ignorance and inferior intelligence of *G*, it was of vital importance for *M* to show what led to the alleged agreement, and how it was that the Darogah was instrumental to it, which he had not done. *Per TREVELYAN, J.*—Compounding an offence supposes an arrangement by which the parties have settled their differences, and in the more usual acceptance of the term implies that the prosecutor has received some consideration or gratification for dropping the prosecution. Although the provisions of the Contract Act may not apply, the proof of the arrangement must be similar to that which the Court

## COMPOUNDING OFFENCE—concluded.

requires for the proof of any agreement which is in issue; and unless it appears that the parties were free from influence of every kind and were fully aware of their respective rights, it would be impossible to give effect to a so-called arrangement or composition. Having regard to the fact that the writer of the Bengali agreement had not been called, and that the contracting parties were, on the one side, ignorant coolies, strangers to the land and to the language in which the document was written, and on the other, a European of some education, assisted by his Bengali clerk, and, having also the assistance of the police, it was not proved that *G* knew what he was about and was fairly contracting. *Held*, therefore, by the Court that there was under the circumstances no compounding of the offences with which *M* was charged, valid in law such as to deprive the Magistrate of jurisdiction to try them. *MURRAY v. QUEEN-EMPRESS*. I. L. R., 21 Cal., 103

17. *Compounding after committal—Effect of, on committal.*—A committal once made of an accused person by a Magistrate to the Sessions, cannot be annulled by his allowing the prosecutor to file a compromise. *QUEEN v. SALTAR SHEIK*. 2 W. R., Cr., 57

18. *Criminal Procedure Code (Act V of 1898), s. 345—Filing of petition of compromise in Court—Effect of subsequent withdrawal of petition.*—Where a complainant, a female, had presented a petition of compromise in respect of a compoundable offence and the Magistrate had examined her and satisfied himself as to her understanding the same. *Held* that he was wrong in ordering the petition to be put up with the record but should have immediately dealt with the matter, and that he was under the terms of s. 345, Criminal Procedure Code, obliged to accept the compromise and to give effect to it. *Held*, also, that the complainant could not by a subsequent withdrawal of the above petition of compromise insist upon the case proceeding. *KUSUM BEWA v. BECHU BEWA* [3 C. W. N., 322

19. *Offence lawfully compoundable—Penal Code (Act XLV of 1860), s. 342—Petition for withdrawal and compromise—Object and effect of—Duty of Magistrate on receipt of such petition.*—When a charge is framed against an accused person only of an offence which can be lawfully compounded and a petition of compromise or for leave to compound the offence is put in, the Court should allow the parties to compound the offence, and acquit the accused. When a petition either for compromise of, or for withdrawal from, the case is put in, the Court ought to make an order either granting or refusing the application then and there, and should not put it off by ordering it to be filed with the record to be considered at the close of the trial. *MAHOMED ISMAIL v. PAIZUDDI* [3 C. W. N., 516

## COMPROMISE

Col

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE . . . . . 1494
2. REMEDY ON NON-PERFORMANCE OF COMPROMISE . . . . . 1500
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See DIVORCE ACT, ss. 16, 17.  
[I L R., 10 All., 559]

See EVIDENCE ACT, s. 74 . . . 25 W. R., 68

See CASES UNDER EXECUTION OF DECREE—EXECUTION ON OR AFTER AGREEMENTS OR COMPROMISES.

See MALABAR LAW—ENDOWMENT.  
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See REGISTRATION ACT, 1877, s. 17 (1864, s. 13) . . . . . 7 B. L. R., 197  
[3 C. W. N., 683]

## Effect of—

See MORTGAGE—TACKING.  
[I L R., 18 Mad., 368]

## of suit, Power to make—

See ATTORNEY AND CLIENT.  
[7 Bom., O. C., 70]

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See CASES UNDER HINDU LAW—WIDOW—POWER OF WIDOW—POWER TO COMPROMISE.

See LIS PENDENS.  
[I L R., 18 Calc., 188  
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See PLEADERS—AUTHORITY TO BIND CLIENT . . . . . 3 N. W., 149  
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out of Court without knowledge of Attorneys.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT . . . 9 B. L. R., Ap., 19  
[I L R., 25 Calc., 687  
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I L R., 27 Calc., 269  
4 C. W. N., 208]

See LIMITATION ACT, 1877, ART. 84 (1871, ART. 65) . . . I L R., 1 Bom., 505

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See PAUPER SUIT—APPEALS.  
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See STAMP DUTY, REFUND OF.  
[11 W. R., 158  
4 B. L. R., Ap., 96, 98 note]

## 1. CO

view. *Directors of the London and South Western Railway Company v. Blackmore*, L R., 1 H. L., 610, followed. *NEELANAND SINGH v. HAMMOODIN* [I L R., 8 Calc., 573]

2. *Hindu family—Deed altering proper course of succession according to Hindu law.*—Where a dispute in a Hindu family as to legitimacy and the right to succession resulted in a family arrangement as to the mode in which the estate was to be held by the sons,—

Where a family arrangement was made, the court would have given a taluk, in the event of the death of a younger son, to such of the lawful

primary right, a construction which would postpone male issue to their mothers was inadmissible. *GAJAPATI RADHIKA PATTI MAHADEVI GURU v. GAJAPATI HARI KRISHNA DEVI GURU*

[8 B. L. R., 203  
14 W. R., P. C., 33  
13 Moore's I A., 497]

Reversing the decision of the High Court in *GAJAPATI HARI KRISHNA DEVI GURU v. GAJAPATI RADHIKA PATTI MAHA DEVI GURU* and *GAJAPATI NEELAMANI PATTI MAHA DEVI GURU v. GAJAPATI RADHIKA PATTI NEELMA DEVI GURU* 3 Mad., 369

**COMPROMISE—continued.****1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.**

3. — *Agreement to relinquish claim—Continuing suit after agreement—Liability to repay consideration-money*—Where, during the pendency of a suit, the plaintiff, in consideration of R2,000, executed contemporaneously a farigh-kutti, or relinquishment of the claim made by him in the suit, and an ikrarnamah, or engagement to deliver in a raziarnamah, or deed acknowledging himself to be satisfied,—*Held* that the farigh-kutti and raziarnamah amounted to a decided agreement for the settlement of the action; and that, although the plaintiff sued as a pauper, yet, as it was questionable whether he should have been allowed to sue as a pauper, and as he had failed to perform his duty according to his engagement in entering up a raziarnamah, he was liable to pay the consideration money of the agreement and the costs incurred in consequence of his unsuccessful and apparently unjust litigation which he had instituted and carried on for the purpose of freeing himself from the obligation incurred by the farigh-kutti.

MUNNI RAM AWASTY v. SIEO CHURN AWASTY  
[7 W. R., P. C., 29  
4 Moore's I. A., 114]

4. — *Conditional agreement to pay interest*—Where a compromise embodied in a decree was to the effect that the defendant should pay to the plaintiff the principal sum within a specified period, and that if he were successful in another suit against a different party he could also pay the interest; and the defendant succeeded in his suit in the first Court, but his suit was dismissed on appeal,—*Held* he was not liable to pay the interest on the proper construction of the compromise.

BOLAKEE LALL v. MAHOMED HOSSEIN KHAN  
[14 W. R., 63]

5. — *Mahomedan law—Estate limited to take effect in favour of a person after another's death*—It is not consistent with Mahomedan law to limit an estate to take effect after the determination, on the death of the owner, of a prior estate by way of what is known to English law as a vested remainder, so as to create an interest which can pass to a third person before the determination of the prior estate. The parties to a solennamah or compromise were, on the one side, the widow of a Mahomedan, she being in possession of villages in Oudh, which had belonged to him, and of which the summary settlement of 1858 had been made with her; and, on the other side, two brothers, alleged to be his sons. By the compromise, which was made in the course of proceedings at regular settlement, it was agreed that the widow should, during her lifetime, continue to hold possession, and remain proprietor, without power of alienation, and that after her death the two sons should possess each one-half of the property. *Held* that, on the true construction of the compromise, the title of the sons to succeed was contingent upon their surviving the widow, and that no interest passed to their heirs on their deaths.

**COMPROMISE—continued.****1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.**

in her lifetime. ABDUL WAHID KHAN v. NURAN BIBI  
I. L. R., 11 Cal., 597  
[L. R., 12 I. A., 91]

6. — *Penalty for non-fulfilment of conditions, Suit to enforce*—A suit for a kabuliati having been brought in the Revenue Court, a deed of compromise was filed in the suit, in which it was stipulated that a certain sum would be paid by the defendants to the zamindar as rent of four kanis of land, including homestead, after mutation of names; that R15-8 on account of outstanding balance and charges connected with the rents would be paid to the plaintiffs within a month; and that in default the defendants would have no right to the lands specified. The defendants having failed to fulfil the conditions, the plaintiffs executed their decree and realised from them the balance above mentioned, and having sued them for the rent obtained a decree. The plaintiffs then brought this suit to recover possession, in virtue of itmami right, of the land on the ground of non-fulfilment of the conditions of the compromise. The first Court gave them a decree, which the lower Appellate Court reversed, holding that the deed merely imposed a penalty with a view to punctual payment. *Held* that, as what the defendants had to do was of a perpetually recurring nature, and no action which the Court might take would be effectual in preserving the plaintiff from being sued by the zamindar, the intention was that the terms should be strictly enforced on failure to perform the conditions, and that the defendant should be obliged to surrender the lands.

HASHIM v. HOSSEIN ALI  
19 W. R., 433.

7. — *Construction and enforceability of compromise of suit between members of grantee's family—Removal of manager—Appointment of receiver*—Early in the eighteenth century two villages were granted by the zamindars of Sivaganga and Guntamanaikanur to the last of the Naik rulers of Madura for the maintenance of the rank and dignity of his family which was now represented by the plaintiffs and defendants Nos. 1 to 23. The property was long managed by the representative, for the time being, of the senior line. In 1844 one of the junior members instituted a suit for partition, which terminated in a decree, declaring the corpus of the property to be indivisible and the annual produce to be divisible in certain shares. Subsequently in 1857 a compromise was entered into, by which the parties agreed to vary the distribution of the shares, but they agreed that the management of the estate, indivisible and inalienable, should continue to be vested in the eldest line subject to certain supervision on the part of the other members. The compromise was long acted upon by the family; but in 1892 the representative of the senior line died, leaving only his widow and infant sons. The widow, as guardian of the elder son, then entered on the management, and being gosha, delegated it to a stranger. The plaintiffs representing a junior line

**COMPROMISE—continued.****1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.**

came of age the estate should be managed by a receiver appointed from among the members of the family. **TIRUMALAI NAIK v. BANGABU TIRUMALAI SAUBI NAIK** I L. R., 21 Mad., 310

**8. ——— Assignment of villages part, of an impartible estate—Maintenance of a member of a junior branch of a joint Hindu family—Agreement—Arbitration award, decrees and settlement there on—Revenue, by whom payable—A talukhdar owning an impartible in-**

talukhdar's ownership, and the assignment by him of eleven villages to the junior member, free of liability in respect of the revenue. These terms were entered in an administration paper, or *wajib-ul-arz*, of the talukh before the settlement of

any proportionate increase of profit from the eleven villages. In 1881 the talukhdar sued for a declaration that the defendant's right in the villages consisted only of a certain amount of allowance for

**COMPROMISE—continued.****1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.**

being originally based on claims to maintenance. The talukh was vested in the plaintiff subject to the right of the defendant to hold the eleven villages, and as between them, the former was liable for the jumma and the latter for the local rates and cesses. **LOKNATH v. BISDESSARNATH**

[I L. R., 27 Cal., 103]

**9. ——— Enforcing compromise—Compromise of family disputes—Hindu law—**

**JUN SINGH v. PRAYAG SINGH**

[I L. R., 8 Cal., 138 : 10 C. L. R., 60]

**10. ——— Non-performance**

the worship of the family idol. The elder was kept out of possession of these lands by the younger, and he performed the worship at his own expense, and the younger took out execution, objecting that his brother had not performed his trust as family shahait, so that he had been compelled to perform the ceremonies at his own expense; but his objection was overruled. *Held*, on appeal by the younger, that the non-performance of any ceremonies by the elder brother gave him no cause of complaint, unless he could show that such failure was not caused by any default on his own part. **RADHASIDHAN MURTHY v. TARA MANI DAS**

[3 B. L. R., P. C., 70]

[11 W. R., P. C., 31]

12 Moore's L. A., 380

**11. ——— Decree made on compromise—Review of judgment—Altering decree.—The manager of the Court of Wards effected a compromise with claimants on the estate; a decree**

disturb settled arrangements on the ground of their

compromise was sanctioned by the Court.

( 1499 )

## DIGEST OF CASES.

## COMPROMISE—continued.

## 1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.

afterwards the manager found that he had been deceived by his servants, and that the claim had been allowed erroneously. *Held* that the Court having granted a review, and the claim being proved to be exaggerated, a decree was properly given for the true amount. *LALJI SAHU v. COLLECTOR OF TIRHUT* . . . . . 6 B. L. R., P. C., 648 [15 W. R., P. C., 23

12. ———— Effect of compromise—  
Reconveyance with condition of the gift of property—  
Restriction of alienation—Mahomedan Law—

*Gift.*—*M* and her son *S* departing on a journey, made a conditional gift of their property to *A*. On their return, *A*, under the award of a panchayat, restored their property, but by the instrument reconveying it their estate was limited to a life interest, and they were restrained from alienating it. The lower Courts held this instrument to be a deed of gift, and that the conditions attached to the gift were void by Mahomedan law. *Held*, on special appeal, that the lower Courts were wrong in so treating it, as it was in fact a compromise, the terms of which should be carried out, and *M* and *S* should be restrained from wasting or alienating the property. *ABUDEKAR BIN HAGADA HAJISABA v. MATIBI* [6 Bom., A. C., 77

13. ———— Subsequently acquired property.—The late Maharajah Mitterjeet Singh was entitled to the levy of a tax upon pilgrims resorting to the temple at Gya. On the abolition of the tax by the Government a compensation was awarded to the Maharajah in lieu of it in the shape of a perpetual annual payment, which sum, it was settled by an agreement and a decree of a Sudder Court during the Maharajah's lifetime, was on his death to be divided in certain proportions between his two sons, through whom the Government might and respondents claim as their heirs respectively. *Held* that, in whatever mode the Government might think proper to deal with this sum, with reference to the jumma, the rights of the parties could not be affected thereby without their consent, but would continue to be adjusted according to the proportions originally established. *INDERJEET KOOL v. ISMUDH KOOL* . . . . . 5 W. R., P. C., 14 [1 Ind. Jur., N. S., 141 10 Moore's I. A., 329

14. ———— Family agreement as to division of property.—Suit for further share.—The plaintiff, defendant, and *K* were brothers. *K* died, and after his death a division took place, and an agreement was executed by the parties by which one-third of the family property went to the plaintiff, and two-thirds to the defendant, whose son had been adopted by *K*, the plaintiff giving up his right to more than a third in consideration of the fact of the adoption. Subsequently *K*'s widow sued for a share on behalf of her own son, but the suit was decided against her and affirmed by the High Court, on the ground that her son was an idiot.

( 1500 )

## COMPROMISE—continued.

## 1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.

The plaintiff now sued for recovery of a moiety of the one-third share still in possession of the defendant which in ordinary course would have fallen to *K* or his representatives. *Held* that the plaintiff having by the agreement accepted a third share, and abandoned his claim to the rest, could not recover. *SAMY AIXANGAR alias RAMASAWMY AIXANGAR v. ALAGASINGA AIXANGAR* . . . . . 3 Mad., 33

15. ———— Admission of title in compromise, Effect of.—A suit having been brought against *R J* and others, a compromise was effected, to which *J D* (a *pro forma* defendant) was no party, and a decree was passed on the terms of the compromise whereby certain land was awarded to the plaintiff. On attempting to take possession, the plaintiff was opposed by *J D*. The case was taken up under s. 230, Code of Civil Procedure, and *J D*'s possession was upheld; the plaintiff then brought a suit against *J D*, who dying, was represented by the defendants in the former suit who had been parties to the compromise. *Held* that these defendants were bound by the terms of the compromise in which they had admitted the title of the plaintiff in the lands in dispute, even if their title to the lands accrued to them since the compromise. *RAM CHUNDER ADHIKAREE v. RAM JEEBUN ADHIKAREE* . . . . . 12 W. R., 427

16. ———— Interest Act (XXXII of 1839).—Interest on certain amount payable on the happening of an event and at certain time.—Sum agreed to be paid to defend a suit.—Effect of compromise of suit on liability to pay.—*A* brought a suit against *B* and *C*. *B* wrote a letter to *C*, proposing that counsel should be engaged to defend the suit, and that *C* should contribute Rs 900 only for it. *C* agreed to the proposal and consented to pay the amount within ten days. Counsel was engaged, and Rs 4,000 were paid to him. After several hearings the case was compromised. *B* then demanded from *C* the amount which he had promised to contribute, and also interest on it. *C* refused to pay and a suit was brought by *B* to recover the said amount with interest. *C* pleaded that he was not liable to pay the amount, inasmuch as the case was compromised, and also pleaded that he was not liable to pay interest on it, as the debt was neither certain in amount nor payable at a certain time. *Held* that *B* was entitled to recover the amount, as there was a promise by *C* to pay on the happening of a certain event which had happened. *Held*, also, that *B* was entitled to get interest on the amount, inasmuch as the debt was not uncertain, the date of payment was defined, and *C* knew that the contingency upon which he became liable had occurred. *SURJA NARAIN MUKHOPADHYA v. PRATAP NARAIN MUKHOPADHYA* [I. L. R., 26 Calc., 955

17. ———— Compromise consisting of two agreements, one registered and the other not.—Unregistered agreement incorporated into a judicial proceeding.—A prior suit between

COMPROMISE—continued.  
1. CONSTRUCTION ENFORCING. EFFECT  
OF, AND SETTING ASIDE, DEEDS OF  
COMPROMISE—continued.  
C. D., 239, followed. Attn: Ray

Endean, L. R., 9 Ch. D., 259, followed. Atchoo-  
TORN CHANDRA c. TARAPRASADIA ROY [L. R., 10 Cal., 612]  
Joint and several

CONSISTENT  
OF, AND SETTING  
COMPROMISE—*continued.*

the same parties, now contesting the right to part of an ancestral estate, claimed another part of the same estate, without comprising the lands now in suit, which, at the time when the first suit was brought, were outstanding under a mortgage. A decree had been made by consent, excluding the lands now sued for. The defendant's case was that the lands now claimed, together with those decreed by consent, had been made the subject of two written agreements not registered. Also, that according to the compromise each of the parties was to take a moiety of the whole estate. Each had obtained possession; but the decree was limited to the part of the estate for which the prior suit, then disposed of, was brought; and only one of the agreements—that one which related to the lands then in suit—was presented to and accepted by the Court which made the consent decree. *Held* that this agreement had a different effect from the other one, as it constituted a step in a judicial proceeding, and did not require registration. But as regard order was pronounced in terms of it. But as the lands now in suit, excluded as they had been from the decree in the former suit, the defendant's title to them had been left to stand or fall by the other unregistered document. The latter, by the Registration Act, 1877, conferred no title, and this defence failed. *PRANAL ANNI v. LAKSHMI ANNI*  
[L. R. 28 I. A., 181]  
[L. R. 28 I. A., 181]

[illegible]

18. **Setting aside compromise.**—**Ours**  
*Sent to set aside deed of compromise.*—**Ours**  
**Prokadi.**—A *wakmahah* or deed of agreement to  
 compromise conflicting claims entered into in the  
 presence of witnesses and solemnly acknowledged  
 by parties who were mutually ignorant of  
 their respective legal rights, cannot afterwards be  
 set aside upon a plea of ignorance of the real facts  
 when the party seeking to avoid the deed has  
 means of ascertaining those facts within his reach.  
 Gross fraud and imposition are not to be imputed  
 upon mere suspicion, and unless the charge is proved,  
 a party cannot be released from an agreement entered  
 into by his own solemn act. The onus of showing  
 that a compromise has been fraudulently obtained by  
 intimidation and false representation is cast upon  
 those who seek to impeach the validity of their own  
 deed. **RAJENDER NARAIN RAY & BHAIR GOWD**  
**SINGH.** 3 Moore's I. A., 181.

19. *set aside compromise—Review of judgment—New suit.*—For the purpose of setting aside a decree passed in pursuance of a compromise made to out of Court, there are two available modes of procedure (1) by suit; (2) by a review of the judgment sought to be set aside; the latter being the more regular mode of procedure. *Lalji, Sales v. Collector of Tirhoot; G. B. L. R. 643; Meena Lal Thakur v. Bhajjan Jha, 13 B. L. R. 44. 11; Gilbert v.*

31. False representations—Sanction by Court  
of compromise entered into by a minor—Misrepresentation or mistake as to material facts—Contract Act (IX of 1872), s. 20—Enquiry as to

**COMPROMISE—continued.****1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.**

whether it would be for benefit of minor to set aside compromise.—The plaintiff, a minor, was, as daughter and one of the heirs of A, entitled to  $\frac{7}{16}$ ths of his estate. The value of A's estate was uncertain, and depended on whether or not A had been a partner in business with M, and whether or not a sum of R30,000 had been paid by M to A in satisfaction of all claims which A had against M in respect of the estate of K, a deceased brother of A and former partner in the same business. M having, on A's death, possessed himself of all the estates of A, the plaintiff brought a suit against M, in which a decree was made ordering an account to be taken of the estate of A which had come into the hands of M. Pending such account M died, leaving a will, by which he appointed the son of A and another his executors, and the suit was revived against them. In their application for probate they stated that the value of M's estate, so far as they had been able to ascertain and were aware, was R4,11,000. Shortly after probate was granted, negotiations were entered into between the executors and the advisers of the plaintiff for a compromise, and a petition was, with the concurrence of the executors, presented by the plaintiff to the Court, asking for its sanction to the terms agreed upon by the parties, which were, that the plaintiff should receive R20,000 in full of all demands, and R5,000 for her costs of suit. This petition took, as the value of M's estate, the amount stated by the executors in their application for probate, and stated that the value of A's estate, in case the above-mentioned payment by M was proved, would be R30,000, and in case it was not proved, then a moiety of the estate of M; and that, considering the difficulties the plaintiff had to meet in proving her case, and with a view to put an end to further trouble, litigation, and expense, the above terms had been agreed to on her behalf. These terms of compromise were sanctioned by the Court on the 11th September 1876. Shortly afterwards, further property was discovered belonging to the estate of M. The plaintiff brought a suit against the executors to set aside the compromise, allowing that the terms had been accepted by her on the faith of the representation made by the executors in their application for probate, and charging them with wilful and fraudulent concealment. There was evidence to show that some of the property subsequently discovered was such that the defendants as executors ought to have known, even if they did not, of its existence at the time of the compromise. Held that even though the executors had no such knowledge, and there was no actual fraud, yet there was such culpable ignorance and neglect of duty on their part as to amount to fraud, and carry with it the consequences of knowledge; and as the compromise had in consequence been entered into by the parties and sanctioned by the Court under a misapprehension of material facts, the plaintiff was entitled to have the compromise set aside, and the parties restored to their rights in the former suit at the time it was effected. *Per PONTIFEX, J.*—In cases where the

**COMPROMISE—continued.****1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.**

sanction of the Court is required, as where there is an infant concerned, each party is bound to see that the materials on which the sanction of the Court is asked for are unimpeachable. *Per PONTIFEX, J.*—*Quære*,—Whether in this suit, if the questions were found to arise, it would be necessary for the Court to consider whether it would be for the benefit of the minor that the compromise should be set aside. *Per GARTH, C. J.*—*Semble*,—Even if it only appeared that the compromise had been entered into and sanctioned under an entire mistake of the parties and of the Court with regard to the subject-matter of the agreement, it ought to be set aside under s. 20 of the Contract Act. *Per GARTH, C. J.*—In a substantive suit by a minor to set aside a compromise made with the sanction of the Court obtained by fraud or mistake, it is not the province of the Court to enquire whether it would or would not be for the benefit of the minor that the compromise should be set aside; though it might be otherwise on an application for review to the Court which granted the sanction. *SOLOMON v. ABDOL AZEEZ*

[L. L. R., 6 Calc., 687; 8 C. L. R., 169]

**22.** ————— *Party subsequently found legally entitled to nothing—Compromise made on behalf of minors.*—When parties enter into a compromise, or family arrangement, in order to avoid litigating the question as to whether one of the parties is entitled to certain property or not, such compromise will not be set aside, although it should eventually turn out that the party taking something under the compromise was in reality legally entitled to nothing. But where such a compromise was alleged to have been entered into by a mother on behalf of two minor sons on the one hand, and an adult member of the family on the other, agreeing to give the latter more than had been awarded by a judicial decision, it was held that the compromise was not binding on the minors. *DEARMAJ VAMAN v. GURRAY SREINIVAS* . . . 10 Bom., 311

**23.** ————— *Ground for setting aside compromise—Consideration—Estoppel—Fraud.*—When a claim is once compromised, and a new contract entered into, the promisor is estopped from pleading illegality or absence of consideration for the new contract, the real consideration for it being the withdrawal of the claim itself, irrespective of the possibility of its being prosecuted to a successful issue. The new contract can only be questioned on the ground of fraud, such as want of good faith in making the claim compromised. *VARAJJAL SHIV-LAL v. DALSUKH VARAJJAL* . . . 12 Bom., 196

**24.** ————— *Ground for setting aside deed.*—A deed of partition between two brothers based on a compromise of suit, ratified by a decree of the Sudder Court, and putting an end to litigation previously entered into by their father, cannot be set aside without strict proof of haste and precipitancy of the settlement, inequality, restraint,

**COMPROMISE—continued.****1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE—continued.**

correction, or fraud. **HEINARAIN SINGH v. MOD-SARAIN SINGH**

[3 W. R., P. C., 51; 7 Moore's I. A., 311]

revived, but his application was rejected by the

was to remit both parties to their original rights, and that if the plaintiff was to be allowed to be heard

**JENAIN** I. L. R., 2 Calc., 184; 28 W. R., 36  
[L. R., 3 I. A., 291]

suit to set aside the compromise of 1881, and recover back the sanathan property assigned to G under

as an equitable defence to recover from the plaintiffs in question the private property, there being nothing in the compromise to show that there was any exchange of private property for trust property. **CHANDRAS CHAKRAVARTY v. CHAKRAVARTY** I. L. R., 18 Bom., 721

**COMPROMISE—continued.****2. REMEDY ON NON-PERFORMANCE OF COMPROMISE.**

28. *Suit to enforce compromise—Reversal of original right.*—A compromise must be treated as a new and positive contract. A breach of its stipulations may be ground of a suit for its enforcement, but not for a revival of the original right. **HISRU COOMAR Ror v. KHAN CHANDER DEO Ror**, 2 W. R., 209

29. *Profits of land.*—Where a compromise was made that any deficiency in the plaintiff's acer land was to be made up of assamee land, and, if that were insufficient, from the defendant's acer land, but the compromise was not acted on, and the plaintiff was unable to make up the deficiency, *Held* that he was entitled to recover profits from the defendants in proportion to the deficiency in his acer land. **HIDAYAT-GOLLAH v. DOORCHORE RAI** 2 Agra, 204

has been effected and a party allowed to withdraw his suit under the provisions of s. 28, Act VIII

right of action, but may bring a suit for the performance of the condition unaccomplished with. *Held* also where a compromise is filed in Court, and a decree passed in accordance therewith, such decree must be first set aside before a second suit can be brought on the original cause of action. **AMAR BEHAR v. NOOR BEGUM** Agra, F. B., 1

31. *Compromise after decree—Denial of compromise in execution of decree.*—Where a compromise is set up, and disavowed by one of the alleged parties thereto, the other party cannot, by an application in the execution department, relying on the compromise, arrest the execution of the decree. Whatever rights may exist under the compromise must be established by a new suit. **JUNDOO v. HIMMAT** 3 N. W., 81

32. *Compromise*

defendant's plea on the day of hearing. *Held* that



## COMPROMISE—continued.

## 3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.

not been conducted in the interest of the infants, but had been improperly compromised by withdrawing objections which had been lodged to the accounts brought in by the defendants, and that this compromise had not been sanctioned by the Court. *Held* that there had been, in effect, a waiver of the infants' claim under an agreement of withdrawal between the parties; and that for such waiver and withdrawal the Court's sanction on behalf of the infants was necessary; and that as such sanction had not been obtained, the plaintiff would be entitled to impeach the decree and re-open the accounts if he had proceeded in the proper manner by an application for review or by an original suit, but that the present procedure was wrong, and that the rule must be discharged. **KARMALI RAHIMHOY v. RAHIMHOY HABIBHOY** . I. L. R., 13 Bom., 137

and by suit under s. 11. **MIRALI RAHIMHOY v. BEMMOORHOY HABIBHOY** . I. L. R., 15 Bom., 504

## 41. ———— Minor—Circum-

interests of the minor, the Court granted leave to the making of the agreement or compromise. From the mere fact that the Court passed the decree in accordance with the compromise, it cannot be inferred that any of these steps preliminary and necessary to the

## COMPROMISE—continued.

## 3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.

making of the decree have been taken by the Court. **KALAYATI v. CHEDI LAL** . I. L. R., 17 All., 531

42. ———— *Compromise on behalf of a minor—Suit to set aside compromise as having been entered into without the leave of the Court.*—Where the guardian ad litem of certain minors assented on their behalf to a compromise, which compromise was accepted by the Court and a decree passed thereon, and was found not to be pre-

**SINOH** . I. L. R., 20 All., 68

should be passed against them if they failed to perform an agreement by which they bound themselves to take an oath, the terms of which were set forth in the agreement and one of them failed to take the oath. The lower Court thereupon passed a decree for the plaintiff. *Held*, by the High Court, that the procedure of the lower Court was not sanctioned by law. **KANNAPALEY UTHACHADATAN MAJE v. PEROTTA MELODEN NAMEN NAMBIAR** . 4 Mad., 423

*See ANONYMOUS CASE* . 4 Mad., Ap., 3

where it was decided that since the repeal of s. 27, Madras Regulation VI of 1816, and s. 6, Madras Regulation III of 1802, by Act X of 1861, the mofussil Courts no longer possess the power of settling cases by oath.

43. ———— *Oaths Act (X of 1879), s. 9—Civil Procedure Code, s. 462—Consent by guardian of a minor defendant to accept the oath of the plaintiff.*—It was agreed by the defendants who were minors and by the father and guardian of a minor defendant on his behalf, that one of the issues in a suit should be determined under

**v. VEDEKATAREDDI** . I. L. R., 12 Mad., 483

45. ———— *Civil Procedure Code, s. 375—Agreement to be bound by oath of particular person—Oaths Act, s. 11.*—The question in a suit was whether the purchase money for a house, which had been paid by the defendant, had been paid out of his own funds or out of monies belonging to the plaintiff. A witness for the defence having made

**COMPROMISE—continued.****3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.**

statements apparently favourable to the plaintiff's case, the pleaders for both parties signed and presented to the Court a petition that if upon a particular bond in the witness' possession it should be stated that the money was received through the defendant the Court should decree the suit, otherwise the suit should be dismissed. *Held* that this arrangement was not an adjustment or compromise of the suit within the meaning of s. 375 of the Civil Procedure Code, so as to determine the jurisdiction of the Court and necessitate its passing a decree according to the arrangement. *MUHAMMAD ZAHUR v. CHEDA LAL*.

[I. L. R., 14 All., 141]

46. ——— Assignment of interest pending suit—*Civil Procedure Code, s. 372.*—The "cases of assignment, creation, or devolution" of any interest pending a suit contemplated by s. 372 of the Civil Procedure Code, are those in which "the person to whom such interest has come" is arrayed on the same side in the suit as "the person from whom it has passed." *Held*, therefore, that a compromise in a suit for land, between the plaintiff and one of the defendants, whereby the latter consented to a decree being given to the former for half the land, was not a "case of assignment" of an interest in such land within the meaning of that section. *RADHA PRASAD SINGH v. RAJENDRA KISHORE SINGH*.

I. L. R., 5 All., 209

47. ——— Civil Procedure Code, 1882, s. 375—*Agreement to compromise suit—Subsequent disagreement—Application for decree in terms of agreement.*—After the hearing of a suit had begun, the plaintiffs and defendants came to an agreement by which they settled all the matters in dispute between them in the suit. The agreement was in writing, and dealt in one clause with the dispute, the subject-matter of the suit, and in a second clause with another dispute of long standing between the parties, with which the suit had nothing to do. The plaintiffs subsequently objecting to consent to a decree being taken in terms of the first clause of the agreement, the defendants took out a rule nisi, calling on the plaintiffs to show cause why the agreement should not be recorded in Court, and why the Court should not pass a decree in accordance therewith, under the provisions of s. 375 of the Civil Procedure Code (Act XIV of 1882). The rule was argued on affidavits on either side, the plaintiffs objecting that the above section did not apply to such a case as this, and that, in any case, the matter could not be decided on affidavits, but evidence must be gone into. *Held* that s. 375 gave the Court the power to deal with such a case as this in the manner required, and that this was a proper case in which to exercise such a power; and that, in the circumstances of this case, no definite procedure having been enjoined by the Code, the matter might properly be decided on affidavits. Rule made absolute accordingly. *RUTTONSEY LALJI v. POORIBAI*.

[I. L. R., 7 Bom., 304]

48. ——— Consent withdrawn before decree.—By an agreement made in

**COMPROMISE—continued.****3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.**

writing before the hearing, the parties to a suit entered into a compromise by which the plaintiff agreed for consideration to withdraw the suit. When the case came on for hearing, plaintiff refused to fulfil his promise. The defendant having produced the agreement, the Munsif held that it must be enforced, and dismissed the suit. On appeal, the District Judge held that the agreement could not be treated as a compromise, as the plaintiff did not consent, and remanded the suit. *Held* that the agreement could be enforced. *RUTTONSEY LALJI v. POORIBAI, I. L. R., 7 Bom., 304*, approved. *KARUPPAN v. RAMASAMI*.

[I. L. R., 8 Mad., 482]

49. ——— Withdrawal from compromise—*Agreement of parties—Decree on compromise—Appeal.*—After suit filed by the plaintiff against several defendants, one of whom was an infant, a petition of compromise entered into between the adult parties was filed in Court. The petition stated the terms of arrangement, and also that an application would be made by the guardian of the minor praying the Court to allow the compromise to be carried out on his behalf. Ten days after the petition of compromise was filed, the first defendant and the plaintiff presented petitions to the Court withdrawing from the compromise, and praying that the suit should proceed. The second defendant presented a petition praying that the compromise should be recorded and a decree passed according to its terms. The Court made a decree in accordance with the prayer of the second defendant's petition. The first defendant appealed. *Held* that an appeal lay, and that the lower Court was wrong in enforcing the compromise at the instance of the second defendant. *Semble*,—That s. 375 of the Code of Civil Procedure merely covers cases in which all parties consent to have the terms entered into, carried out, and judgment entered up. *RUTTONSEY LALJI v. POORIBAI, I. L. R., 7 Bom., 304*, questioned. *HARA SUNDARI DEBI v. KUMAR DUKHINNESSUR MALIA*.

[I. L. R., 11 Calc., 250]

50. ——— Agreement adjusting a suit—*Subsequent disagreement of the parties—Application by one of the parties to record the agreement.*—Under s. 375 of the Civil Procedure Code (XIV of 1882) an application to record an agreement adjusting a suit may be made, although, at the time of such application, one of the parties either denies that it was made, or wishes to withdraw from it, or otherwise objects to its enforcement. The Court being already seized of the suit which is adjusted, the application to record the alleged agreement is a proceeding in that suit, and the Court, in connection with that proceeding, necessarily has all the powers and has thrown upon it all the duties which appertain to it in regard to any other questions arising in any suit upon its file. *RUTTONSEY LALJI v. POORIBAI, I. L. R., 7 Bom., 304*, approved and followed; *HARA SUNDARI DEBI v. DUKHINNESSUR MALIA, I. L. R., 11 Calc., 250*, dissented from. *GOULDAS BULABDAS MANUFACTURING COMPANY v. SCOTT*.

I. L. R., 16 Bom., 202

## COMPROMISE—continued.

## 3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.

bring a fresh suit for the recovery of the latter note, if the defendant failed to carry out the agreement. The plaintiff was obliged to bring a fresh suit, and both the lower Courts held that he was entitled to a

*Held, further, that it was not necessary that the deed of compromise should be registered in order to make it admissible in evidence.* GUPTA NARAIN DAS v. BIJOYA SUNDARI DEBTA 3 C.W.N., 663

NATHA UDATANA TEVAR v. THANATAPARAYA TAMIRAN I.L.R., 22 Mad., 214

53. — Dispute as to factum of compromise—Order dismissing suit in consequence of alleged compromise—Application to High Court by revision petition under s. 622—

it—  
on  
of  
by  
the pleaders of the plaintiffs and defendants in the suit, praying on behalf of their clients that the case might be struck off the file on the ground that the matter in dispute had been compromised. Two of the plaintiffs then filed a counterpetition denying that a compromise had been arrived at,

to the High Court whereupon it was objected that the petition could not be entertained as an appeal lay against the order of the District Judge inasmuch as it was not a decree in pursuance of a compromise under s. 375 of the Code of Civil Procedure, but an order passed on a dispute as to whether a compromise had in fact been arrived at. The petition had been presented within the time allowed for appeal. *Held* that inasmuch as the petition impeached the alleged compromise as not being a "lawful compromise" an appeal lay against the order of

## COMPROMISE—continued.

## 3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.

the District Judge; but that the petition might be treated as an appeal, on the Court fee being paid. *Mahomed Wahiduddin v. Hakimian*, I. L. R., 23 Calc., 787, at p. 778. Where a party to a suit impugns an alleged agreement or compromise by which he would be bound, the Court must satisfy itself by evidence that the agreement or compromise is a lawful one and that its terms have been consented to by the parties to the suit before it can proceed under s. 375 of the Code of Civil Procedure to record it and pass a decree in accordance therewith. *SRI DHARAN SOMAJAYAPAD v. PERAMATHAN SOMAJAYAPAD* I. L. R., 23 Mad., 101

54. — Power of Court to refuse to record compromise too favourable to one party.—The terms of s. 375 of the Civil Procedure Code (Act XIV of 1852) are imperative, and a Court cannot refuse to record a lawful agreement of compromise, and to pass a decree in accordance therewith, merely because in its view it is too favourable to one of the parties. *MOTILAL BAIKRISHNA BALMAK v. ZESU*

[I. L. R., 23 Bom., 238]

55. — Compromise made notwithstanding dissent of client—Counsel's powers

the consent decree must be set aside. *CARRISON v. ALDRIGUES* I. L. R., 13 Calc., 116

56. — Compromise ex-

however, grant a decree modifying the terms of the proposed compromise, but must leave the parties to proceed with the suit as they may be advised. *FAZALEH ALI MIAH v. KAMARUDDIN BHUTTA*

[I. L. R., 13 Calc., 170]

57. — Compromise extending beyond scope of suit—Appeal—Form of decree on compromise.—In a suit for the partition of a zamindari the parties effected a compromise in writing which provided, *inter alia*, for certain reliefs which could only have been given by the Court in a suit based upon a different cause of action. The compromise was presented in Court and a decree was passed embodying the whole of its terms. *Held* (1) that an appeal lay against the decree; (2) that the decree should have been passed in the terms of such of the provisions agreed upon as related to relief which

**COMPROMISE—continued.****3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.**

the Court could have given in the suit; (3) that the decree should be modified accordingly. *VENKATAPPA NAYANIM v. THIRUMA NAYANIM*

[I. L. R., 16 Mad., 410]

58. ————— *Recording compromise—Agreement made out of Court and comprising also matters not the subject of suit.—Held* by the majority of the Full Bench, *MACLEAN, C. J.*, and *TREVELYAN* and *BANERJEE, JJ.* (O'KINEALY and *BEVERLEY, JJ.* dissenting) that where the parties to a suit have by an agreement adjusted the subject-matter of the suit, the Court can, by an order made in the suit under s. 375 of the Code of Civil Procedure, direct such agreement to be recorded and make a decree in accordance therewith, even if one of the parties to the agreement object. *Held* (per O'KINEALY and *BEVERLEY, JJ.*) that the Court could not make such an order, the case not being one to which s. 375 applied. *Per* O'KINEALY, J.—The High Court, on its Original Side, exercising the equitable jurisdiction of the High Court of Chancery, would not on a contested motion give a decree of this nature. *Per* *BEVERLEY, J.*—S. 375 only applies to cases where the adjustment or satisfaction is made in Court, and should not be extended to cases adjusted out of Court. *BRJOBUBLAHU SISHA v. RAMANATHI GHOSH*. . . . . I. L. R., 24 Calc., 908 [I. C. W. N., 507]

59. ————— *Agreement to compromise appeal—Petition to Court by both parties—Consent withdrawn before decree by one party—Remedy—Transfer of Property Act, s. 59—Charge on immovable property—Oral agreement as to terms of compromise of suit—Terms of compromise in dispute—Proof by affidavit and further evidence—Procedure.*—The parties to an appeal, in which an issue had been remitted for trial to the lower Court, having presented a petition to the lower Court, stating that the suit had been compromised and the terms of the compromise, requested the lower Court to move the Appellate Court to pass a decree in accordance with such terms. Before a decree was passed, one of the parties objected to the compromise being accepted. *Held* that it was open to the Court, such objection notwithstanding, to pass a decree in accordance with the agreement. *Ruttonsey Lalji v. Pooribai*, I. L. R., 7 Bom., 304; and *Karuppan v. Ramasami*, I. L. R., 8 Mad., 482, followed. *Hara Sundari Debi v. Kumar Dukhinesur Malia* I. L. R., 11 Calc., 250, observed upon. An oral agreement by the parties to a suit that a decree be passed creating a charge on immovable property above Rs 100 in value is not rendered inoperative by s. 59 of the Transfer of Property Act. The parties to an appeal applied to the Court to pass a decree in accordance with the terms of a compromise, and, before decree was passed, one of the parties objected to such decree being passed, on the ground that certain conditions precedent to be performed by the other party had not been performed. The Court (this being denied by the other party) called for affidavits in proof of the terms of the agreement of

**COMPROMISE—continued.****2. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.**

compromise, and, these being found not to be sufficiently conclusive, directed the lower Court to take evidence on the point. *APPASAMI v. MANIKAM*

[I. L. R., 9 Mad., 103]

60. ————— *Civil Procedure Code, s. 577—Unverified solehnamah—Consent decree—Appellate Court, Power of.*—Where an application purporting to contain the terms of a compromise was presented to the High Court by one of the parties to an appeal before it, but on the so-called solehnamah being sent down to the lower Court for verification, it was found that the attendance of the parties for that purpose could not be procured. *Held* that the High Court was not justified in passing a decree under s. 577 of the Code of Civil Procedure in accordance with the terms of the unverified solehnamah. *BANDEU BHAGAT v. MUHAMMED TAQUI*. . . . . I. L. R., 14 AIL, 350

61. ————— *Agreement adjusting suit—Power of Court to determine fact of agreement having been made—Reference of suit to arbitration—Award.*—The plaintiff sued the defendant to recover certain property of which she alleged he had taken possession. Subsequently the "matters in difference in the said suit" were by a signed submission paper referred to arbitration. An award was made ordering the defendant to pay to the plaintiff Rs 6000, and cancelling a certain account. It also decided the claim of the plaintiff to two ornaments, which was a matter not included in the "submission paper," but had been verbally referred to the arbitrator in the course of the arbitration. The plaintiff now applied that the submission and award should be filed as an agreement adjusting the suit under s. 375 of the Civil Procedure Code (Act XIV of 1882), or, in the alternative, that the award should be filed under s. 525. The defendant disputed the agreement and denied the validity of the award. *Held* that under s. 375 of the Civil Procedure Code, the Court had jurisdiction to determine whether, as a fact, the alleged agreement adjusting the suit has been made, and if it was satisfied that it has been made, to record it. Whether that fact should be tried on affidavit or by oral evidence, is entirely for the discretion of the Court. The Court accordingly, holding that the suit had been adjusted by the submission and award, ordered the same to be filed and the adjustment recorded. *Held*, further, that the Court could make no order as to that portion of the award which dealt with matter not relating to the subject-matter of the suit. A separate application should be made with regard to the ornaments. *SAMIBAI v. PREMI PRAGJI*

[I. L. R., 20 Bom., 304]

62. ————— *Power of Court to frame additional issues as to an alleged compromise effected subsequent to the institution of the suit.*—The Civil Procedure Code, s. 375, was intended to meet cases where the parties having agreed to compromise subsequently fall out. The original Court has power to frame an additional issue to decide

**COMPROMISE—continued.****3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.**

whether a lawful compromise has been effected between the parties subsequent to the institution of the suit. *APPASAMI NATAKAN v. VANDACHARI* [I. L. R., 19 Mad., 419]

**63. Execution of**

put into execution, the proceedings taken therefor amount to a separate litigation in which the parties

the judgment-debtor can resile from the position assumed by them in the matter of the compromise.

*Dairath Das, I. L. R., 5 All., 492*, followed. *Dev Rai v. Gokal Prasad, I. L. R., 3 All., 585*, *Ram Lakhan Rai v. Bakhtaur Rai, I. L. R., 6 All., 623*; *Fateh Muhammad v. Gopal Das, I. L. R., 7 All., 121*; *Ganga v. Murlidhar, I. L. R., 4 All., 240*; *Sheo Golam Lal v. Beni Prasad, I. L. R., 5 Cal., 27*; *Lakshmana v. Suliya Bai, I. L. R., 7 Mad., 400*; *Yella Chelli v. Munisami Reddy, I. L. R., 6 Mad., 101*; *Pisani v. Attorney-General of Gibraltar, L. R., 5 C. P., 516*; and *Sadasiva Pillai v. Ramalinga Pillai, L. R., 21 A., 219*, referred to. *MUHAMMAD SALIMAN v. JUKKEI LAL*

[I. L. R., 11 All., 223]

to remit fees under any circumstances. *HARROW v. POTLOCK* 1 Ind. Jur., O. S., 57; 1 Hydr., 140

**COMPROMISE—concluded.****3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—concluded.**

**65.** *Compromise of suit on day for defendant's appearance—Refund of stamp duty.*—After service of the summons, and on the day the defendant was required to appear, the parties filed in Court deeds containing terms of compromise. *Held* that the plaintiff was entitled to a return of the entire amount of the stamp duty, there having been no settlement of issues. *BRISTOL CUMBER ROY CROWDHERY v. PARBUTTY DABEA* [Marsh., 374; 3 Hay, 213]

**66.** *Civil Procedure Code, 1859, s. 98—Return of stamp duty—Stamp Act X of 1862, s. 26.*—On the day fixed for the

section as modified by s. 20 of Act X of 1862. **ANONYMOUS CASE** 1 Mad., 127

**67.** *Civil Procedure Code, s. of stamp for suits by s. 26, which may be compromised.* IN THE MATTER OF ZEBUNNISA HIDER 12 W. R., 376

**COMPULSORY LABOUR (MADRAS).**

See MAGISTRATE, JURISDICTION OF.—SPECIAL ACT—ACT I OF 1853 4 Mad., Ap., 21

**CONCEALMENT OF BIRTH.**

*Destruction of foetus—Penal Code,*

**CONCILIATOR.**

See DEKKAN AGRICULTURISTS RELIEF ACT.

[I. L. R., 6 Bom., 31  
I. L. R., 8 Bom., 20, 411  
I. L. R., 13 Bom., 424  
I. L. R., 23 Bom., 788]

See PARTIS—SUBSTITUTION OF PARTIES—PLAINTIFFS.

[I. L. R., 19 Bom., 203]

**CONCUBINE.**

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—CONCUBINE.

[I. L. R., 12 Bom., 20  
I. L. R., 23 Mad., 232]

**CONCURRENT JUDGMENTS ON FACT.**

See CASES UNDER APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—CONCURRENT JUDGMENTS ON FACT.

See CASES UNDER PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS.

**CONDITION.**

— Breach of—

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**CONDITION PRECEDENT.**

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See EXECUTION OF DECREE—NOTICE OF EXECUTION . I. L. R., 8 Calc., 103  
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I. L. R., 20 Calc., 370  
I. L. R., 21 Calc., 19

See GUARANTEE 1 Ind. Jur., N. S., 412

See CASES UNDER HINDU LAW—ADOPTION—SECOND, SIMULTANEOUS AND CONDITIONAL ADOPTION.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—ADOPTION.

**CONDITIONAL SALE.**

See LIMITATION ACT, 1877, ART. 10 (1871, ART. 10) . I. L. R., 1 All., 592  
[2 Agra, 184  
I. L. R., 3 All., 175  
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2 N. W., 284  
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I. L. R., 20 All., 315, 358, 375

See CASES UNDER MORTGAGE.

See CASES UNDER VENDOR AND PURCHASER—CONDITIONAL SALES.  
[I. L. R., 17 All., 451

**CONFESSION.**

	Col.
1. GENERAL CASES . . . . .	1520
2. CONFESSIONS UNDER THREAT OR PRESSURE . . . . .	1521
3. CONFESSIONS SUBSEQUENTLY RETRACTED . . . . .	1524
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**CONFESSION—continued.****G. CONFESSIONS OF PRISONERS TRIED JOINTLY . . . . . 1549**

See PLEA . I. L. R., 14 Bom., 564

**1. GENERAL CASES.**

1. ———— "Confession," Meaning of, as used in Evidence Act—Evidence Act, 1872, ss. 26, 30.—The word "confession," as used in the sections of the Evidence Act relating to confessions, must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt. QUEEN-EMPRESS v. JAGRUP  
[I. L. R., 7 All., 648

2. ———— Voluntary confession—Proof of guilt.—A voluntary and genuine confession is legal and sufficient proof of guilt. QUEEN v. JHURREE . . . . . 7 W. R., Cr., 41

3. ———— Confession to be taken as a whole.—A prisoner's confession must be taken in its entirety. QUEEN v. BOODHOO . 8 W. R., Cr., 38  
GOLOBE CHUNDER CHOWDHRY v. MAGISTRATE OF CHITTAGONG . . . . . 25 W. R., Cr., 15

QUEEN v. SONAOOLLAH . 25 W. R., Cr., 23

4. ———— Statements of accused inconsistent with each other.—The ordinary rule of taking confessions as a whole and giving the accused (in the absence of other evidence against him) the benefit of any circumstance that may appear in his favour therefrom, cannot apply to confessions which are diametrically opposed to each other; but only where the more favourable view is not absolutely inconsistent with the general tenor of the confession. QUEEN v. NITYO GOPAL DASS BR-  
RAGEE . . . . . 24 W. R., Cr., 80

5. ———— Inconsistent statements—Credibility of.—The words actually used by an accused, who is said to have confessed, ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses deposing to a confession themselves arrived from the answers which the accused gave to questions put by them. Where an accused makes two distinct statements,—the one amounting to a confession of guilt, the other repudiating guilt,—if the one statement is taken against the accused, the other also must be taken, for what it is worth, in his favour. The Court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other. QUEEN v. SOOBIAN  
[10 B. L. R., 332

6. ———— Confessions of prisoner in one case evidence in another.—The confessions of the prisoner in one case in which he was convicted cannot be used against him in another case, unless they are deposed to on oath, either by the person who took them down, or by some one else who heard them. IN BE MUNGER BROOXAN . 10 W. R., Cr., 56

**CONFESSION—continued.****1. GENERAL CASES—concluded.**

7. ——— Corroboration of evidence of accomplice by confession of another prisoner.—The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others. *REG. v. MALAPA BIN KAPANA* 11 Bom., 199

8. ——— Confessions of co-accused against others in their absence.—Confessions of two of several accused persons made in the absence of the others are of no weight as against the latter. Such confessions, as well as the statements of ap-

vidence. *QUEEN v. CHODA ATCHENAH*  
[3 Mad., 319]

**2. CONFESSIONS UNDER THREAT OR PRESSURE.**

10. ——— Statement admitting crime, but pleading compulsion by others.—An

a prisoner is tried, that the accused, before making a confession, was warned that it was optional with him to answer the questions put to him or not, is on appeal conclusive as to the fact of such a warning having been given, it is not conclusive to show that such a confession has not been made under the influence of fear engendered by previous maltreatment, or is not otherwise valueless. Allegations made in a regular and proper manner before a Sessions Court on appeal, that a confession made by the accused before the Magistrate who tried the case was made under such circumstances as to preclude its admissibility in, or diminish its value as evidence, should receive due attention and be enquired into. A Sessions Court refusing to make such enquiry commits a grave error in law and procedure. *REG. v. KASHINATH DINKAR*  
[8 Bom., Cr., 126]

12. ——— Record of circumstances under which confession was made.—*Criminal Procedure Code, 1861, s. 119—Judicial record.*

**CONFESSION—continued.****2. CONFESSIONS UNDER THREAT OR PRESSURE—continued.**

trate, showing in whose custody the prisoners were, and how far they were free agents. *QUEEN v. KODAI KAHAR* 5 W. R., Cr., 6

after which the prisoner was brought before the

14. ——— *Illegal pressure*

is inadmissible only if the Court considers it to have been induced by illegal pressure. *REG. v. HALVANT PENDINGAR* 11 Bom., 137

15. ——— Confession made under threat for a purpose other than to extort

that the threat was not made to extort a confession, but to suppress an attempt at mutiny. *QUEEN v. HICKS* 10 B. L. R., Ap., 1

16. ——— Confession to panchayat caused by threat.—*Evidence Act, 1872, s. 21—*

**CONFESSION—continued.****2. CONFESSIONS UNDER THREAT OR PRESSURE—concluded.**

*Proof of oral confession.*—The matter before a "panchayat" was whether *M* and *K* had murdered *B*, and thereby disqualified themselves from further intercourse with the rest of their brotherhood. *M* and *B* made certain statements before the panchayat, which it was afterwards sought to prove against them on their trial for the murder of *B*, as confessions corroborating the evidence of an approver. The witnesses called to prove these "confessions" did not state specifically what was said by *M* and *K* before the panchayat. One witness, a member of the panchayat, said: "*M* confessed and *K* acquiesced." Another witness, also a member of the panchayat, said: "*M* and *K* were taxed with taking *B*'s house, upon which both admitted having murdered him." The same witness also said: "The admissions were not taken down." It appeared that it was not till at the sixth meeting of the panchayat, and when *M* and *K* were threatened with excommunication from caste for life, that they made such statements. *Held* that, if the statements attributed to *M* and *K* had been actually made and assented to, and this fact had been duly proved, the provisions of s. 24 of Act I of 1872 could not be pleaded against their admissibility, on the ground that such statements had been caused by such threat, for the members of the panchayat were not in authority over *M* and *K* within the meaning of that section, nor was there any threat made having reference to any charge against them. The statements, however, could not be accepted as sufficient in themselves to corroborate the evidence of the approver, or to support the conviction of *M* and *K* for the murder of *B*. The statements were in general terms and represented only the impression conveyed by what might have been said to the mind of the witnesses. It was always essential that the Court should know as nearly as possible what were the words used by the supposed confessors, and what were the questions or matters in regard to which they were said. It might have been that the words ascribed to *M* and *K*, taken with the questions put and the exact subject-matter of the enquiry, did not amount to a confession of the guilt believed by the hearers to have been confessed. *EMPRESS v. MOHAN LAL* . . . **I. L. R., 4 All., 46**

**17. — Warning by Magistrate—Inducement to confess—Criminal Procedure Code, Act X of 1882, s. 163—Evidence Act (I of 1872), s. 24.**—A Deputy Magistrate, before taking down a statement from a person brought before him by the police, noted on the paper on which he was about to take down the statement the following words, which, after excluding the police officers from his presence, he had verbally addressed to the accused: "After excluding from my presence the police officers, who brought him, I warned the accused that what he would say would go as evidence against him; so he had better tell the truth." *Held* that the use of such language was calculated to hold out an inducement to the prisoner to confess, and that such a confession was therefore inadmissible in evidence against him. *QUEEN-EMPRESS v. UZEER*

[I. L. R., 10 Calc., 775]

**CONFESSION—continued.****3. CONFESSIONS SUBSEQUENTLY RETRACTED.**

**18. — Confession retracted before Sessions Judge.**—A confession before the Magistrate, though afterwards retracted before the Sessions Court, is evidence against the party making it, under s. 366 of the Code of Criminal Procedure, 1861. *QUEEN v. JEMA* . . . **8 W. R., Cr., 40**

**19. — Statement to Magistrate afterwards retracted—Evidence—Criminal Procedure Code, 1861, s. 205.**—A detailed confession made by an accused before a Magistrate, but retracted on the examination being read over to him in conformity with s. 205 of the Code of Criminal Procedure, does not amount to a confession, although the plea for retracting the confession—*viz.*, ill-treatment of the accused by the police—may be enquired into and found to be untrue. *REG. v. GARBAD BECHAR* . . . **9 Bom., 344**

**20. — Confession to Magistrate—Want of corroboration.**—Where the only evidence in a Sessions trial was a confession made to a Magistrate but subsequently retracted, and it was established that the police misconducted themselves in the search of the houses of the prisoners who confessed and of others under trial, and produced evidence which was rejected as false, it was held that the prisoners could not safely be convicted on their own statements without any corroboration. *SOFIRUDDIN v. EMPRESS* . . . **2 C. L. R., 132**

**21. — Statement made after conditional pardon—Evidence Act (II of 1855), s. 32.**—A conditional pardon was tendered to and accepted by the accused. He then, on solemn affirmation, made a statement before the committing Magistrate in which he criminated himself and two other persons. Three days afterwards he voluntarily came forward and made, on solemn affirmation, another statement, in which he retracted and contradicted what he had said in his former statement. The conditional pardon was thereupon cancelled, and the accused was put upon his trial. *Held* that the first statement was admissible as evidence against the accused, under s. 32 of Act II of 1855. *REG. v. ALIBHAI MITHA* . . . **8 Bom., Cr., 103**

**22. — Confessional statements of accused—Subsequent retraction—Charge to Jury.**—It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. A jury should be asked with reference to such confessions, not whether they were corroborated by independent evidence, but whether having regard to the circumstances under which they were made and retracted and all the circumstances connected with them, it was more probable that the original confession or the statements retracting them were true. *QUEEN-EMPRESS v. RAMAN*

[I. L. R., 21 Mad., 83]

**23. — Criminal Procedure Code, 1882, s. 288—Evidence—Confession**

## CONFESSION—continued.

3. CONFESSIONS SUBSEQUENTLY  
RETRACTED—continued.

Held that the prisoner should not have been convicted on such evidence. *QUEEN-EMPRESS v. BHARNAPPA*. I. L. R., 12 Mad., 123

24. ———— *Criminal Procedure Code, ss. 342, 364—Withdrawal of uncorroborated evidence by the witness—Examination of the accused.*—A and B were charged with the murder of C, the husband of B. There was some evidence that B had said her husband was dead at

a garden, and that A, who was her paramour, had

who corroborated the statement in two depositions

dictary statements of the second prisoner remain, and doubt exists as to which statement is true, and the confessional statements cannot be safely relied on against the prisoner." *Semble*.—The same rule should be followed when a witness withdraws his deposition before the Sessions Court. *Per KERNAN, J.*—The examination of an accused person under

against him to show that he is guilty. *QUEEN-EMPRESS v. RANGI*. I. L. R., 10 Mad., 295

25. ———— *Confession afterwards retracted—Necessity of corroborative evidence—Practice.*—A retracted confession, if proved to be voluntarily made, can be acted upon along with

## CONFESSION—continued.

3. CONFESSIONS SUBSEQUENTLY  
RETRACTED—continued.

*Queen-Emress v. Rangji*, I. L. R., 10 Mad., 295, and *Queen-Emress v. Bharnappa*, I. L. R., 12 Mad., 123, dissented from; *Reg. v. Balwant*, 11 Bom., 137, and *Queen-Emress v. Sangappa*, Bom. II. C. Cr. Rulings of 25th April 1899, followed. *QUEEN-EMPRESS v. GHARTA*

[I. L. R., 10 Bom., 728

26. ———— *Confession subsequently retracted, Effect of—Criminal Procedure Code (1882), s. 164.*—It is unsafe for a Court to

true: that is to say, usually, unless the confession is corroborated by credible independent evidence. *Queen-Emress v. Rangji*, I. L. R., 10 Mad., 295, referred to. *QUEEN-EMPRESS v. MAHANIN*

[I. L. R., 18 All., 78

according to the circumstances of each particular case, and if the Court is of opinion that such a con-

[I. L. R., 20 All., 133

taken. The voluntary character of such a statement cannot Court statement Criminal inquiry. on his retracted confession standing by itself uncorroborated, or on the statements of witnesses brought

**CONFESSION—continued.****2. CONFESSIONS UNDER THREAT OR PRESSURE—concluded.**

*Proof of oral confession.*—The matter before a "panchayat" was whether *M* and *K* had murdered *B*, and thereby disqualified themselves from further intercourse with the rest of their brotherhood. *M* and *B* made certain statements before the panchayat, which it was afterwards sought to prove against them on their trial for the murder of *B*, as confessions corroborating the evidence of an approver. The witnesses called to prove these "confessions" did not state specifically what was said by *M* and *K* before the panchayat. One witness, a member of the panchayat, said: "*M* confessed and *K* acquiesced." Another witness, also a member of the panchayat, said: "*M* and *K* were taxed with taking *B*'s house, upon which both admitted having murdered him." The same witness also said: "The admissions were not taken down." It appeared that it was not till at the sixth meeting of the panchayat, and when *M* and *K* were threatened with excommunication from caste for life, that they made such statements. Held that, if the statements attributed to *M* and *K* had been actually made and assented to, and this fact had been duly proved, the provisions of s. 24 of Act I of 1872 could not be pleaded against their admissibility, on the ground that such statements had been caused by such threat, for the members of the panchayat were not in authority over *M* and *K* within the meaning of that section, nor was there any threat made having reference to any charge against them. The statements, however, could not be accepted as sufficient in themselves to corroborate the evidence of the approver, or to support the conviction of *M* and *K* for the murder of *B*. The statements were in general terms and represented only the impression conveyed by what might have been said to the mind of the witnesses. It was always essential that the Court should know as nearly as possible what were the words used by the supposed confessors, and what were the questions or matters in regard to which they were said. It might have been that the words ascribed to *M* and *K*, taken with the questions put and the exact subject-matter of the enquiry, did not amount to a confession of the guilt believed by the hearers to have been confessed. *EMPRESS v. MOHAN LAL* . I. L. R., 4 All., 46

**17. — Warning by Magistrate—Inducement to confess—Criminal Procedure Code, Act X of 1882, s. 163—Evidence Act (I of 1872), s. 24.**—A Deputy Magistrate, before taking down a statement from a person brought before him by the police, noted on the paper on which he was about to take down the statement the following words, which, after excluding the police officers from his presence, he had verbally addressed to the accused: "After excluding from my presence the police officers, who brought him, I warned the accused that what he would say would go as evidence against him; so he had better tell the truth." Held that the use of such language was calculated to hold out an inducement to the prisoner to confess, and that such a confession was therefore inadmissible in evidence against him. *QUEEN-EMPRESS v. UZER*

[I. L. R., 10 Cal., 775]

**CONFESSION—continued.****3. CONFESSIONS SUBSEQUENTLY RETRACTED.**

**18. — Confession retracted before Sessions Judge.**—A confession before the Magistrate, though afterwards retracted before the Sessions Court, is evidence against the party making it, under s. 366 of the Code of Criminal Procedure, 1861. *QUEEN v. JEMIA* . . . 8 W. R., Cr., 40

**19. — Statement to Magistrate afterwards retracted—Evidence—Criminal Procedure Code, 1861, s. 205.**—A detailed confession made by an accused before a Magistrate, but retracted on the examination being read over to him in conformity with s. 205 of the Code of Criminal Procedure, does not amount to a confession, although the plea for retracting the confession—viz., ill-treatment of the accused by the police—may be enquired into and found to be untrue. *REG. v. GARBAD BECHAR* . . . 9 Bom., 344

**20. — Confession to Magistrate—Want of corroboration.**—Where the only evidence in a Sessions trial was a confession made to a Magistrate but subsequently retracted, and it was established that the police misconducted themselves in the search of the houses of the prisoners who confessed and of others under trial, and produced evidence which was rejected as false, it was held that the prisoners could not safely be convicted on their own statements without any corroboration. *SOFIYUDDIN v. EMPRESS* . . . 2 C. L. R., 132

**21. — Statement made after conditional pardon—Evidence Act (II of 1855), s. 32.**—A conditional pardon was tendered to and accepted by the accused. He then, on solemn affirmation, made a statement before the committing Magistrate in which he criminated himself and two other persons. Three days afterwards he voluntarily came forward and made, on solemn affirmation, another statement, in which he retracted and contradicted what he had said in his former statement. The conditional pardon was thereupon cancelled, and the accused was put upon his trial. Held that the first statement was admissible as evidence against the accused, under s. 32 of Act II of 1855. *REG. v. ALBHAI MITHA* . . . 8 Bom., Cr., 103

**22. — Confessional statements of accused—Subsequent retraction—Charge to Jury.**—It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. A jury should be asked with reference to such confessions, not whether they were corroborated by independent evidence, but whether having regard to the circumstances under which they were made and retracted and all the circumstances connected with them, it was more probable that the original confession or the statements retracting them were true. *QUEEN-EMPRESS v. RAMAN*

[I. L. R., 21 Mad., 83]

**23. — Criminal Procedure Code, 1862, s. 258—Evidence—Confession**

## CONFESSION—continued.

3. CONFESSIONS SUBSEQUENTLY  
RETRACTED—continued.

retracted—Corroboration, Deposition of witnesses  
before Magistrates read under s. 239 insufficient.—

Held that the prisoner should not have been convicted on such evidence. *QUEEN-EMPRESS v. BHARNAPPA*, I. L. R., 12 Mad., 123

24. Criminal Procedure Code, ss. 342, 364—Withdrawal of uncorroborated evidence by the witness—Examination of the accused.—A and B were charged with the murder of C, the husband of B. There was some evidence that B had said her husband was dead a

a garden, and that A, who was her paramour, had murdered him in her arms, which statement she repeated frequently with greater detail in answer to

confessional statements cannot be safely relied on against the prisoner." *Semle*.—The same rule should be followed when a witness withdraws his deposition before the Sessions Court. *Per KERNAY, J.*—The Criminal Procedure Code has no purpose but to explain any and not to against him to show that he is guilty. *QUEEN-EMPRESS v. RANGI*, I. L. R., 10 Mad., 295

25. Confession afterwards retracted—Necessity of corroborative evidence—Practice.—A retracted confession, if proved to be voluntarily made, can be acted upon along with

## CONFESSION—continued.

3. CONFESSIONS SUBSEQUENTLY  
RETRACTED—continued.

*Queen-Emress v. Rangy*, I. L. R., 10 Mad., 225, and *Queen-Emress v. Bharnappa*, I. L. R., 12 Mad., 123, dissented from; *Reg. v. Barrant*, 11 Bom., 137, and *Queen-Emress v. Sangappa*, Bom. II. C. Cr. Rulings of 25th April 1889, followed. *QUEEN-EMPRESS v. GHARYA*

[I. L. R., 19 Bom., 728]

26. Confession subsequently retracted, Effect of—Criminal Procedure Code (1882), s. 164.—It is unsafe for a Court to rely on and act upon a confession which has been

[I. L. R., 18 All., 78]

[I. L. R., 20 All., 133]

28. Criminal Procedure Code (Act V of 1898), ss. 164 and 258—Improperly of recording statements of witnesses with a view to fix them to those statements—Confession retracted—Evidence of witnesses retracted—Corroboration—Deposition before Committing Magistrate read under s. 238, Criminal Procedure Code.—It is improper for a police officer to send a

taken. The voluntary character of such a statement cannot Court state Criminal inquiry. on his retracted confession standing by itself uncorroborated, or on the statements of witnesses brought

**CONFESSION—continued.****3. CONFESSIONS SUBSEQUENTLY  
RETRACTED—concluded.**

in under s. 288 of the Criminal Procedure Code without independent corroborating testimony; nor can these two be joined together and held as mutually corroborating each other so as to justify a conviction based on them. *Queen v. Amanulla*, 12 B. L. R., Ap., 15; 21 W. R., Cr., 49; *Queen-Empress v. Ranji*, I. L. R., 10 Mad., 295; and *Queen-Empress v. Bharmappa*, I. L. R., 12 Mad., 123, referred to and approved of. *QUEEN-EMPRESS v. JADUB DAS*

[I. L. R., 27 Cal., 295  
4 C. W. N., 129]

**4. CONFESSIONS TO MAGISTRATE.**

**29.** Practice of taking prisoners before Magistrate to get confession recorded.—The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting a confession recorded, is not generally desirable, but such a confession is legally admissible in evidence when duly proved. *REG. v. VAHALA JETHA* . . . 7 Bom., Cr., 56

**30.** Statement made to Magistrate.—*Criminal Procedure Code*, 1861, s. 109.—S. 109 of the Code of Criminal Procedure refers to cases where the confession of a prisoner has been made to the Magistrate conducting the investigation, and not to the police. It is only when properly made to the Magistrate that the confession can be used as evidence against the prisoner. The mere standing by of the Magistrate when the confession is being made to the police is not sufficient. *QUEEN v. DOMUN KAHAR* . . . 12 W. R., Cr., 82

**31.** Sufficiency of confession.—*Corroborative denial of statement in Sessions Court*.—The properly attested confession of a prisoner before a Magistrate is sufficient for his conviction without corroborative evidence, and notwithstanding a subsequent denial before the Sessions Court. *QUEEN v. BHUTTUN RUJWAN* 12 W. R., Cr., 49

**32.** Statement on preliminary enquiry.—*Code of Criminal Procedure (Act X of 1872)*, ss. 122, 193, 346.—*Code of Criminal Procedure (Act X of 1882)*, ss. 342, 364.—On a certain day a confession by an accused person was recorded by a Magistrate, and on the next day the same Magistrate, having jurisdiction to do so, examined the witnesses for the prosecution and eventually committed the accused. Held following *Empress v. Anuntam Singh*, I. L. R., 5 Cal., 954, that such confession, having been made to a Magistrate competent to hold, and who actually then was holding, an enquiry preliminary to commit, must be regarded as falling within s. 193 of Act X of 1872, or s. 342 of Act X of 1882, and as such governed by the reservations contained in s. 346 of the former Act or s. 364 of the latter. Observations on ss. 342 and 364 of Act X of 1882 (*Criminal Procedure Code*). *EMPRESS v. YAKUB KHAN* . I. L. R., 5 All., 253

**33.** Pardon wrongly tendered to witness.—*Admissibility of evidence—Criminal*

**CONFESSION—continued.****4. CONFESSIONS TO MAGISTRATE—continued.**

*Procedure Code*, 1872, s. 344.—*Evidence Act*, s. 24.—Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with others in offences, one of which were exclusively triable by the Court of Session, and such person was examined as a witness in the case,—Held that the statement made by such person was irrelevant and inadmissible as a confession, with reference to s. 344 of Act X of 1872, and s. 24 of Act I of 1872. *EMPRESS OF INDIA v. ASHGAR ALI*

[I. L. R., 2 All., 280]

**34.** Improper examination of accused person by Magistrate.—*Criminal Procedure Code*, ss. 164, 364, 533.—*Evidence Act*, ss. 65; 80.—*Record rejected*.—The Deputy Magistrate of Malabar, purporting to act under the provisions of the Mapilla Act (Madras Act XX of 1859), recorded a statement in the nature of a confession made by V, who was under arrest on suspicion of being concerned in a Mapilla outrage. This statement, which was made in Malayalam, was recorded in English in the form of a narrative and was signed by the Magistrate only. The same Magistrate shortly afterwards, purporting to act under the Code of Criminal Procedure, before any evidence was recorded against V, examined him as to this statement which was read over and translated to him. In answer to questions, V, admitted that he had made it voluntarily. This examination was recorded according to the provisions of s. 364 of the Code of Criminal Procedure. After other evidence was recorded, V, retracted his statement. He was committed to the Sessions, tried, and convicted mainly on his own recorded statement and examination. The Deputy Magistrate was examined as a witness, and stated that the statement recorded by him was made by V, and was correctly recorded, and was made voluntarily. Held that the record of the statement made by V to the Deputy Magistrate was not admissible in evidence against V. *PER PARKER, J.*—The provisions of s. 164 of the Code of Criminal Procedure are imperative, and s. 533 will not render a confession admissible where no attempt has been made to conform to the provisions of the former section. If the confessional statement of V was recorded by the Magistrate in his executive capacity, it was not receivable in evidence under s. 80 of the Evidence Act. The action of the Magistrate in examining V as to his confessional statement before there was any legal evidence on the record against him was illegal, and therefore the record of such examination could not be used in evidence against V. Inasmuch as the record of the statement of V was not admissible, secondary evidence thereof could not be given. *QUEEN-EMPRESS v. VIRAN* . . . I. L. R., 9 Mad., 224

**35.** Record of statement before Magistrate.—*Certificate of Magistrate—Criminal Procedure Code*, 1861, s. 205.—A confession before a Magistrate should be recorded in the language in which it was made, and to make it evidence the certificate by the Magistrate required by s. 205, *Criminal Procedure Code*, 1861, must be attached. *QUEEN v. BHEEBEEKEE* . . . 4 N. W., 16



**CONFESSION—continued.****4. CONFESSIONS TO MAGISTRATE—continued.**

*Procedure Code, s. 122—Admissibility of secondary evidence of confession not taken in accordance with s. 346 of Criminal Procedure Code (Act X of 1872).—*When the confession of a prisoner under s. 122 of the Criminal Procedure Code was not taken in the manner provided by s. 346, and was, therefore, defective—*Held* that the evidence of the recording officer, that such confession was actually made, was inadmissible to remedy the defect. *IN RE EMPRESS C. MANNOO TAMBOLUR*

[I. L. R., 4 Calc., 698; 4 C. L. R., 137

QUEEN C. CHUNDER BHUTTA CHAMBER

[24 W. R., Cr., 42

47. ——— Confession to Magistrate during enquiry held previously to committal—*Criminal Procedure Code, ss. 122 and 346.*—When a confession is made to a Magistrate by an accused person during an enquiry held previously to the case being taken up by the committing officer, and by an officer acting merely as a recording officer, it must be recorded in strict accordance with the provisions of ss. 122 and 346 of the Code of Criminal Procedure. If the provisions of these sections have not been fully complied with by the recording officer, the Court of Session cannot take evidence that the accused person duly made the statement recorded; and in cases where evidence can be taken, a Court of Session is not at liberty to treat a deposition, sent up with the record and made by the recording officer before the committing officer, to the effect that the accused person did in fact duly make before him the statement recorded, as evidence of that fact. In such a case the recording officer must himself be called and examined by the Court of Session, except in cases in which the presence of the recording officer cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court of Session considers unreasonable. *NOSHAI MISHRI C. EMPRESS*

[I. L. R., 5 Calc., 958; 6 C. L. R., 353

48. ——— Confession recorded by Magistrate who afterwards holds the preliminary examination—*Criminal Procedure Code (Act X of 1872), ss. 122, 193, 346.*—A confession recorded by a Magistrate, who afterwards conducts the enquiry preliminary to committal, and has jurisdiction to do so, is to be treated as an examination under s. 193 of the Criminal Procedure Code, and not as a confession recorded under s. 122, notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the police investigation. To such a confession consequently the provisions of the last paragraph of section 346 apply. S. 122 of the Criminal Procedure Code contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is enquired into or tried. *EMPRESS C. ANUNTARAM SINGH*

[I. L. R., 5 Calc., 954; 6 C. L. R., 297

49. ——— Confession, mode of recording, and admissibility of—*Criminal Procedure Code (Act V of 1898), ss. 164, 364, 533—Defective*

**CONFESSION—continued.****4. CONFESSIONS TO MAGISTRATE—continued.**

*recording of a confession or statement—Magistrate recording a confession and holding subsequent judicial inquiry.*—Whether a confession made by a prisoner to a Magistrate be regarded as a statement under s. 164 or under s. 364 of the Code of Criminal Procedure, the terms of the law require that the record should be signed not only by the person who makes the confession or is under examination but also by the Magistrate and that, in addition thereto, there should be a certificate in the terms prescribed. Such a confession or statement to be admissible in evidence must strictly comply with the terms of the law. The defect in recording a confession may be remedied under s. 533, Criminal Procedure Code, by examining the Magistrate who recorded the confession. A confession freely made to a Magistrate and recorded under s. 164 of the Code of Criminal Procedure is admissible in evidence, and the fact that after the confession so recorded, the same Magistrate holds the subsequent judicial inquiry and commits the case to the Court of Session does not make the confession inadmissible on that ground. *EMPRESS V. ANUNTARAM SINGH, I. L. R., 5 Calc., 954*, explained and distinguished. A Magistrate may become disqualified from dealing with a case by reason of some previous action taken by him, but the character of the evidence and its admissibility cannot be affected by his subsequent conduct; or in other words, what is admissible in evidence cannot become inadmissible through the course subsequently taken by a Magistrate. *EMPRESS C. LAL SHEIKH 3 C. W. N., 387*

50. ——— Confession made during or before investigation by police—*Statement to Magistrate other than the one holding enquiry—Criminal Procedure Code, 1872, ss. 122, 346.*—S. 122 of the Criminal Procedure Code (Act X of 1872) does not apply to a confession recorded by a Magistrate acting under Ch. XV or Ch. XVII, but to a confession made to a Magistrate other than the Magistrate by whom the case has to be enquired into or tried; and to a confession made during or before the commencement of an investigation by the police. *IN THE MATTER OF BEHARI HADJI . . . . . 5 C. L. R., 238*

51. ——— Confession made commencement of proceedings—*Criminal Procedure Code, 1872, ss. 122, 346—Prompt record of confessions.*—A confession made by an accused person before a Magistrate who has jurisdiction to deal with the matter to which it relates, may be made the commencement of a trial or enquiry under Chap. XV of the Criminal Procedure Code, and be treated as a confession under s. 346, whether or not the case be still under the investigation of the police. *Per curiam.*—The object of s. 122 of the Code of Criminal Procedure is to enable any Magistrate, other than the Magistrate by whom the case is to be tried or enquired into, to record a confession promptly. *Behari Hadji, 5 C. L. R., 238, and Reg. v. Shiva, I. L. R., 1 Bom., 219, discussed. KRISHNO MONEE V. EMPRESS . . . . . 6 C. L. R., 289*

52. ——— Memorandum of Magistrate not in prescribed form—*Evidence Act*

## CONFESSION—continued.

## 4. CONFESSIONS TO MAGISTRATE—continued.

Code omits to take it in writing, with the formalities prescribed by s. 346 of that Code, such confession is not absolutely inadmissible in evidence. Evidence may be taken to show that the prisoner duly made the statement recorded. *Reg. v. Shieya, J. L. R., 1 Bom., 219*, dissented from. *EMPRESS v. RAMANJITTA*. I L. R., 3 Mad., 5

## 54. ——— Certificate not recorded at

ment of one person jointly tried with another for the same offence liable to consideration against that other, it is necessary that it should amount to a distinct confession of the offence charged. *EMPRESS v. DAJI NARSU*. I L. R., 0 Bom., 288

55. ——— Examination not recorded in proper form—Error in recording examination—Question and answer—Statement of accused person—Criminal Procedure Code (Act X of 1872), s. 346—Admissibility in evidence—The confession of an accused person was recorded in a simple narrative form instead of in the shape of question and answer as required by the Code of Criminal Procedure, s. 346. There was nothing in the character of the confession, or in the circumstances of the case, to lead to the inference that the accused had been prejudiced by the error. *Held* that the error did not affect the admissibility of the statement in evidence. *IN THE MATTER OF THE PETITION OF MUNDHI SUREKH*. *EMPRESS v. MUNDHI SUREKH*

[I L. R., 8 Cal., 610]

*TITU MAYA v. QUEEN*

[I L. R., 8 Cal., 618 note; 1 C. L. R., 1

56. ——— Confession not recorded in language in which it is given, admissibility of in evidence—Criminal Procedure Code (Act X of 1872), ss. 164, 361, and 533—Evidence Act (I of 1872), s. 21—Examination of accused—Defect in confession.—An accused, when in custody, made a confession to a Deputy Magistrate in the presence of a Sub-Inspector, and during an investigation being held into a case of murder, under the provisions of Chap. XIV of the Criminal Procedure Code. The

## CONFESSION—continued.

## 4. CONFESSIONS TO MAGISTRATE—continued.

certificate as required by the section. It occupied about five pages of foolscap. At the trial the

Deputy Magistrate as a witness, and admitted in evidence his statement as to what the accused told him. This evidence, which occupied only a few lines, was to the effect that the accused told him he had committed the murder, and on this evidence alone the accused was convicted. On appeal, *held* that the provisions of s. 164 read with s. 361 are imperative as to the language in which a confession is to be recorded, and that s. 533 does not contemplate or provide for any non-compliance with the law in this respect, and that, therefore, as it was not impracticable to record the confession in Hindi, the Sessions

except the document, where, as in this case, it was in existence and forthcoming. *Held* also that, as the defects in the record could not be cured under s. 533 of the Criminal Procedure Code, and no secondary evidence could be given, no proof of the confession could be given, and the accused must be acquitted. *JAI NARAYAN JAI v. QUEEN-EMPRESS*

[I L. R., 17 Cal., 863]

57. ——— Criminal Procedure Code (Act X of 1852), ss. 164, 361, and 533—Examination of accused.—Where a confession made in Hindustani was taken before a Sub-divisional Magistrate and was recorded by the Court Officer in Bengali, that being the language of the Court, and where it appeared that the Magistrate himself was a Mahomedan, and it was contended that he must be taken to have been able to record the confession in the language in which it was given, there being no evidence to the contrary, *Held* in the absence of such evidence, the Court should presume that the proceedings of the Magistrate were

found that was impracticable, and adopted the alternative allowed by law of having the confession recorded in the Court language. *Jai Narayan Rai*

**CONFESSION—continued.****4. CONFESSIONS TO MAGISTRATE—continued.**

*v. Queen-Empress, I. L. R., 17 Calc., 562, doubted.*  
**LALCHAND v. QUEEN-EMPRESS**

[I. L. R., 18 Calc., 549]

**58.** *Criminal Procedure Code (1882), s. 361—Recording statement of accused on examination before Magistrate.*—Where an accused, a Manipuri, was examined before the Magistrate through an interpreter, who obtained his answers in Manipuri, and they were recorded in that language, and the interpreter translated them into Bengali, and they were recorded by the Magistrate in English, and the statement in English and that in Manipuri were found to differ,—*Held* that the statement recorded in Manipuri must be taken to be the record in the case. Had the Manipuri statement not been made, the Magistrate by recording the statement in English would not have strictly complied with the spirit and intention of s. 361 of the Criminal Procedure Code, though the record in English might not necessarily have been inadmissible in evidence. **QUEEN-EMPRESS v. SAGAL SAMDA SAJAO.**

[I. L. R., 21 Calc., 642]

**59.** *Criminal Procedure Code (1882), s. 361.*—The confession of an accused person made in Bengali, the language in which the accused was examined, was recorded in English. The committing Magistrate, in his evidence in Court, said that he could not write Bengali well, and that there was no Mohurrir with him at the time when the confession was recorded. *Held* the provisions of s. 361 of the Criminal Procedure Code had been sufficiently complied with. **Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 562, distinguished.** **QUEEN-EMPRESS v. RAZAI MIA**

[I. L. R., 22 Calc., 817]

**60.** *Confession to Presidency Magistrate—Statement of prisoner made before inquiry—Statement of prisoner made in the course of or after inquiry—Criminal Procedure Code (1882), ss. 164, 361 and 533—Examination of accused persons.*—The sections comprised in Chap. XIV of the Criminal Procedure Code (Act X of 1882) (except s. 155), do not apply to the Police in the Presidency towns, and consequently a statement or confession made to a Presidency Magistrate does not come within s. 164, and the procedure prescribed in regard to the recording of statements or confessions by that section, and (by reference) s. 364, does not apply to statements and confessions recorded by a Presidency Magistrate before the commencement of the trial. But such statement or confession, though not taken under s. 164, is admissible in evidence against the prisoner. **Queen-Empress v. Nilmadhub, I. L. R., 15 Calc., 565, followed on this point.** During an inquiry before a Presidency Magistrate after the evidence for the prosecution was taken, the Magistrate examined the accused under ss. 209 and 312 of the Criminal Procedure Code. The accused was examined in Marathi, but the questions and answers were recorded in English. The Magistrate deposed at the trial that it was the invariable practice in his Court to take down depositions in English, and that he could not himself have accurately recorded the prisoner's state-

**CONFESSION—continued.****4. CONFESSIONS TO MAGISTRATE—continued.**

ment in Marathi. He also deposed that the statement was correctly recorded in English, and that each question and answer when recorded was interpreted to the accused in Marathi, and that the accused then made his mark at the end of the recorded statement. He further stated that there were at hand native subordinate officials of his Court who could have recorded the statement in Marathi, but that he himself had not sufficient knowledge of Marathi as to be able to read what was written by such a subordinate, or to satisfactorily check or test the correctness with which it represented the statement made by the accused. *Held* that, assuming that it was practicable to record the statement in Marathi and that consequently it was irregular with reference to s. 361 of the Code to record it in English, the statement was nevertheless admissible in evidence under s. 533, the irregularity not having injured the accused as to his defence on the merits. **Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 562, dissented from.** **QUEEN-EMPRESS v. VISRAM BABAJI** . . . I. L. R., 21 Bom., 495

**61.** *Confession not signed by the accused—Admissibility of such confession—Parol evidence admissible to prove the terms of the confession.*—S. 533 of the Code of Criminal Procedure (Act X of 1882) is intended to apply to all cases in which the directions of the law have not been fully complied with. It applies to omissions to comply with the law as well as to infractions of the law. **Queen-Empress v. Visram Babaji, I. L. R., 21 Bom., 195, followed.** **Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 562, dissented from.** The accused was charged with murder. At the trial a confession made by him before the committing Magistrate was tendered in evidence against him. The Sessions Judge rejected the confession as inadmissible, as it did not bear the mark or signature of the accused, and, as there was no other reliable evidence to bring home the charge to the accused, he was acquitted. *Held*, reversing the order of acquittal, that though the record of the confession was admissible, parol evidence could be given of the terms of the confession, and those terms, when proved, might be admitted and used as evidence against the accused under s. 533 of the Code of Criminal Procedure (Act X of 1882). The accused was, therefore, ordered to be re-tried. **QUEEN-EMPRESS v. RAGHU**

[I. L. R., 23 Bom., 221]

**62.** *Evidence, Admissibility of confession in—Question and answer—Memorandum in English by Magistrate—Criminal Procedure Code (Act X of 1882), ss. 164, 361 and 533.*—It is not necessary that the English memorandum referred to in para. 3 of s. 364 of the Criminal Procedure Code should be made in respect of confessions recorded under s. 164, as the manner in which such a confession is to be recorded under the provisions of that section is fully set out in the first two paras. of s. 364. A confession of an accused person was recorded before a Deputy Magistrate by one of his clerks, under the provisions of s. 164 of the Criminal Procedure Code, while the case was under

## CONFESSION—continued.

## A. CONFESSIONS TO MAGISTRATE—continued.

of the decision in *Tota Maya v. The Queen*, I. L. R., 8 Cal., 618 note, that as the accused was not prejudiced by the questions and answers not being recorded, it was unnecessary for the judge to take evidence under s. 533, and that the conviction based on the confessions must be upheld. *YAKOO MANTO v. QUEEN-EMPRESS*, I. L. R., 14 Cal., 539

[I. L. R., 11 Bom., 703

See *QUEEN-EMPRESS v. KHEM*

[I. L. R., 23 All., 115

and *QUEEN-EMPRESS v. ALAGU KONR*

[I. L. R., 18 Mad., 421

84. ——— Defect in confession—*Criminal Procedure Code (Act X of 1892)*, ss. 1, 164, 364, 533—*Evidence Act (I of 1872)*, ss. 21, 26, 60—*Presidency towns, Investigations in*—An accused, in custody at the time, made to a Magistrate in Calcutta, in the course of a police investigation held in Calcutta, a statement confessing that he had murdered his father. The accused spoke and understood English, and the Magistrate questioned him in English, and was answered sometimes in English and sometimes in Bengali. Whenever the answers were

which he had stated, and signed the document in the presence of the Magistrate, who affixed the usual certificate thereto. In taking this confession the Magistrate purported to have acted under ss. 164 and 364 of the Criminal Procedure Code. At the trial, subsequently to the admission of the confession in

## CONFESSION—continued.

## A. CONFESSIONS TO MAGISTRATE—continued.

evidence under s. 80 of the Evidence Act, the Magistrate was called as a witness and deposed to the above facts with reference to the language in which the confession was taken and the mode in which it was recorded. *Held*, on a reference to a Full Bench, as to whether the confession was inadmissible in evidence

impracticable to have taken down the answers in the language in which there were given; and further that there would be grave doubt if such a defect could be cured by s. 533. *QUEEN-EMPRESS v. NULMADHUR MITTER*, I. L. R., 15 Cal., 595

accused persons enacted in ss. 24, 25, and 26 of the Evidence Act, and ss. 164 and 364 of the Code of Criminal Procedure. Were it otherwise, confessions and statements of accused persons not recorded in accordance with the requirements of ss. 164 and 364 of the Code might be proved as admissions by the accused, and the wholesome provisions elaborately laid down in these two sections practically reduced to a nullity. Nor can s. 533 of the Code be construed to favour that view. Under that section, when a confession or other statement of an accused person is duly made in accordance with the provisions of law, but in the recording of it those provisions have not been fully complied with, oral evidence is admissible to prove that the confession or other statement was duly made. The defect which the section is intended to cure is not one of substance, but of form only. *Queen-Empress v. Vira, I. L. R., 9 Mad., 224*, and *Jai Narayan Rao v. Queen-Empress, I. L. R., 17 Cal., 874*, followed. The statements having been recorded by a Magistrate not being a police-officer, in the course of an investigation under Ch. XIV of the Code, the provisions of s. 164 must be construed so as to require that the statements be recorded at be

**CONFESSION—continued.****4. CONFESSIONS TO MAGISTRATE—continued.**

*v. Queen-Empress, I. L. R., 17 Calc., 862, doubted.*  
**LALCHAND v. QUEEN-EMPRESS**

[I. L. R., 18 Calc., 549]

**58.** ————— *Criminal Procedure Code (1882), s. 361—Recording statement of accused on examination before Magistrate.*—Where an accused, a Manipuri, was examined before the Magistrate through an interpreter, who obtained his answers in Manipuri, and they were recorded in that language, and the interpreter translated them into Bengali, and they were recorded by the Magistrate in English, and the statement in English and that in Manipuri were found to differ,—*Held* that the statement recorded in Manipuri must be taken to be the record in the case. Had the Manipuri statement not been made, the Magistrate by recording the statement in English would not have strictly complied with the spirit and intention of s. 361 of the Criminal Procedure Code, though the record in English might not necessarily have been inadmissible in evidence. **QUEEN-EMPRESS v. SAGAL SAMBA SAJAO.**

[I. L. R., 21 Calc., 642]

**59.** ————— *Criminal Procedure Code (1882), s. 361.*—The confession of an accused person made in Bengali, the language in which the accused was examined, was recorded in English. The committing Magistrate, in his evidence in Court, said that he could not write Bengali well, and that there was no Mohurrir with him at the time when the confession was recorded. *Held* the provisions of s. 361 of the Criminal Procedure Code had been sufficiently complied with. **Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 862, distinguished.** **QUEEN-EMPRESS v. RAZAI MIA**

[I. L. R., 22 Calc., 817]

**60.** ————— *Confession to Presidency Magistrate—Statement of prisoner made before inquiry—Statement of prisoner made in the course of or after inquiry—Criminal Procedure Code (1882), ss. 164, 361 and 533—Examination of accused persons.*—The sections comprised in Chap. XIV of the Criminal Procedure Code (Act X of 1882) (except s. 155), do not apply to the Police in the Presidency towns, and consequently a statement or confession made to a Presidency Magistrate does not come within s. 164, and the procedure prescribed in regard to the recording of statements or confessions by that section, and (by reference) s. 361, does not apply to statements and confessions recorded by a Presidency Magistrate before the commencement of the trial. But such statement or confession, though not taken under s. 164, is admissible in evidence against the prisoner. **Queen-Empress v. Nilmadhub, I. L. R., 15 Calc., 565, followed on this point.** During an inquiry before a Presidency Magistrate after the evidence for the prosecution was taken, the Magistrate examined the accused under ss. 209 and 312 of the Criminal Procedure Code. The accused was examined in Marathi, but the questions and answers were recorded in English. The Magistrate deposed at the trial that it was the invariable practice in his Court to take down depositions in English, and that he could not himself have accurately recorded the prisoner's state-

**CONFESSION—continued.****4. CONFESSIONS TO MAGISTRATE—continued.**

ment in Marathi. He also deposed that the statement was correctly recorded in English, and that each question and answer when recorded was interpreted to the accused in Marathi, and that the accused then made his mark at the end of the recorded statement. He further stated that there were at hand native subordinate officials of his Court who could have recorded the statement in Marathi, but that he himself had not sufficient knowledge of Marathi as to be able to read what was written by such a subordinate, or to satisfactorily check or test the correctness with which it represented the statement made by the accused. *Held* that, assuming that it was practicable to record the statement in Marathi and that consequently it was irregular with reference to s. 361 of the Code to record it in English, the statement was nevertheless admissible in evidence under s. 533, the irregularity not having injured the accused as to his defence on the merits. **Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 862, dissented from.** **QUEEN-EMPRESS v. VISRAM BADAJI** . . . I. L. R., 21 Bom., 495

**61.** ————— *Confession not signed by the accused—Admissibility of such confession—*

*Parol evidence admissible to prove the terms of the confession.*—S. 533 of the Code of Criminal Procedure (Act X of 1882) is intended to apply to all cases in which the directions of the law have not been fully complied with. It applies to omissions to comply with the law as well as to infractions of the law. **Queen-Empress v. Visram Bahaji, I. L. R., 21 Bom., 195, followed.** **Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 862, dissented from.** The accused was charged with murder. At the trial a confession made by him before the committing Magistrate was tendered in evidence against him. The Sessions Judge rejected the confession as inadmissible, as it did not bear the mark or signature of the accused, and, as there was no other reliable evidence to bring home the charge to the accused, he was acquitted. *Held*, reversing the order of acquittal, that though the record of the confession was admissible, parol evidence could be given of the terms of the confession, and those terms, when proved, might be admitted and used as evidence against the accused under s. 533 of the Code of Criminal Procedure (Act X of 1882). The accused was, therefore, ordered to be re-tried. **QUEEN-EMPRESS v. RAGHU**

[I. L. R., 23 Bom., 221]

**62.** ————— *Evidence, Admissibility of confession in—Question and answer—Memorandum in English by Magistrate—Criminal Procedure Code (Act X of 1882), ss. 164, 361 and 533.*—It is not necessary that the English memorandum referred to in para. 3 of s. 361 of the Criminal Procedure Code should be made in respect of confessions recorded under s. 164, as the manner in which such a confession is to be recorded under the provisions of that section is fully set out in the first two paras. of s. 361. A confession of an accused person was recorded before a Deputy Magistrate by one of his clerks, under the provisions of s. 164 of the Criminal Procedure Code, while the case was under

## CONFESSION—continued.

## 4. CONFESSIONS TO MAGISTRATE—continued.

and the questions and answers were not taken down. At the trial before the Sessions Judge both confessions were put in evidence and no evidence was given under the provisions of s. 533 of the Criminal Procedure Code that the accused duly made the statements recorded. The accused was convicted mainly on the strength of the confessions. *Held* upon the authority of the decision in *Titu Maya v. The Queen, I. L. R., 8 Calc., 618* note, that as the accused was not prejudiced by the questions and answers not being recorded, it was unnecessary for the judge to take evidence under s. 533, and that the conviction based on the confessions must be upheld. **YSKOO MAHTO v. QUEEN-EMRESS, I. L. R., 14 Calc., 539**

ss. 191 and 192.—A statement taken by a third-class Magistrate under s. 164 of the Code of Criminal Pro-

[I. L. R., 11 Bom., 702

See **QUEEN-EMRESS v. KHEM**

[I. L. R., 23 All., 115

and **QUEEN-EMRESS v. ALAGU KONE**

[I. L. R., 18 Mad., 421

lish, and was answered sometimes in English and sometimes in Bengali. Whenever the answers were given in English, they were so taken down; when in Bengali, they were written down in English and read over to the accused in that language, who accepted the English as being the meaning of that which he had stated, and signed the document in

## CONFESSION—continued.

## 4. CONFESSIONS TO MAGISTRATE—continued.

evidence under a 50 of the Evidence Act, the Magistrate was called as a witness and deposed to the above facts with reference to the language in which the confession was taken and the mode in which it was recorded. *Held*, on a reference to a Full Bench, as to whether the confession was inadmissible in evidence by reason of some of the answers having been given in Bengali, but recorded in English, that the provisions of s. 164 of the Code had no application to statements taken in the course of a police investigation made in the town of Calcutta, and that con-

The provisions of s. 164, as read with s. 365, would not be complied with, where answers made by an accused to a Magistrate in one language are taken down in another, unless it could be shown that it was impracticable to have taken down the answers in the language in which they were given; and further that there would be grave doubt if such a defect could be cured by s. 533. **QUEEN-EMRESS v. NIMADHUR MITTER, I. L. R., 15 Calc., 595**

## 65. — Examination of accused persons at preliminary investigation—Criminal

1882) to hold an investigation into a case of murder, and recorded the statements of the accused persons. *Held* that the statements were rightly rejected as inadmissible. The rule, laid down in s. 21 of the Evidence Act, must be taken subject to the special provisions relating to confessions and statements of accused persons enacted in ss. 24, 25, and 26 of the Evidence Act, and ss. 164 and 364 of the Code of Criminal Procedure. Were it otherwise, confessions and statements of accused persons not recorded in accordance with the requirements of ss. 164 and 364 of the Code might be proved as admissions by the accused, and the whole of the provisions elaborately laid down in those two sections practically reduced to a nullity. Nor can s. 533 of the Code be construed to favour that view. Under that section, when a confession or other statement of an accused person is duly made in accordance with the provisions of law, but in the recording of it those provisions have not been fully complied with, oral evidence is admissible to prove that the confession or other statement was duly made. The defect which the section is intended to cure is not one of substance, but of form only. **QUEEN-EMRESS v. VIRON, I. L. R., 2 Mad., 244**, and **Jai Narayan Rai v. Queen-Emress, I. L. R., 17 Calc., 576**, followed. The statements having been recorded by a Magistrate not being a police-officer, in the course of an investigation under Ch. XIV of the Code, the provisions of s. 164 must be observed. The statements contemplated by that section should be recorded in the manner prescribed for recording evidence, and confessions must be recorded in the manner provided by s. 364. **24, 555**

# CONFESSION—continued.

4. CONFESSIONS TO MAGISTRATE—continued.  
*v. Queen-Empress, I. L. R., 17 Calc., 862, doubted.*  
*LAALCHAND v. QUEEN-EMPRESS*

58. [I. L. R., 18 Calc., 549  
*Criminal Procedure Code (1882), s. 361—Recording statement of accused on examination before Magistrate.—Where an accused, a Manipuri, was examined before the Magistrate through an interpreter, who obtained his answers in Manipuri, and they were recorded in that language, and the interpreter translated them into Bengali, and they were recorded by the Magistrate in English, and the statement in English and that in Manipuri were found to differ.—Held that the statement recorded in Manipuri must be taken to be the record in the case. Had the Manipuri statement not been made, the Magistrate by recording the statement in English would not have strictly complied with the spirit and intention of s. 361 of the Criminal Procedure Code, though the record in English might not necessarily have been inadmissible in evidence.*  
*QUEEN-EMPRESS v. SAGAL SAMBA SAJAO.*

59. [I. L. R., 21 Calc., 642  
*Criminal Procedure Code (1882), s. 361.—The confession of an accused person made in Bengali, the language in which the accused was examined, was recorded in English. The committing Magistrate, in his evidence in Court, said that he could not write Bengali well, and that there was no Mohurrir with him at the time when the confession was recorded. Held that provisions of s. 361 of the Criminal Procedure Code had been sufficiently complied with. *Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 862, distinguished.* *QUEEN-EMPRESS v. RAZAI MIA**

60. [I. L. R., 22 Calc., 817  
*Confession to Presidency Magistrate—Statement of prisoner made before inquiry—Statement of prisoner made in the course of or after inquiry—Criminal Procedure Code (1882), ss. 164, 361 and 533—Examination of accused persons.—The sections comprised in Chap. XIV of the Criminal Procedure Code (Act X of 1882) (except s. 155), do not apply to the Police in the Presidency towns, and consequently a statement or confession made to a Presidency Magistrate does not come within s. 164, and the procedure prescribed in regard to the recording of statements or confessions by that section, and (by reference) s. 364, does not apply to statements and confessions recorded by a Presidency Magistrate before the commencement of the trial. But such statement or confession, though not taken under s. 164, is admissible in evidence against the prisoner. During an inquiry before a Presidency Magistrate after the evidence for the prosecution was taken, the Magistrate examined the accused under ss. 209 and 312 of the Criminal Procedure Code. The accused was examined in Marathi, but the questions and answers were recorded in English. The Magistrate deposed at the trial that it was the invariable practice in his Court to take down depositions in English, and that he could not himself have accurately recorded the prisoner's state-*

# CONFESSION—continued.

4. CONFESSIONS TO MAGISTRATE—continued.  
*ment in Marathi. He also deposed that the statement was correctly recorded in English, and that each question and answer when recorded was interpreted to the accused in Marathi, and that the accused then made his mark at the end of the recorded statement. He further stated that there were at hand native subordinate officials of his Court who could have recorded the statement in Marathi, but that he himself had not sufficient knowledge of Marathi as to be able to read what was written by such a subordinate, or to satisfactorily check or test the correctness with which it represented the statement made by the accused. Held that, assuming that it was practicable to record the statement in Marathi and that consequently it was irregular with reference to s. 361 of the Code to record it in English, the statement was nevertheless admissible in evidence under s. 533, the irregularity not having injured the accused as to his defence on the merits. *Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 862, dissented from.* *QUEEN-EMPRESS v. VISRAM BABAJI**

61. [I. L. R., 21 Bom., 495  
*Confession not signed by the accused—Admissibility of such confession—Parol evidence admissible to prove the terms of the confession.—S. 533 of the Code of Criminal Procedure (Act X of 1882) is intended to apply to all cases in which the directions of the law have not been fully complied with. It applies to omissions to comply with the law as well as to infractions of the law. *Queen-Empress v. Visram Babaji, I. L. R., 21 Bom., 195, followed.* *Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 862, dissented from.* The accused was charged with murder. At the trial a confession made by him before the committing Magistrate was tendered in evidence against him. The Sessions Judge rejected the confession as inadmissible, as it did not bear the mark or signature of the accused, and, as there was no other reliable evidence to bring home the charge to the accused, he was acquitted. Held, reversing the order of acquittal, that though the record of the confession was admissible, parol evidence could be given of the terms of the confession, and those terms, when proved, might be admitted and used as evidence against the accused under s. 533 of the Code of Criminal Procedure (Act X of 1882). The accused was, therefore, ordered to be re-tried. *QUEEN-EMPRESS v. RAGHU**

62. [I. L. R., 23 Bom., 221  
*Evidence, Admissibility of confession in—Question and answer—Memorandum in English by Magistrate—Criminal Procedure Code (Act X of 1882), ss. 164, 361 and 533.—It is not necessary that the English memorandum referred to in para. 3 of s. 361 of the Criminal Procedure Code should be made in respect of confessions recorded under s. 164, as the manner in which such a confession is to be recorded under the provisions of s. 361. A confession of an accused person was recorded before a Deputy Magistrate by one of his clerks, under the provisions of s. 164 of the Criminal Procedure Code, while the case was under*

## CONFESSION—continued.

## A. CONFESSIONS TO MAGISTRATE—continued.

investigation by the police. No English memorandum of the nature referred to in s. 364 was made by

and the questions and answers were not taken down. At the trial before the Sessions Judge both confessions were put in evidence and no evidence was given under the provisions of s. 533 of the Criminal Procedure Code that the accused duly made the statements recorded. The accused was convicted mainly on the strength of the confessions. *Held* upon the authority of the decision in *Tita Mayo v. The Queen, I. L. R., 8 Cal., 618* note, that as the accused was not prejudiced by the questions and answers not being recorded, it was unnecessary for the judge to take evidence under s. 533, and that the conviction based on the confessions must be upheld. *FRERO MANTO v. QUEEN-EMPRESS, I. L. R., 14 Cal., 539*

63. — Statement recorded by a Magistrate—*Criminal Procedure Code, 1882, s. 164—Evidence—Judicial proceeding—Giving false evidence—Penal Code (Act XLV of 1860), ss. 191 and 192.*—A statement taken by a third-class Magistrate under s. 164 of the Code of Criminal Procedure (Act X of 1882), such Magistrate not having authority to carry on the preliminary inquiry in

[I. L. R., 11 Bom., 703]

See *QUEEN-EMPRESS v. KHEM*

[I. L. R., 23 All., 115]

and *QUEEN-EMPRESS v. ALAGU KOVA*

[I. L. R., 18 Mad., 431]

64. — Defect in confession—Criminal

## CONFESSION—continued.

## A. CONFESSIONS TO MAGISTRATE—continued.

evidence under s. 80 of the Evidence Act, the Magistrate was called as a witness and deposed to the above facts with reference to the language in which the confession was taken and the mode in which it was recorded. *Held*, on a reference to a Full Bench, as to whether the confession was inadmissible in evidence

provisions of s. 26 of the Evidence Act. *Scuttle*—The provisions of s. 164, as read with s. 364, would not be complied with, where answers made by an accused to a Magistrate in one language are taken down in another, unless it could be shown that it was impracticable to have taken down the answers in the

1882) to hold an investigation into a case of murder, and recorded the statements of the accused persons.

and statements of accused persons not recorded in accordance with the requirements of ss. 164 and 364 of the Code might be proved as admissions by the accused, and the whole of the provisions elaborately laid down in these two sections practically reduced to a nullity. Nor can s. 533 of the Code be construed to favour that view. Under that section, when a confession or other statement of an accused person is duly made in accordance with the provisions of law, but in the recording of it those provisions have not been fully complied with, oral evidence is admissible to prove that the confession or other statement was duly made. The defect which the section is intended to cure is not one of substance, but of form only. *Queen-Emress v. Feroz, I. L. R., 9 Mad., 224*, and *Jai Narayan Rai v. Queen-Emress, I. L. R., 17 Cal., 570*, followed. The statements having been recorded by a Magistrate not being a police-officer, in the course of an investigation under Ch. XIV of the Code, the provisions of s. 164 must

English, and the Magistrate questioned him in English, and was answered sometimes in English and sometimes in Bengali. Whenever the answers were given in English, they were so taken down; when

**CONFESSION—continued.****4. CONFESSIONS TO MAGISTRATE—continued.**

*v. Queen-Empress, I. L. R., 17 Calc., 862, doubted.*  
**LALCHAND v. QUEEN-EMPRESS**

[I. L. R., 18 Calc., 549]

**58.** *Criminal Procedure Code (1882), s. 364—Recording statement of accused on examination before Magistrate.*—Where an accused, a Manipuri, was examined before the Magistrate through an interpreter, who obtained his answers in Manipuri, and they were recorded in that language, and the interpreter translated them into Bengali, and they were recorded by the Magistrate in English, and the statement in English and that in Manipuri were found to differ.—*Held* that the statement recorded in Manipuri must be taken to be the record in the case. Had the Manipuri statement not been made, the Magistrate by recording the statement in English would not have strictly complied with the spirit and intention of s. 364 of the Criminal Procedure Code, though the record in English might not necessarily have been inadmissible in evidence.  
**QUEEN-EMPRESS v. SAGAL SAMBA SAJAO.**

[I. L. R., 21 Calc., 642]

**59.** *Criminal Procedure Code (1882), s. 364.*—The confession of an accused person made in Bengali, the language in which the accused was examined, was recorded in English. The committing Magistrate, in his evidence in Court, said that he could not write Bengali well, and that there was no Mohurrir with him at the time when the confession was recorded. *Held* the provisions of s. 364 of the Criminal Procedure Code had been sufficiently complied with. *Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 862, distinguished.* **QUEEN-EMPRESS v. RAZAI MIA**

[I. L. R., 22 Calc., 817]

**60.** *Confession to Presidency Magistrate—Statement of prisoner made before inquiry—Statement of prisoner made in the course of or after inquiry—Criminal Procedure Code (1882), ss. 164, 364 and 533—Examination of accused persons.*—The sections comprised in Chap. XIV of the Criminal Procedure Code (Act X of 1882) (except s. 155), do not apply to the Police in the Presidency towns, and consequently a statement or confession made to a Presidency Magistrate does not come within s. 164, and the procedure prescribed in regard to the recording of statements or confessions by that section, and (by reference) s. 364, does not apply to statements and confessions recorded by a Presidency Magistrate before the commencement of the trial. But such statement or confession, though not taken under s. 164, is admissible in evidence against the prisoner. *Queen-Empress v. Nilmadhub, I. L. R., 15 Calc., 565, followed on this point.* During an inquiry before a Presidency Magistrate after the evidence for the prosecution was taken, the Magistrate examined the accused under ss. 209 and 312 of the Criminal Procedure Code. The accused was examined in Marathi, but the questions and answers were recorded in English. The Magistrate deposed at the trial that it was the invariable practice in his Court to take down depositions in English, and that he could not himself have accurately recorded the prisoner's state-

**CONFESSION—continued.****4. CONFESSIONS TO MAGISTRATE—continued.**

ment in Marathi. He also deposed that the statement was correctly recorded in English, and that each question and answer when recorded was interpreted to the accused in Marathi, and that the accused then made his mark at the end of the recorded statement. He further stated that there were at hand native subordinate officials of his Court who could have recorded the statement in Marathi, but that he himself had not sufficient knowledge of Marathi as to be able to read what was written by such a subordinate, or to satisfactorily check or test the correctness with which it represented the statement made by the accused. *Held* that, assuming that it was practicable to record the statement in Marathi and that consequently it was irregular with reference to s. 364 of the Code to record it in English, the statement was nevertheless admissible in evidence under s. 533, the irregularity not having injured the accused as to his defence on the merits. *Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 862, dissented from.* **QUEEN-EMPRESS v. VISRAM BABAJI**

[I. L. R., 21 Bom., 495]

**61.** *Confession not signed by the accused—Admissibility of such confession—Parol evidence admissible to prove the terms of the confession.*—S. 533 of the Code of Criminal Procedure (Act X of 1882) is intended to apply to all cases in which the directions of the law have not been fully complied with. It applies to omissions to comply with the law as well as to infractions of the law. *Queen-Empress v. Visram Babaji, I. L. R., 21 Bom., 195, followed.* *Jai Narayan Rai v. Queen-Empress, I. L. R., 17 Calc., 862, dissented from.* The accused was charged with murder. At the trial a confession made by him before the committing Magistrate was tendered in evidence against him. The Sessions Judge rejected the confession as inadmissible, as it did not bear the mark or signature of the accused, and, as there was no other reliable evidence to bring home the charge to the accused, he was acquitted. *Held*, reversing the order of acquittal, that though the record of the confession was admissible, parol evidence could be given of the terms of the confession, and those terms, when proved, might be admitted and used as evidence against the accused under s. 533 of the Code of Criminal Procedure (Act X of 1882). The accused was, therefore, ordered to be re-tried. **QUEEN-EMPRESS v. RAGHU**

[I. L. R., 23 Bom., 221]

**62.** *Evidence, Admissibility of confession in—Question and answer—Memorandum in English by Magistrate—Criminal Procedure Code (Act X of 1882), ss. 164, 364 and 533.*—It is not necessary that the English memorandum referred to in para. 3 of s. 364 of the Criminal Procedure Code should be made in respect of confessions recorded under s. 164, as the manner in which such a confession is to be recorded under the provisions of that section is fully set out in the first two paras. of s. 364. A confession of an accused person was recorded before a Deputy Magistrate by one of his clerks, under the provisions of s. 164 of the Criminal Procedure Code, while the case was under

## CONFESSION—continued.

## 4. CONFESSIONS TO MAGISTRATE—continued.

As the statements were put in evidence and no evidence was given under the provisions of s. 533 of the Criminal Procedure Code that the accused duly made the statements recorded. The accused was convicted mainly on the strength of the confessions. *Held* upon the authority of the decision in *Tito Maya v. The Queen, I. L. R., 8 Cal., 618* note, that as the accused was not prejudiced by the questions and answers not being recorded, it was unnecessary for the judge to take evidence under s. 533, and that the conviction based on the confessions must be upheld. *FERRO MANTO v. QUEEN-EMPRESS, I. L. R., 14 Cal., 539*

cedure (Act X of 1882), such Magistrate not having

[I. L. R., 11 Bom., 703]

See *QUEEN-EMPRESS v. KHEM*

[I. L. R., 23 All., 115]

and *QUEEN-EMPRESS v. ALAGU KONE*

[I. L. R., 18 Mad., 421]

Calcutta, a statement confessing that he had murdered his father. The accused spoke and understood English, and the Magistrate questioned him in English, and was answered sometimes in English and sometimes in Bengali. Whenever the answers were given in English, they were so taken down; when in Bengali, they were written down in English

Magistrate purported to have acted under ss. 164 and 364 of the Criminal Procedure Code. At the trial, subsequently to the admission of the confession in

## CONFESSION—continued.

## 4. CONFESSIONS TO MAGISTRATE—continued.

confession was taken and the mode in which it was recorded. *Held*, on a reference to a Full Bench, as to whether the confession was inadmissible in evidence

The provisions of s. 164, as read with s. 364, would

## 85. — Examination of accused per-

*Held* that the statements were rightly rejected as inadmissible. The rule, laid down in s. 21 of the Evidence Act, must be taken subject to the special provisions relating to confessions and statements of accused persons enacted in ss. 24, 25, and 26 of the Evidence Act, and ss. 164 and 364 of the Code of Criminal Procedure. Were it otherwise, confessions and statements of accused persons not recorded in accordance with the requirements of ss. 164 and 364 of the Code might be proved as admissions by the accused, and the wholesome provisions elaborately laid down in these two sections practically reduced to a nullity. Nor can s. 533 of the Code be construed to favour that view. Under that section, when a confession or other statement of an accused person is duly made in accordance with the provisions of law, but in the recording of it those provisions have not been fully complied with, oral evidence is admissible to prove that the confession or other statement was duly made. The defect which the section is intended



## CONFESSION—continued.

5. CONFESSIONS TO POLICE OFFICERS  
—continued.

proved as against a person accused of any offence, applies to every police officer and is not to be restricted to officers of the regular police force.

QUEEN-EMRESS v. SALEMUDDIN SHUK

[I. L. R., 23 Cal., 589  
3 C. W. N., 393]

by reason of the information, and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact?"

QUEEN-EMRESS v. COMMER SAHIB

[I. L. R., 13 Mad., 153]

73. — Confession made to a police officer by accused while in police custody—*Evidence Act (I of 1872), ss. 25 and 26.*—A statement made to a police officer by an accused person while in the custody of the police, if it is an admission of a criminalising circumstance, cannot be used in evidence under ss. 25 and 26 of the Evidence Act (I of 1872).

QUEEN-EMRESS v. JAYACHARAM

[I. L. R., 18 Bom., 363]

74. — *Police custody—Jailor in a Native State—Evidence Act (I of 1872), s. 26.*—The custody of the keeper of a jail in a

an offence, s. 26 of the Evidence Act (I of 1872) does not exclude such a jailor from giving evidence of what the accused told him while in jail.

QUEEN-EMRESS v. TATTA

[I. L. R., 20 Bom., 785]

s. 26 of the Evidence Act. QUEEN-EMRESS v. NAOLA KALA

I. L. R., 23 Bom., 235

76. — Confession of an accused while in the custody of a chowkidar—*Evidence Act (I of 1872), ss. 25, 26.*—Chowkidar, whether a police officer, a village chowkidar is

## CONFESSION—continued.

5. CONFESSIONS TO POLICE OFFICERS  
—continued.

and by ar 18 under Ghose, I. L. R., 1 Cal., 207, and Queen-Emress v. Bisma, I. L. R., 17 Bom., 455, distinguished. QUEEN-EMRESS v. BEPIS BEHARRY DEY

[2 C. W. N., 71]

77. — Chowkidar—*Police Act (V of 1861)—Bengal Regulation XX of 1817—Village Chowkidars Act Amendment Act (Bengal Act I of 1892).*—Semble—A chowkidar, although he is not a police officer under Act V of 1861, is a police officer under Bengal Regulation XX of 1817 and Bengal Act I of 1892, and a confession made to him is inadmissible. QUEEN-EMRESS v. BEPIS BEHARRY DEY, 2 C. W. N., 71, dissented from. EMRESS v. INDRA CHUNDER PAL

[2 C. W. N., 337]

See KALAI v. KANU CHOWKIDAR

[I. L. R., 27 Cal., 306  
4 C. W. N., 253]

in which it was held that a chowkidar was not a police officer within the terms of s. 59 of the Criminal Procedure Code, 1898.

statement led to the discovery of some bones of the

that the child was born alive. Held that the confession before the Magistrate was irrelevant, and that the Court was not prepared to say that the confession made before the Sessions Judge was made after the impression caused by the promise of the police constable had been fully removed, and that, looking at the fact that a promise of safety had been made, the confession was, even if accepted, of a limited character; that there was nothing to show that the child was born alive, and considering that, if the child was born dead, the accused might, under fear of exposure and disgrace, have wished to conceal the truth, the accused must be acquitted of murder. QUEEN v. LUCAS

5 N. W., 80

79. — Statement to police officer also a Magistrate—*Evidence Act, ss. 25, 26, and*

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## DIGEST OF CASES.

## CONFESSION—continued.

## 6. CONFESSIONS TO POLICE OFFICERS—continued.

167.—Admissibility in evidence of confession—*Deputy Commissioner of Police in Calcutta—Letters Patent, 1865, cl. 26*—Case certified by *Advocate General*—The prisoner, on his arrest, made a statement in the nature of a confession which was reduced into writing by one of the inspectors in whose custody the prisoner was, and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the police office, the Deputy Commissioner receiving and attesting the statement in his capacity as Magistrate and Justice of the Peace. At the trial of the prisoner at the Criminal Sessions of the High Court, this statement was tendered in evidence against him, and was admitted by the Judge, who overruled an objection on behalf of the prisoner that, under s. 25 of the Evidence Act, it was inadmissible. On a case certified by the Advocate General under cl. 26 of the Letters Patent, *Held* that the confession was, under s. 25 of the Evidence Act, not admissible in evidence. *Per GARTH, C.J.*—S. 26 of the Evidence Act is not to be read as qualifying the plain meaning of s. 25. In construing s. 25 the term "police officer" is not to be read in a technical sense, but in its mere comprehensive and popular meaning. *Per GARTH, C.J.* (PONTIFEX, J., dissenting).—The Court which under that section is to decide upon the sufficiency of the evidence to support the conviction is, in a case coming before the Court and under s. 26 of the Letters Patent, the Court of review, not the Judge himself, of the evidence adduced at the trial. *Per Curiam*.—Apart from s. 167, the Court has power, in a case under cl. 26 of the Letters Patent, to review the whole case on the merits, and affirm or quash the conviction. *QUEEN v. HURNHOLE CHUNDER GHOSH* [I. L. R., 1 Calc., 207: 25 W. R., Cr., 38]

80. — Confession to police officer by one of accused persons tried jointly—*Evidence Act, 1872, ss. 25 and 167*—Admissibility in evidence of confession—*High Court's Criminal Procedure Act (X of 1875), ss. 23 and 101*—*Letters Patent, 1865, cl. 25*—Power of the High Court on a point of law reserved to consider the merits of the case.—S. 25 of the Evidence Act (I of 1872) does not preclude one accused person from proving a confession made to a police officer by another accused person tried jointly with him. Such a confession is not to be received as evidence on behalf of the other. The High Court, on a point of law as to the admissibility of rejected evidence, reserved under cl. 25 of the Letters Patent, 1865, and s. 101 of the High Court's Criminal Procedure Act (X of 1875), has power to review the whole case and determine whether the admission of the rejected evidence would have affected the result of the trial; and a conviction should not be reserved unless the admission of the rejected evidence ought to have

## CONFESSIONS TO POLICE OFFICERS—continued.

## 6. CONFESSIONS TO POLICE OFFICERS—continued.

varied the result of the trial (*Evidence Act, s. 167*). *EMPRESS v. PITAMBER JINA* [I. L. R., 2 Bom., 81]

81. — Admission made to police officer before arrest—*Evidence Act, ss. 25, 26*—An admission made by an accused person to a police officer before arrest is admissible in evidence. *EMPRESS v. DABEE PERSHAD* [I. L. R., 6 Calc., 530: 7 C. L. R., 541]

82. — Circumstances rendering confession admissible—*Evidence Act, ss. 24-26*—The circumstances which will render a confession objected to under ss. 24-26 of the Evidence Act (I of 1872) admissible in evidence discussed. *EMPRESS v. RAMA BIRAPA* [I. L. R., 3 Bom., 12]

83. — Self-exculpatory statement to police officer in police custody—*Re-trial*.—A statement made to a police officer by an accused person while in the custody of the police, although intended to be made in self-exculpation and not as a confession, may be nevertheless an admission of a criminalizing circumstance, and, if so, under ss. 25 and 26 of the Evidence Act I of 1872, it cannot be proved against the accused. After excluding evidence improperly admitted and put before the jury, the High Court found that the remaining evidence was not of such a character that a conviction might reasonably be based upon it. It accordingly reversed the conviction and sentence of the accused, declining to order his re-trial. *EMPRESS v. PANDHARINATH* [I. L. R., 6 Bom., 34]

84. — Statements of prisoner to police officer on being accused—*Evidence Act, ss. 25, 26, 27*—P, accused of the murder of a girl, gave to a police officer a knife, saying it was the weapon with which he had committed the murder. He also said that he had thrown down the girl's anklets at the scene of the murder, and would point them out. On the following day he accompanied the police officer to the place where the girl's body had been found, and pointed out the anklets. *Held* that such statements, being confessions, made to a police officer, whereby no fact was discovered, could not be proved against P. Observations on the use of confessions made to police officers. *Reg. v. Jora Hasji*, 11 Bom., 242, and *Empress v. Rama Birapa*, I. L. R., 3 Bom., 12, referred to. *EMPRESS v. PANCHAM* [I. L. R., 4 All., 198]

85. — Statement to police officer investigating case—*Evidence Act, ss. 25, 27*—Under s. 25 of the Evidence Act, I of 1872, a confession made to a police officer is inadmissible in evidence except so far as is provided by s. 27. It is immaterial whether such police officer be the officer investigating the case—the fact that such person is a police officer invalidates a confession. *THE MATTER OF HIRAN MIYA* [I. L. R., 2 C. L. R., 2]

86. — Confession before Village Magistrate—*Criminal Procedure Code, s. 164*—*Village Cess Act, s. 7*—*Evidence Act, s. 25*—A Village Magistrate is not a police officer, and

**CONFESSION—continued.****6. CONFESSIONS TO POLICE OFFICERS**  
—continued.

therefore, a confession made to a Village Magistrate is not inadmissible in evidence by reason of s. 25 of the Evidence Act. *QUEEN-EMRESS v. SAMA PAI* . . . *I. L. R., 7 Mad., 287*

**87. —** Incriminating statement by prisoner to police officer—*Evidence of police constable.*—A policeman, on being cross-examined, stated that, when he arrested the prisoner, the prisoner said to him, "Some Chinamen at the time of the occurrence came out with hatchets." On re-examination the policeman so far altered the words stated to have been used by the prisoner as to substitute for the

given. *QUEEN-EMRESS v. MATHEWS*  
*[I. L. R., 10 Cal., 1022]*

**88. —** Confession made to police officer, Admissibility of, for other purposes

enquiry held by the Magistrate under s. 523 of the Criminal Procedure Code (X of 1852). The High Court declined to interfere with an order, made by a Magistrate under s. 523 of the Criminal Procedure Code, for the delivery of property, where the Magistrate made such order upon the mere evidence of a confession of the accused to the police that the property was stolen from the adjudged owner. *QUEEN-EMRESS v. THEENDROYAN MANGACHAND*

*[I. L. R., 9 Bom., 131]*

**89. —** Information as to offence charged—*Evidence Act, ss. 26, 27—Confessions of persons charged—Information as to offence.*—When a fact is discovered in consequence of informa-

that a particular fact has been discovered from the information of A B, and this will let in, under s. 27, Evidence Act, so much of the information as relates distinctly to the information therein discovered. *QUEEN v. RAM CHURN CHENGO*

*[34 W. R., Cr., 30]*

**90. —** *Evidence Act, ss. 25, 26, 27.*—B and C, accused of offence under s. 414 of the Penal Code, gave information to the

**CONFESSION—continued.****5. CONFESSIONS TO POLICE OFFICERS**  
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police which led to the discovery of the stolen property. This information was to the effect that the accused had stolen a cow and calf, and sold them to a particular person at a particular place. *Held* by the Full Bench (*MAHMOOD, J.*, dissenting) that s. 27 of the Evidence Act is a proviso not only to s. 26, but also to s. 25; and that, therefore, so much of the information given by the accused to the police officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be proved. *EMRESS v. KARPALA, Weekly Notes, All., 1882, p. 223*, dissented from. *Per MAHMOOD, J.*, that s. 27 of the Evidence Act is not a proviso to s. 25, but only to s. 26, and that, therefore, the statements in question were wholly inadmissible in evidence. *EMRESS v. PANCHAM, I. L. R., 4 All., 198*, referred to by STRAIGHT, *Offg. C.J.*, and MAHMOOD, *J.* *Per STRAIGHT, Offg. C.J.*, that where a statement is being detailed by a constable as having been made by an accused in consequence

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**91. —** *Confession made while in custody of police—Evidence Act, ss. 25, 27.*—No judicial officer dealing with the provisions of s. 27 of Act I of 1872 should allow one word more to be deposed to by a police officer detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is

fact or facts of which he gives evidence. *EMRESS v. PANCHAM, I. L. R., 4 All., 198*. *QUEEN-EMRESS v. BABU LAL, I. L. R., 6 All., 509*, discussed and commented on. Thus, when a police officer deposed that an accused had told him that he had robbed A of Rs 148, whereof he had spent Rs 5 and had got Rs 140, and that he had made over the Rs 140 to him.—*Held* that the statement that he robbed A of Rs 148 was not necessarily preliminary to the surrender of the Rs 140, and was inadmissible in evidence against him. When also a police officer deposed to the fact that the accused, who was charged with murder, had stated to him that he and A had stolen some hides from C, and upon such statement he had sent for C and recorded his information, and when it appeared that C had already informed the police of the fact of the theft, though the witness was not

CONFESION—continued.  
5. CONFESIONS TO POLICE OFFICERS  
—continued.

5. CONFESSIONS.—*continued.*

167—*Admissibility in evidence of confession—Deputy Commissioner of Police in Calcutta—Letters Patent, 1865, cl. 26—Case certified by Advocate General.*—The prisoner, on his arrest, made a statement in the nature of a confession which was reduced into writing by one of the inspectors in whose custody the prisoner was, and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the police office, the Deputy Commissioner receiving and attesting the statement in his capacity as Magistrate and Justice of the Peace. At the trial of the prisoner at the Criminal Sessions of the High Court, this statement was tendered in evidence against him, and admitted by the Judge, who overruled an objection on behalf of the prisoner that, under s. 25 of the Evidence Act, it was inadmissible. On a case certified by the Advocate General under cl. 26 of the Letters Patent, *Held* that the confession was, under s. 25 of the Evidence Act, not admissible in evidence. *Per GARTH, C.J.*—S. 26 of the Evidence Act is not to be read as qualifying the plain meaning of s. 25. In construing s. 25 the term "police officer" is not to be read in a technical sense, but in its more comprehensive and popular meaning. *Per GARTH, C.J.* (PONTIFEX, J., doubtful).—The Court which under that section is to decide upon the sufficiency of the evidence to support the conviction is, in a case coming before the Court and under s. 26 of the Letters Patent, the Court of review, not the Court below. Such decision is to be come to on being informed by the Judge's notes and, if necessary, by the Judge himself, of the evidence adduced at the trial. *Per Curiam.*—Apart from s. 167, the Court has power, in a case under cl. 26 of the Letters Patent, to review the whole case on the merits, and affirm or quash the conviction.

QUEEN v. HURRIBOLE CHUNDER GHOSE  
1 Cal., 207: 25 W. R., Cr., 36

80. \_\_\_\_\_ Confession to police officer  
of accused persons tried jointly—  
25 and 167—Admissibility  
Criminal

80. — *Confession to person tried jointly by one of accused persons tried jointly by Evidence Act, 1872, ss. 25 and 167—Admissibility in evidence of confession—High. Court's Criminal Procedure Act (X of 1875), ss. 23 and 101—Letters Patent, 1865, cl. 25—Power of the High Court on a point of law reserved to consider the merits of the case.—S. 25 of the Evidence Act (I of 1872) does not preclude one accused person from proving a confession made to a police officer by another accused person tried jointly with him. Such a confession is not to be received or treated as evidence against the person making it, but simply as evidence on behalf of the other. The High Court, on a point of law as to the admissibility of rejected evidence, reserved under cl. 25 of the Letters Patent, 1865, and s. 101 of the High Court's Criminal Procedure Act (X of 1875), has power to review the whole case and determine whether the admission of the rejected evidence would have affected the result of the trial; and a conviction should not be reserved unless the admission of the rejected evidence ought to have*

CONFESION—continued.  
5. CONFESSIONS TO POLICE OFFICERS  
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Admission made to police—  
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6. CONFESSIONS TO POLICE OFFICERS  
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[I. L. R., 10 Cal., 1023

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89. —  
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—continued.

police which led to the discovery of the stolen property. This information was to the effect that the accused had stolen a cow and calf, and sold them to a particular person at a particular place. *Held* by the Full Bench (MAHMOOD, J., dissenting) that s. 27 of the Evidence Act is a proviso not only to s. 26, but also to s. 25; and that, therefore, so much of the information given by the accused to the police officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be proved. *EMPRESS v. KUARPALA*, *Weekly Notes*, All., 1882, p. 225, disapproved from. *Per* MAHMOOD, J., that s. 27 of the Evidence Act is not a proviso to s. 25, but only to s. 26, and that, therefore, the statements in question were wholly inadmissible in evidence. *EMPRESS v. PUNCHAM*, I. L. R., 4 All., 198, referred to by STRAIGHT, *Offg. C.J.*, and MAHMOOD, J. *Per* STRAIGHT, *Offg. C.J.*, that where a statement is being detailed by a constable as having been made by an accused, in consequence of which he discovered a certain fact or certain facts, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. Observations by STRAIGHT, *Offg. C.J.*, as to the mode in which the testimony of witnesses should be recorded in cases where two persons are being tried. Observations by STRAIGHT, *Offg. C.J.*, and DUTHOIT, J., upon the nature of confessions by accused persons in India, and the circumstances in which such confessions are made. *EMPRESS v. BABU LAL* . . . I. L. R., 8 All., 509

91. — *Confession made while in custody of police—Evidence Act*, ss. 25, 27. —No judicial officer dealing with the provisions of s. 27 of Act I of 1872 should allow one word more to be deposed to by a police officer detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused so as in itself

the fact of the theft, though the witness was not

# CONFESSION—continued.

## 5. CONFESSIONS TO POLICE OFFICERS —continued.

aware of it,—*Held* that the statement was inadmissible upon the ground that it would be most dangerous to extend the provisions of s. 27, and allow a police officer, who is investigating a case, to prove an information received from a person accused of an offence in the custody of a police officer, on the ground that a material fact was thereby discovered by him, when that fact was already known to another police officer. *ADU SHIKDAR v. QUEEN-EMPRESS*  
[I. L. R., 11 Calc., 635]

92. — *Confession while in custody of police—Evidence Act, ss. 25, 26, 27.*—The accused were charged with theft of some jwari. During the police investigation they admitted before the police that they had taken the grain and concealed it in a jar, which they forthwith produced. The identity of the jwari recovered with that stolen was not proved to the satisfaction of the trying Magistrate, except by these admissions, and upon these admissions they were convicted of theft. *Held* that, as the prisoners themselves produced the jwari, it was by their own act, and not from any information given by them, that the discovery took place. S. 27 of the Evidence Act, therefore, did not apply; and, though the fact of the production of the property might be proved, the accompanying confession made to the police was inadmissible in evidence. *Empress v. Pancham, I. L. R., 4 All., 198, and Queen-Empress v. Babu Lal, I. L. R., 6 All., 509, followed.*  
*QUEEN-EMPRESS v. KAMALIA*  
[I. L. R., 10 Bom., 595]

93. — *Evidence Act (I of 1872), ss. 25, 26—Admissibility of confession made to chowkidar—Retracted confession.*—P, who was accused of the murder of his wife and was arrested by a chowkidar, was alleged to have made a confession to him of the crime in the presence of one D whose evidence was not accepted by the Judge. He subsequently, a few hours later, made a confession to the Magistrate detailing the account of the murder. Two days after he retracted his confession before the Magistrate, and alleged it had been made under police threats. *Held* that, after the view taken of the evidence of D, it would not be safe to act upon the confession alleged to be made to the chowkidar, but having regard to the circumstances of the case, the second confession was reliable. *EMPRESS v. INDRA CHUNDER PAL*  
2 C. W. N., 637

94. — *Statements made by accused while in police custody, Admissibility of—Evidence Act, ss. 8, 25, 26, 27—Confession—Confession leading to discovery of a fact—Statements as evidence of conduct.*—The accused was charged, under s. 411 of the Penal Code, with dishonestly receiving stolen property. In the course of the police investigation the accused was asked by the police where the property was. He replied that he had kept it, and would show it. He said he had buried the property in the fields. He then took the police to the spot where the property was concealed, and with his own hands disinterred the earthen pot in

# CONFESSION—continued.

## 5. CONFESSIONS TO POLICE OFFICERS —continued.

which the property was kept. He made a second statement when pointing out the spot to the effect that he had buried the property there. It was contended that those statements were inadmissible, having been made when the accused was in custody of the police. *Held* (1) that the above statements were clearly in the nature of a confession, as they suggested the inference that the prisoner committed the crime, and even if not intended by the accused as a confession of guilt, they were an admission of a criminalising circumstance, and would form a very important part of the evidence against the accused, showing that he had not come by the property honestly, and were, therefore, properly within the rule of exclusion in regard to confessions made by a person in custody of the police. (2) That neither of the above statements was admissible in evidence under explanation 1 of s. 8 of the Evidence Act, I of 1872, as evidence of the conduct of the accused. S. 8, so far as it admits a statement as evidence the word "conduct," must be read in connection with ss. 25 and 26, and cannot admit a statement as evidence which would be shut out by those sections. (3) That the accused's statement, that he had buried the property in the fields, was admissible in evidence under s. 27 of the Evidence Act, as it set the police in motion and led to the discovery of the property. A statement is equally admissible under s. 27, whether the statement is made in such detail as to enable the police to discover the property themselves, or whether it be of such a nature as to require the assistance of the accused in discovering the exact spot where the property is concealed. *QUEEN-EMPRESS v. NANA*  
[I. L. R., 14 Bom., 260]

95. — *Information received from the accused—Evidence Act (I of 1872), s. 27—Statement leading to the discovery of a fact—Admissibility of such statement.*—If the statement of an accused person in the custody of the police is a necessary preliminary of the fact thereby discovered, it is admissible under s. 27 of the Evidence Act; it is immaterial whether the statement is sufficient to enable the police to make the discovery by themselves, or is only of such a nature as to require further assistance of the accused to enable them to discover the fact. *Empress of India v. Pancham, I. L. R., 4 All., 198, dissented from. Queen-Empress v. Nana, I. L. R., 14 Bom., 268, followed. Adu Shikdar v. Queen-Empress, I. L. R., 11 Calc., 635, referred to. LEGAL REMEMBRANCE v. CHEMA NASHYA*  
I. L. R., 25 Calc., 413

DEPUTY LEGAL REMEMBRANCE v. CHEMA NASHYA  
2 C. W. N., 257

96. — *Statement of accused to friend—Evidence Act (I of 1872), s. 26—Statement made in temporary absence of police.*—A person under arrest on a charge of murder was taken in a tonga, from the place where the alleged offence was committed, to Godhra. A friend drove with her in the tonga, and a mounted policeman rode in front. In the course of the journey, the policeman left the

**CONFESSION—continued.****& CONFESSIONS TO POLICE OFFICERS  
—concluded.**

communication to his friend with reference to the alleged offence. At the trial it was proposed to ask

LESTER . . . I L. R., 20 Bom., 165

**& CONFESSIONS OF PRISONERS TRIED  
JOINTLY.**

consideration against those prisoners who pleaded not guilty. The proper course for the Judge was either to have sentenced the prisoner who pleaded guilty, and then put him aside, or to have waited to see what the evidence would disclose. *REG. v. KALU PATTI* . . . 11 Bom., 140

08. . . . . Amendment of

instigation of B, was put in as evidence against A. Subsequently the charge against A was altered to one of abetment of murder, and the Sessions Judge, under the authority of s. 30 of the Evidence Act, used the confession against both and convicted them. The High Court held that the original and amended charges were so nearly related that the trial might, without any unfairness, be deemed to have been a trial on the amended charge from the commencement; and that no objection having been taken by B, who was represented by a valued, to the admissibility

09. . . . . Statement of  
person tried jointly with others.—The statement of  
a person tried jointly with other persons for the same

**CONFESSION—continued.****& CONFESSIONS OF PRISONERS TRIED  
JOINTLY—continued.**

offence is not made less of an admission, as to all that the person knew concerning the offence affecting himself and the other persons, by the fact of the Court not thinking him guilty of the offence charged. *QUEEN v. HARU KHAN 5 N. W., 213*

100. . . . . Confession of  
co-prisoner—Corroboration.—The confession of one  
prisoner cannot be used as corroborative evidence  
against another person. Corroboration as to the details  
of the crime, without corroboration as to the person of  
the accused, is worthless. *QUEEN v. DURAHOO  
DASS SIRDAR* . . . 13 W. R., Cr., 14

101. . . . . Confession of  
Co-prisoner—Trial for substantive offence and

parties. S. 30, Act I of 1872, ought to be construed  
with great strictness, and the confession of one  
person is not admissible in evidence against another,  
although the two are jointly tried, if one is tried for  
the abetment of the offence for which the other  
is on his trial. *QUEEN v. JAFFIR ALI*  
(19 W. R., Cr., 57)

102. . . . . Statements of ac-  
cused persons as evidence against other co-accused.  
—Statements made by one set of prisoners, crimi-  
nating another set of prisoners, when each individual  
prisoner made a case for himself in which he was  
free from any criminal offence, ought not to be taken  
into consideration under s. 30 of the Evidence Act  
against the prisoners of the second set, when the two  
sets, although tried together, were tried upon totally  
different charges. *QUEEN v. HUNWARR LALL*  
(21 W. R., Cr., 53)

*QUEEN v. KRUKER OORAM* (21 W. R., Cr., 43)

103. . . . . Confessions of  
accused tried jointly—Joinder of charges of

used as evidence against B, and all the accused were  
convicted. Held that the Magistrate committed an  
error of law in admitting the confession of M, K,  
and B as against B, and it was a ground for setting  
aside the conviction, but not for discharging the ac-  
cused. *BISHNU BASWAR v. EMPRESS*  
(10 W. N., 33)

104. . . . . Confessions of  
prisoners tried jointly as evidence.—Confessions of  
prisoners tried simultaneously with the accused for  
the same offence, which are in a very qualified man-  
ner made operative as evidence by Act I of 1872,  
s. 30, are only to be rated as evidence of a defective

**CONFESSION—continued.****5. CONFESSIONS TO POLICE OFFICERS**  
—continued.

aware of it,—*Held* that the statement was inadmissible upon the ground that it would be most dangerous to extend the provisions of s. 27, and allow a police officer, who is investigating a case, to prove an information received from a person accused of an offence in the custody of a police officer, on the ground that a material fact was thereby discovered by him, when that fact was already known to another police officer. *ADU SHIKDAR v. QUEEN-EMPRESS*

[I. L. R., 11 Calc., 635]

**92.** — *Confession while in custody of police—Evidence Act, ss. 25, 26, 27.*—The accused were charged with theft of some jwari. During the police investigation they admitted before the police that they had taken the grain and concealed it in a jar, which they forthwith produced. The identity of the jwari recovered with that stolen was not proved to the satisfaction of the trying Magistrate, except by these admissions, and upon these admissions they were convicted of theft. *Held* that, as the prisoners themselves produced the jwari, it was by their own act, and not from any information given by them, that the discovery took place. S. 27 of the Evidence Act, therefore, did not apply; and, though the fact of the production of the property might be proved, the accompanying confession made to the police was inadmissible in evidence. *Empress v. Pantham, I. L. R., 4 All., 198*, and *Queen-Empress v. Babu Lal, I. L. R., 6 All., 509*, followed. *QUEEN-EMPRESS v. KAMALIA*

[I. L. R., 10 Bom., 595]

**93.** — *Evidence Act (I of 1872), ss. 25, 26—Admissibility of confession made to chowkidar—Retracted confession.*—P, who was accused of the murder of his wife and was arrested by a chowkidar, was alleged to have made a confession to him of the crime in the presence of one D whose evidence was not accepted by the Judge. He subsequently, a few hours later, made a confession to the Magistrate detailing the account of the murder. Two days after he retracted his confession before the Magistrate, and alleged it had been made under police threats. *Held* that, after the view taken of the evidence of D, it would not be safe to act upon the confession alleged to be made to the chowkidar, but having regard to the circumstances of the case, the second confession was reliable. *EMPRESS v. INDRA CHUNDER PAL* . . . 2 C. W. N., 637

**94.** — *Statements made by accused while in police custody, Admissibility of—Evidence Act, ss. 8, 25, 26, 27—Confession—Confession leading to discovery of a fact—Statements as evidence of conduct.*—The accused was charged, under s. 411 of the Penal Code, with dishonestly receiving stolen property. In the course of the police investigation the accused was asked by the police where the property was. He replied that he had kept it, and would show it. He said he had buried the property in the fields. He then took the police to the spot where the property was concealed, and with his own hands disinterred the earthen pot in

**CONFESSION—continued.****5. CONFESSIONS TO POLICE OFFICERS**  
—continued.

which the property was kept. He made a second statement when pointing out the spot to the effect that he had buried the property there. It was contended that those statements were inadmissible, having been made when the accused was in custody of the police. *Held* (1) that the above statements were clearly in the nature of a confession, as they suggested the inference that the prisoner committed the crime, and even if not intended by the accused as a confession of guilt, they were an admission of a criminating circumstance, and would form a very important part of the evidence against the accused, as showing that he had not come by the property honestly, and were, therefore, properly within the rule of exclusion in regard to confessions made by a person in custody of the police. (2) That neither of the above statements was admissible in evidence under explanation 1 of s. 8 of the Evidence Act, I of 1872, as evidence of the conduct of the accused. S. 8, so far as it admits a statement as included in the word "conduct," must be read in connection with ss. 25 and 26, and cannot admit a statement as evidence which would be shut out by those sections. (3) That the accused's statement, that he had buried the property in the fields, was admissible in evidence under s. 27 of the Evidence Act, as it set the police in motion and led to the discovery of the property. A statement is equally admissible under s. 27, whether the statement is made in such detail as to enable the police to discover the property themselves, or whether it be of such a nature as to require the assistance of the accused in discovering the exact spot where the property is concealed. *QUEEN-EMPRESS v. NANA*

[I. L. R., 14 Bom., 260]

**95.** — *Information received from the accused—Evidence Act (I of 1872), s. 27—Statement leading to the discovery of a fact—Admissibility of such statement.*—If the statement of an accused person in the custody of the police is a necessary preliminary of the fact thereby discovered, it is admissible under s. 27 of the Evidence Act; it is immaterial whether the statement is sufficient to enable the police to make the discovery by themselves, or is only of such a nature as to require further assistance of the accused to enable them to discover the fact. *Empress of India v. Pantham, I. L. R., 4 All., 198*, dissented from. *Queen-Empress v. Nana, I. L. R., 14 Bom., 268*, followed. *Adu Shikdar v. Queen-Empress, I. L. R., 11 Calc., 635*, referred to. *LEGAL REMEMBRANCE v. CHEMA NASHYA* . . . I. L. R., 25 Calc., 413

*DEPUTY LEGAL REMEMBRANCE v. CHEMA NASHYA* . . . 2 C. W. N., 257

**96.** — *Statement of accused to friend—Evidence Act (I of 1872), s. 26—Statement made in temporary absence of police.*—A person under arrest on a charge of murder was taken in a tonga, from the place where the alleged offence was committed, to Godhra. A friend drove with her in the tonga, and a mounted policeman rode in front. In the course of the journey, the policeman left the

**CONFESSION—continued.****5. CONFESSIONS TO POLICE OFFICERS**  
—concluded.

notwithstanding the temporary absence of the policeman, the accused was still in custody, and the question must be disallowed. *QUEEN-EMRESS v. LESTER* 1 L. R., 20 Bom., 165

**6. CONFESSIONS OF PRISONERS TRIED JOINTLY.**

to have sentenced the prisoner who pleaded guilty, and then put him aside, or to have waited to see what the evidence would disclose. *REG. v. KALU PATIL* 11 Bom., 148

88. —Amendment of charges—*Criminal Procedure Code, 1872, ss. 417-419.*—While A and B were being jointly tried before

one of abetment of murder, and the Sessions Judge, under the authority of s. 30 of the Evidence Act, read the confession against both and convicted them. The High Court held that the original and amended charges were so nearly related that the trial might, without any unfairness, be deemed to have been

89. —Statement of person tried jointly with others.—The statement of a person tried jointly with other persons for the same

**CONFESSION—continued.****6. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.**

offence is not made less of an admission, as to all that the person knew concerning the offence affecting himself and the other persons, by the fact of the Court not thinking him guilty of the offence charged. *QUEEN v. BAKUR KHAN & N. W.*, 213

100. —Confession of co-prisoner—Corroboration.—The confession of one prisoner cannot be used as corroborative evidence against another person. Corroboration as to the details of the crime, without corroboration as to the person of the accused, is worthless. *QUEEN v. DURBAROO BASS SINDAR*. 13 W. R., Cr., 14

with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial. *QUEEN v. JAYRIS ALI*

[19 W. R., Cr., 57]

101. —Statements of ac-

[31 W. R., Cr., 53]

*QUEEN v. KHURRIS OORAM*

[21 W. R., Cr., 43]

103. —Confessions of accused tried jointly—Joinder of charges of

CHAND. *HIMSHU BANWAR v. EMPRESS*

[10 W. N., 35]

104. —Confessions of prisoners tried jointly as evidence.—Confessions of prisoners tried simultaneously with the accused for the same offence, which are in a very qualified manner made operative as evidence by Act I of 1872, s. 30, are only to be rated as evidence of a defective

## CONFESSION—continued.

## G. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.

character, and require especially careful scrutiny before they can be safely relied on. *QUEEN v. SADHU MUNDUL* . . . . . 21 W. R., Cr., 69

105. ————— *Statements made by prisoners before committing officer.*—Statements made by a prisoner before the committing officer, which implicate his fellows and exculpate himself, cannot be regarded as evidence under the Evidence Act, s. 30. *QUEEN v. KESHUB BROONIA* [25 W. R., Cr., 8

108. ————— *Defects of confessions by co-prisoners.*—The confession of co-prisoners cannot, under the Evidence Act I of 1872, s. 30, be treated as evidence of ordinary character not distinguished by any special infirmity or qualifications against the other prisoners, as, in addition to the infirmity inherent in an accomplice's testimony, they are not given on oath, and are not liable to be tested by cross-examination. *QUEEN v. NAGA* [23 W. R., Cr., 24

107. ————— *Confession of co-prisoner incriminating himself.*—The statement of one prisoner cannot be taken as evidence against another prisoner under s. 30 of the Evidence Act, unless the confessing prisoner implicates himself to the full as much as his co-prisoner whom he incriminates. *QUEEN v. BAIJOO CHOWDRY* [25 W. R., Cr., 43

108. ————— *Confession by co-prisoner implicating himself.*—Where more persons than one are being tried for the same offence, and a confession made by one affecting himself and some of the others is proved, the Evidence Act, s. 30, does not provide that such confession is evidence, but that it may be "taken into consideration : " the intention of the Legislature being that when, as against any person implicated by such confession, there is evidence tending to his conviction, the circumstance of such person being implicated by the confession of one of those who are being jointly tried with him shall be taken into consideration as bearing upon the truth or sufficiency of such evidence. *QUEEN v. CHUNDER BHUTTACHARJEE*. 24 W. R., Cr., 42

109. ————— *Confessions of fellow-prisoners tried jointly for the same offence.*—When the accused was convicted solely on the confessions of his fellow-prisoners, who were tried jointly with him for the same offence,—*Held* that the conviction was bad. Under s. 30 of the Indian Evidence Act, I of 1872, such confessions could be "taken into consideration " against the accused, but they were not evidence within the definition given in s. 3 of the Act ; and they could not, therefore, alone form the basis of a conviction. *QUEEN-EMPRESS v. KHANDIA BIN PANDU* . I. L. R., 15 Bom., 66

110. ————— *Value, as evidence, of confession of persons tried jointly.*—The words "take into consideration " in s. 30 of the Indian Evidence Act, 1872, do not mean that the

## CONFESSION—continued.

## G. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.

confession referred to in the section is to have the force of sworn evidence. *QUEEN-EMPRESS v. KHANDIA*, I. L. R., 15 Bom., 66, referred to. *QUEEN-EMPRESS v. NIRMAL DAS* [I. L. R., 22 All., 445, 448 note

111. ————— *Confession made by person charged jointly with another for separate offences arising out of one transaction, admissibility of, as against the other.*—In order to constitute an offence under s. 373 of the Penal Code, it is not necessary that the intention or knowledge of likelihood as to the employment of the minor for purposes of prostitution should be with reference to employment, either immediate or at some definite, and not very remote, future period, but an offence under the section is complete as soon as a girl is purchased with the guilty intention or knowledge of likelihood that she will, while still a minor under the age of 16 years, be employed for that purpose, although the point of time for such employment may be remote by reason of her physical incapacity for the purpose. *H*, the father of two girls, twins, about a year old, sold one of them to *K*, a prostitute, for Rs. 9, and within ten days of such sale also sold her the other for Rs. 14. *K* was shown to have previously purchased another child whom she had brought up from her infancy, and who was then living with her and leading the life of a prostitute. Both *H* and *K* made confessions as to the guilty knowledge and intention with which the sale of the two children was made. *K*'s confession was made within two hours after her arrest, and immediately thereafter she was committed to *hajat* for seven days. On the seventh day, on being brought up for trial before the Deputy Magistrate, she retracted her confession and assigned an innocent reason for her purchase of the girl. *H* and *K* were tried jointly, *H* being charged with an offence under s. 372, viz., selling the girls for the purpose of prostitution, and *K* with an offence under s. 373, viz., buying for the same purpose. Neither was charged with abetting the other. The two confessions were used as evidence. *Held* that, having regard to the circumstances under which the confession of *K* was given and retracted, it was open to suspicion, and could not safely be acted upon, and that the confession made by *H* was not legally admissible against her, as they were not being tried jointly for the same offence. *DEPUTY LEGAL REMEMBRANCER v. KARUNA BAIS-TOBI* . . . . . I. L. R., 22 Cal., 164

112. ————— *Confession of co-prisoner—Joint trial—Plea of guilty.*—*A* and *B* were charged with murder. *A* pleaded guilty, but he was not convicted or sentenced till the conclusion of the trial of his fellow-prisoner *B*. The Sessions Judge, holding that both the accused were jointly tried for the same offence, took into consideration as against *B* the confessions made by *A*, and convicted both of murder. *Held* that, after *A* had pleaded guilty, he could not be treated as being jointly tried with *B*. *A*'s confessions were therefore not admissible

## CONFESSION—continued.

## G. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.

against *H* under s. 30 of the Indian Evidence Act (I of 1872). *QUEEN-EMRESS v. PANDUJ*

[I. L. R., 19 Bom., 195]

113. ———— *Statements of co-accused who pleaded guilty—Joint trial.*—Where

evidence against the other accused persons, inasmuch as, after pleading guilty, the persons making those statements were no longer on their trial. *QUEEN-EMRESS v. PIRBU* I. L. R., 17 All., 524

to support a conviction. *QUEEN-EMRESS v. RANU NAYAN* I. L. R., 19 Mad., 482

ing is no longer on his trial, and cannot be treated as being jointly tried with the others. A confession by that person affecting himself and others cannot, therefore, be taken into consideration as against such others under s. 30 of the Evidence Act. *QUEEN-EMRESS v. LAKSHMAYYA PANDARAM*

[I. L. R., 23 Mad., 491]

116. ———— *Confession by*

end if he pleads guilty. Under s. 271 of the Code of Criminal Procedure, where an accused pleads guilty, "the plea shall be recorded," and the accused "may be convicted" thereon; but evidence may be taken in Sessions cases as if the plea had been one of "not guilty," and the case decided upon the whole of the evidence including the accused's plea. When such a procedure is adopted, the trial does not terminate with the plea of guilty, and therefore a confession by the person so pleading may be taken into consideration under s. 30 of the Indian Evidence Act, 1872, as against any other person who is being jointly tried with him for the same offence. A trial does not strictly end until the accused has been either convicted or acquitted or discharged. *QUEEN-EMRESS v. CHINNA PATEEN* I. L. R., 23 Mad., 161

117. ———— *Confession of co-prisoner who has withdrawn from associates before offence.*—The confession of a person who says he abetted a murder, but withdrew before the actual

## CONFESSION—continued.

## G. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.

perpetration of that murder by his associates, cannot be used as evidence against those associates, though the person confessing is tried with them jointly on a charge of murder. *REG. v. AMRITA GOVINDA*

[10 Bom., 497]

118. ———— *Confession of co-prisoner.*—S. 30 of Act I of 1872 is an exception, and its wording shows that the confession is merely to be an element in the consideration of the evidence. Unless there is something more, a conviction on it will still be a case of no evidence, and bad in law. *ANONYMOUS* 7 Mad., Ap., 15

119. ———— *Confession of a prisoner when admissible against co-prisoner.*—To render the confession of one prisoner jointly tried with another admissible in evidence against the latter, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which the prisoners are being jointly tried. *QUEEN v. HELLAR Ali* 10 B. L. R., 453; 10 W. R., Cr., 67

*QUEEN v. MOHESH BHAWAR*

[10 B. L. R., 455 note; 10 W. R., Cr., 16]

120. ———— *Confession of co-prisoner—Illegal conviction.*—A conviction based solely on the evidence of a co-prisoner is bad in law. *QUEEN v. AMBIDARA HILLAGU*

[I. L. R., 1 Mad., 163]

*QUEEN v. BUDHU NAYAN*

[I. L. R., 1 Bom., 475]

121. ———— *Conviction on uncorroborated confession.*—A conviction of a person who is being tried together with other persons for the same offence cannot proceed merely on an uncorroborated statement in the confession of such other persons. *EMRESS OF INDIA v. BHAWANIL*  
*EMRESS OF INDIA v. RAM CHAND*

[I. L. R., 1 All., 661, 675]

122. ———— *Confession of one prisoner implicating himself and another, Effect of—Court.*—Meaning of.—Under s. 30 of the Evidence Act, the confession of a prisoner affecting himself and another person charged with the

must be dealt with by the Court in the same manner as any other evidence. The weight, however, to be attached to such evidence, and the question whether taken by itself it is sufficient in point of law to justify a conviction, is a question for the Judge. Unsupported by other evidence, it, however, should be taken as evidence of the very weakest kind, being simply a statement of a third person not made upon oath or affirmation. If such confession is corroborated by other evidence, it is immaterial whether in proving the case at the trial the confession precedes the other evidence or the other evidence precedes the

**CONFESSION—continued.****6. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.**

confession. *Per* JACKSON, J. (McDONELL, concurring).—Such evidence is not sufficient to support a conviction, even if corroborated by circumstantial evidence, unless the circumstances constituting corroboration would, if believed to exist, themselves support a conviction. *Per Curiam*.—The word "Court" in s. 30 of the Evidence Act means not only the Judge in a trial by a Judge with a jury, but includes both Judge and jury. *EMPRESS v. ASHOOTOSH CHUCKERBUTTY*

[I. L. R., 4 Cal., 483; 3 C. L. R., 270]

**123.** *Uncorroborated confession of a co-accused, Sufficiency of, for conviction—Uncorroborated testimony of an accomplice—Evidence Act (I of 1872), s. 114, ill. (b).*—The confession of a co-accused, if proved, is evidence against the accused, but it is evidence of the weakest kind, and, if uncorroborated, it is not sufficient to warrant a conviction. *EMPRESS v. ASHOOTOSH CHUCKERBUTTY, I. L. R., 4 Cal., 483*, followed. *MANKI TEWARI v. AMIR HOSSEIN*

[2 C. W. N., 749]

**124.** *Statement of prisoner exculpating himself.*—A prisoner, charged together with others with being a member of an unlawful assembly, made a statement before the committing Magistrate implicating his fellow-prisoners and another person. He subsequently withdrew this statement, and made another, in which he endeavoured to exculpate himself. *Held* that this statement was not evidence against the other prisoners under s. 30 of the Evidence Act. It was not a confession, nor did it amount to any admission by the prisoner that he was guilty in any degree of the offence charged; but it was simply an endeavour on his part to explain his own presence on the occasion in such a manner as to exculpate himself; and any mention made by him in such a statement of other persons having been engaged in the riot was altogether irrelevant, and not evidence against them. *NOOR BUX KAZI v. EMPRESS*

[I. L. R., 6 Cal., 279; 7 C. L. R., 385]

**125.** *Confession not implicating prisoner confessing.*—Where the confession of a person being tried jointly with other persons did not implicate him to the same extent as it implicated such other persons, and was not sufficient of itself to justify his conviction,—*Held* that such confession could not be taken into consideration under s. 30 of Act I of 1872 against such other persons. *Queen v. Belat Ali, 10 B. L. R., 453*, followed. *EMPRESS OF INDIA v. GANRAJ*

[I. L. R., 2 All., 444]

**126.** *Confession of prisoner exculpating himself.*—Where a person being tried jointly with other persons made a statement deprecating any guilty knowledge and seeking to clear himself at the expense of such other persons,—*Held* that such statement could not be taken into consideration under s. 30 of Act I of 1872 against such other persons. *Queen v. Belat Ali, 10 B. L.*

**CONFESSION—continued.****6. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.**

*R., 453*, and *Empress v. Ganraj, I. L. R., 2 All., 444*, followed. *EMPRESS OF INDIA v. MULU*  
[I. L. R., 2 All., 648]

**127.** *Trial for dacoity and receiving stolen property.*—A and B were committed for trial, the former for dacoity under s. 395 of the Penal Code and the latter under s. 412 for receiving stolen property, knowing it to be such. A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence and on the confessions made by A the Sessions Judge convicted B. On appeal to the High Court,—*Held* that, A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence against B. There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed. *EMPRESS v. BALA PATEL*

[I. L. R., 5 Bom., 63]

**128.** *Statement by prisoner in absence of co-prisoners—Confession.*—Several persons were charged together with offences under ss. 148, 302, 324, and 326 read with s. 149 of the Penal Code. The Sessions Judge, when about to examine the prisoners, required all but the prisoner under examination to withdraw from the Court, until his turn for examination came round, and convicted each prisoner chiefly upon what was said by his co-prisoners during his absence from the Court. *Held* that the evidence so given was inadmissible. *IN THE MATTER OF THE PETITION OF CHANDRA NATH SIRCAR, EMPRESS v. CHANDRA NATH SIRCAR*

I. L. R., 7 Cal., 65; 8 C. L. R., 353

CHAKOWBI LALL v. MOTI KURMI

[13 C. L. R., 275]

**129.** *Statement by prisoner in absence of co-prisoners—Code of Criminal Procedure (X of 1872), s. 250.*—The two accused persons were jointly tried before the Sessions Judge on a charge of murder. The Sessions Judge examined each of the accused in the absence of the other, making the latter withdraw from the Court during the examination of the former, though without objection from the pleaders of the accused persons. *Held* that the examination of each accused could be used only against himself, and not against his fellow-accused. *EMPRESS v. LAKSHMAN BALA*

[I. L. R., 6 Bom., 124]

**130.** *Distinct confession of offence charged.*—To render the statement of one person jointly tried with another for the same offence liable to consideration against that other, it is

**CONFESSION—continued.****G. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.**

necessary that it should amount to a distinct confession of the offence charged. **EMPERESS v. DASI NARAY** . . . I. L. R., 6 Bom., 288

**131.** ———— *Statements of co-prisoners pleading guilty.*—Several prisoners being charged together with house-breaking, some of them pleaded guilty. The Sessions Judge used the confessions made by those who pleaded guilty as evidence against a prisoner who was tried. *Held* that such confessions were not evidence under s. 30 of the Evidence Act, 1872. **VENKATASAMI v. QUEEN** [I. L. R., 7 Mad., 103]

passed that he had got the coins from D, who had passed them to several persons at his request. *Held* that the confession of A was relevant against B. *Where persons are accused of an offence of the*

from these sections to constitute a separate offence from that of the accomplice. **QUEEN-EMPERESS v. NUR MAHOMED** . . . I. L. R., 8 Bom., 223

**133.** ———— *Confession of co-accused used against abettor.*—Upon the trial of A

**134.** ———— *Confession if taken to be taken against all co-accused.*—Admissibility

evidence at all, amounting to a confession against all the accused, and not against the person alone who made it. **EMPERESS v. RAMA BHARAA** [I. L. R., 3 Bom., 13]

**135.** ———— *Want of corroboration.*—Where the accused was convicted of house-breaking by night with intent to commit theft, and the only evidence against him was the confession of a fellow-prisoner, and the fact that he pointed out the stolen property same

**CONFESSION—continued.****G. CONFESSIONS OF PRISONERS TRIED JOINTLY—concluded.**

months after the commission of the offence.—*Held* that the mere production of the stolen property by the accused was not sufficient corroboration of the confession of the other prisoner. **QUEEN-EMPERESS v. DOSA JIVA** . . . I. L. R., 10 Bom., 231

**CONFESSION OF JUDGMENT.**

s. 22, on the following question. Is the plaintiff entitled to a decree as of the date on which the defendant appeared and confessed judgment? *Held* that the Judge has a discretion when parties have come to

[3 B. L. R., A. C., 390; 12 W. R., 403]

**2.** ———— *Conditional confession of judgment.*—The confession of judgment must be unconditional unless the plaintiff consents to a conditional one, e.g., a decree on payment of instalments. **ATMA RAM v. CHANDEN SISON** [3 Agra, 77]

**CONFISCATION.**

*See CASES UNDER ACT OF STATE.*

*See CASES UNDER FORFEITURE OF PROPERTY.*

*See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.* [I. L. R., 17 All., 456]

**CONFISCATION OF PROPERTY IN OUDH.**

**1.** ———— *Limitation—Release of Government rights—Settlement—Cause of action.*—House property in Lucknow, of which the Government had assumed possession as confiscated under the proclamations issued by Lord Canning and Sir James Outram in March 1853, was released under an order passed on the 6th July 1863, whereby the Government abandoned the confiscation and left former owners to their rights. This property had previously to the confiscation, belonged to one M. K. Ladda in Oudh as confiscated under Lord Canning's proclamation were, in October 1863, directed to be settled with the heirs of M. K. In a suit brought in March 1875 by a plaintiff, who claimed a share of the house property

**CONFESSION—continued.****6. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.**

confession. *Per* JACKSON, J. (McDONELL, concurring).—Such evidence is not sufficient to support a conviction, even if corroborated by circumstantial evidence, unless the circumstances constituting corroboration would, if believed to exist, themselves support a conviction. *Per Curiam*.—The word "Court" in s. 30 of the Evidence Act means not only the Judge in a trial by a Judge with a jury, but includes both Judge and jury. *EXPRESS v. ASHOOTOSH CHUCKERBUTTY*

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**124.** *Statement of prisoner exculpating himself.*—A prisoner, charged together with others with being a member of an unlawful assembly, made a statement before the committing Magistrate implicating his fellow-prisoners and another person. He subsequently withdrew this statement, and made another, in which he endeavoured to exculpate himself. *Held* that this statement was not evidence against the other prisoners under s. 30 of the Evidence Act. It was not a confession, nor did it amount to any admission by the prisoner that he was guilty in any degree of the offence charged; but it was simply an endeavour on his part to explain his own presence on the occasion in such a manner as to exculpate himself; and any mention made by him in such a statement of other persons having been engaged in the riot was altogether irrelevant, and not evidence against them. *NOOR BUX KAZI v. EXPRESS*

[I. L. R., 6 Cal., 279; 7 C. L. R., 385]

**125.** *Confession not implicating prisoner confessing.*—Where the confession of a person being tried jointly with other persons did not implicate him to the same extent as it implicated such other persons, and was not sufficient of itself to justify his conviction, *Held* that such confession could not be taken into consideration under s. 30 of Act I of 1872 against such other persons. *Queen v. Belat Ali, 10 B. L. R., 453*, followed. *EXPRESS OF INDIA v. GANRAJ*

[I. L. R., 2 All., 444]

**126.** *Confession of prisoner exculpating himself.*—Where a person being tried jointly with other persons made a statement deprecating any guilty knowledge and seeking to clear himself at the expense of such other persons, *Held* that such statement could not be taken into consideration under s. 30 of Act I of 1872 against such other persons. *Queen v. Belat Ali, 10 B. L.*

**CONFESSION—continued.****6. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.**

*R., 453*, and *Empress v. Ganraj, I. L. R., 2 All., 444*, followed. *EXPRESS OF INDIA v. MULLU*  
[I. L. R., 2 All., 646]

**127.** *Trial for dacoity and receiving stolen property.*—A and B were committed for trial, the former for dacoity under s. 395 of the Penal Code and the latter under s. 412 for receiving stolen property, knowing it to be such. A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence and on the confessions made by A the Sessions Judge convicted B. On appeal to the High Court, *Held* that, A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence. It was, therefore, no evidence of the dacoity, and the case against him failed. Conviction quashed. *EXPRESS v. BALA PATEL*

[I. L. R., 5 Bom., 63]

**128.** *Statement by prisoner in absence of co-prisoners—Confession.*—Several persons were charged together with offences under ss. 148, 302, 324, and 328 read with s. 149 of the Penal Code. The Sessions Judge, when about to examine the prisoners, required all but the prisoner under examination to withdraw from the Court, until his turn for examination came round, and convicted each prisoner chiefly upon what was said by his co-prisoners during his absence from the Court. *Held* that the evidence so given was inadmissible. *IN THE MATTER OF THE PETITION OF CHANDRA NATH SIKKA v. EXPRESS v. CHANDRA NATH SIKKA*. I. L. R., 7 Cal., 65; 8 C. L. R., 353  
*CHAKOWBI LALL v. MOTI KURMI*

[13 C. L. R., 275]

**129.** *Statement by prisoner in absence of co-prisoners—Code of Criminal Procedure (X of 1872), s. 250.*—The two accused persons were jointly tried before the Sessions Judge on a charge of murder. The Sessions Judge examined each of the accused in the absence of the other, making the latter withdraw from the Court during the examination of the former, though without objection from the pleaders of the accused persons. *Held* that the examination of each accused could be used only against himself, and not against his fellow-accused. *EXPRESS v. LAKSHMAN BALA*

[I. L. R., 6 Bom., 124]

**130.** *Distinct confession of offence charged.*—To render the statement of one person jointly tried with another for the same offence liable to consideration against that other, it is

## CONFESSION—continued.

## G. CONFESSIONS OF PRISONERS TRIED JOINTLY—continued.

necessary that it should amount to a distinct confession of the offence charged. *EMRESS v. DASI NARSU* . . . I. L. R., 6 Bom., 288

131. ———— *Statements of co-prisoners pleading guilty*—Several prisoners being charged together with house-breaking, some of them pleaded guilty. The Sessions Judge used the confessions made by those who pleaded guilty as evidence against a prisoner who was tried. *Held* that such confessions were not evidence under s. 30 of the Evidence Act, 1872. *VENKATASAMI v. QUEEN* (I. L. R., 7 Mad., 102

129) ———— *Offence of same*

at the time they became possessed of them. *A* confessed that he had got the coins from *B*, and had passed them to several persons at his request. *Held* that the confession of *A* was relevant against *B*. *W* . . . two persons are accused of an offence of the

that of two persons. . . . *MAHOMED* . . . I. L. R., 8 Bom., 223

133. ———— *Confession of co-prisoner used against abettor*.—Upon the trial of *A* for murder, and *B* for abetment thereof, a confession by *A* implicating *B* cannot be taken into consideration against *B* under s. 30 of the Evidence Act, 1872. *HADI v. QUEEN-EMRESS* I. L. R., 7 Mad., 570

134. ———— *Confession if taken to be taken against all co-accused—Admissibility*

(I. L. R., 3 Bom., 12

135. ———— *Want of corroboration*.—A conviction of a person who is tried jointly with other persons for the same offence cannot proceed merely upon the uncorroborated confession of one of such other persons. *QUEEN-EMRESS v. DOSA JIVA* . . . I. L. R., 10 Bom., 231  
*QUEEN-EMRESS v. KRISHNA BHAT*

136. ———— *House-breaking—Production of stolen property*.—Where the accused was convicted of house-breaking by night with intent to commit theft, and the only evidence against him was the confession of a fellow-prisoner, and the fact that he pointed out the stolen property as

## CONFESSION—concluded.

## G. CONFESSIONS OF PRISONERS TRIED JOINTLY—concluded.

months after the commission of the offence.—*Held* that the mere production of the stolen property by the accused was not sufficient corroboration of the confession of the other prisoner. *QUEEN-EMRESS v. DOSA JIVA* . . . I. L. R., 10 Bom., 231

## CONFESSION OF JUDGMENT.

## 1. ———— Confession at filing of plaint

the Judge has a discretion when parties have come to

[3 B.L. R., A. C., 396; 12 W. R., 403

2. ———— *Conditional confession of judgment*.—The confession of judgment must be unconditional unless the plaintiff consents to a conditional one, e.g., a decree on payment of instalments. *ATMA RAM v. CHUNDEN SINGH*

[3 Agra, 77

## CONFISCATION.

See CASES UNDER ACT OF STATE.

See CASES UNDER FORFEITURE OF PROPERTY.

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

(I. L. R., 17 All., 458

## CONFISCATION OF PROPERTY IN OUDH.

1. ———— *Limitation—Release of Government rights—Settlement—Cause of action*.—House property in Lucknow, of which the Govern-

were, in October 1863, directed to be settled with the heirs of *M. A.* In a suit brought in March 1873 by a plaintiff, who claimed a share of the house property

## CONFISCATION OF PROPERTY IN OUDH—continued.

and lands as one of the heirs of *M K* against a defendant who was an heir of *M K*, and who had obtained possession of the houses and lands under the orders passed for the release of the one and the settlement of the other, the defendant pleaded that the entire property had come into her possession in 1856 under a gift from *M K*, and that the plaintiff's suit was barred by limitation. *Held* (first), in respect of the house property, that if the defendant was in possession at the time when the proclamations were issued, the question of limitation must be decided as if there never had been a confiscation; and (second), in respect of the lands, that no question of limitation could arise, since the suit was brought within twelve years from the date of the Government order for settlement, under which alone any title to the lands could have been acquired by either of the parties. *JEHAN KADR v. ASSUR BAHU* . . . I. L. R., 4 Calc., 727

2. — Lord Canning's proclamation, 1858, Effect of—*Re-grant of confiscated lands*.—The effect of Lord Canning's proclamation of the 15th March 1858 was to divest all the landed property from the proprietors in Oudh and to transfer it to, and vest it in, the British Government. Consequently all who since that date claim title to such property must claim through the Government. Where a re-grant is made to a former owner, the new title will depend entirely on the terms of the re-grant; and if such re-grant is made for life only, no suit can be maintained to rectify an alleged mistake, and for declaration of an absolute title according to the tenor of the sunnuds by which the property was held under the old dynasty and prior to the confiscation. *MULKA JEHAN SAHIBA v. DEPUTY COMMISSIONER OF LUCKNOW* . . . L. R., 6 I. A., 63

3. — Property standing and registered in name of one party but admitted to belong to another—*Registration for fiscal purposes*.—In Oudh, before its annexation to the British rule, a Rajah was a talukhdar of a large talukh. A younger branch of his family had a separate mehal in the possession of *A* wholly distinct from, and independent of, the talukh the Rajah possessed as representing the elder branch of the family. The Oudh Government for fiscal purposes included *A*'s mehal with the Rajah's talukh, so that the Rajah as the elder branch of the family represented *A*'s mehal at the Court at Lucknow, notwithstanding that *A* remained in undisturbed possession as absolute owner, paying through the Rajah for his mehal a proportion of the jumma fixed on the talukh. This relation between the Rajah and *A* subsisted up to the time of the annexation of Oudh by the British Government. While the Government was making a settlement with the land-owners, and *A* was about to apply for a distinct settlement of his mehal, he, and after him his widow, was induced by the Rajah not to do so, the Rajah in letters fully recognising *A*'s absolute right to the mehal. After the suppression of the rebellion in Oudh, and the Government had recognized the talukhdari tenure with its rights, a provisional settlement of the talukh including *A*'s mehal was made with the Rajah; but before a saad was granted to him, Government confiscated

## CONFISCATION OF PROPERTY IN OUDH—concluded.

half his estates for concealment of arms. The Rajah suppressed the fact of the trust relation of the mehal of *A*, and contrived that it should be included in the half part of the estate the Government had confiscated, which mehal the Government as a reward granted to Oudh loyalists. *A*'s widow brought a suit against the Government and the grantees for the restoration of the mehal and for a settlement. The Chief Commissioner held that, as the Rajah was the registered owner of the mehal of *A* included in his talukh, it had been properly forfeited. Such finding reversed on appeal on the ground that *A* was the acknowledged *cestui que* trust of the Rajah, and that *A*'s widow as equitable owner was not affected as between her and the Government by the act of confiscation of half the Rajah's talukh. *THUKRANI SOOKRAJ KOOWAR v. GOVERNMENT* . . . 14 Moore's I. A., 112

4. — Confiscation and restoration of lands in Oudh in 1858 and of immovables in Lucknow—*Gift—Title*.—On a claim for a share in property consisting of (a) immovables in Lucknow and (b) revenue-paying land in a district of Oudh, the defence was title by gift, with possession, from the former owner, a member of the family through which the plaintiff claimed. As to the immovables in Lucknow, they having been included in the confiscation which, having followed the capture of the town in 1858, was subsequently abandoned without any intention on the part of Government to make a re-grant in favour of any person, the result in regard to the present question was the same as if no such event had occurred. The other property (b) came under the general confiscation of Oudh lands in 1858, and also was restored through subsequent settlement operations in which the final order, relating to the land in question, was to the effect that settlement should be made with the "heirs" of the previous owner. *Held* that the above did not preclude the defence of exclusive title by gift; the order last mentioned, on its true construction, only designating all those who might take under and through the previous owner (deceased at the time of settlement), without excluding any claimant, save those who might claim adversely to such title. The Government did not, in the settlement which followed the confiscation, make any arbitrary or wholly new re-distribution of estates, or proceed as if the existence of previous titles (although they had been brought to an end) was to go for nothing. The enquiry in most cases was as to who would have been entitled had there been no confiscation. As to both classes of property, the gift was maintained. *JEHAN KADR v. AFSAR BAHU BEGUM*

[I. L. R., 12 Calc., 1: I. R., 12 I. A., 124

## CONFISCATION OF SALT.

See CASES UNDER SALT, ACTS AND REGULATIONS RELATING TO.

## CONNIVANCE.

See DIVORCE ACT, s. 14.

[I. L. R., 3 Calc., 688  
7 Mad., 284



**CONSIDERATION—continued.**

one transaction, there was a sufficient consideration for the promise within the meaning of the Contract Act, s. 2. **CHINNAYA RAO v. RAMAYA**

[I. L. R., 4 Mad., 137]

5. ————— *Contract Act, s. 2, cl. (d).*—The administratrix of an estate having agreed to pay *S* his share of the estate if *S* would give a promissory note for portion of a barred debt claimed by *A* from her, *S* executed a promissory note in favour of *A*, gave it to the administratrix, and received his share of the asset. *Held* that there was consideration for the promissory note within the meaning of s. 2, cl. (d), of the Contract Act, 1872, and that *A* could recover upon it. **SAMUEL PILLAI v. ANANTHANATHA PILLAI**

[I. L. R., 6 Mad., 351]

6. ————— *Promissory note—Good consideration.*—In an action on a promissory note, in which the defence was want of consideration, it appeared that the note was given by the defendants to the plaintiff in respect of a transaction in which it was arranged that the plaintiff was to find sureties in a certain appeal case in which the defendant was acting as mooktear or agent; the sureties were to be approved by the Collector and were to be paid R10,000. The plaintiff found the sureties; they were duly approved by the Collector, but the plaintiff paid them a much less sum than R10,000. *Held* that there was good consideration for the note. **GUNGA NARAIN DOSS v. SIB CHUNDER SEN**

[I Ind. Jur., N. S., 409]

7. ————— *Execution of letter of license by creditors to insolvent.*—The execution of a letter of license to an insolvent by all the creditors mentioned in the schedule to his petition in the Insolvent Court, upon which his petition in the Insolvent Court was dismissed, was held to be sufficient consideration to enforce the contract to forbear against one of the creditors, although all the creditors were designated together as one party in the deed, and there was no express declaration that each creditor executed in consideration of all the others executing. **BUNGSEEDHUR PODDAR v. RAMJEE MORARJEE**

2 Ind. Jur., N. S., 243

8. ————— *Verbal promise for interest—Nudum pactum.*—Where a contract of loan stipulated that the legally demandable rate of interest should be five per cent., it was held that a claim by the creditor of interest at eight per cent. founded upon a bare promise of the debtor to pay eight per cent., or upon the fact that the debtor had in account voluntarily debited himself with eight per cent. in lieu of five per cent., could not be maintained in law for want of consideration, amounting merely to a nudum pactum. **GUTHRIE v. LISTER**

[8 W. R., P. C., 59]

11 Moore's I. A., 129

9. ————— *Assignment of debt—Transfer of mortgage.*—*A* mortgaged to his brother *B* his twelfth share in the immovable estate of the family. *C* at *B*'s request became surety for *A* to Government. *A* having become a defaulter, *C* became liable to Government in respect of his de-

**CONSIDERATION—continued.**

falcations. *B*, with a view to indemnify *C*, transferred to him *A*'s mortgage; *C* at the same time assigning to *B* a debt due by *D* to *A* which had been previously assigned by *A* to *C*. In a suit by *C* against *B* for possession of *A*'s share, —*Held* that the assignment by *C* to *B* of *D*'s debt was a sufficient consideration for the transfer by *B* to *C* of *A*'s mortgage, and that a sale which was made by the Government of *A*'s share was subject to such pre-existing valid charge. **YASHAVANT SUBAJI KULKARNI v. GOPAL LADKO BHANDARKAR**

[2 Bom., 202; 2nd Ed., 194]

10. ————— *Illegal consideration—Account stated—Mortgage—Construction of agreement.*—An agreement reciting that in consideration of the care which the plaintiff took of the defendant and her property during her infancy, and of the instruction given to her for which the plaintiff expended her own money, the defendant had mortgaged her house to the plaintiff; and stipulating that in the event of the defendant going to live with any man, and similarly after her death, the house would become the plaintiff's property, —*Held* that there was no illegal consideration shown, but the contract was good in law and in substance an account stated, with a mortgage to secure the amount due; and the usual decree for redemption was made, reversing the decrees of the Courts below which threw out the plaintiff's claim. **HEIRS OF HUSEN BEG BAI v. AKUBAI**

2 Bom., 357; 2nd Ed., 337

11. ————— *Want of consideration—Agreement to avoid further litigation.*—A mutual agreement to avoid further litigation is not an agreement void for want of consideration. **BHIMA VALAD KRISHNAPEA v. NINGAPPA BIN SHIDAPPA TUSE**

5 Bom., A. C., 75

12. ————— *On demand promissory note given for interest on mortgage deed, with interest on such interest.*—A promissory note payable on demand, given for interest due on a mortgage deed, with interest on such interest, cannot be enforced by suit, there being no consideration for the making of such a note. **RUSTAMJI ADESI DAVAR v. RATANJI RUSTAMJI WADIA**

7 Bom., O. C., 9

13. ————— *Marriage—Valuable consideration.*—Marriage is a valuable and not merely a good consideration. **CHINTALAPATI CHINNA SETHADIRAI v. ZAMINDAR OF VIZIANAGRAM**

[2 Mad., 123]

14. ————— *Servant employing particular broker on his master's behalf—Void agreement.*—Where a mehta, without the knowledge of his master, agreed with his master's brokers to receive a percentage (called *suci*) on the brokerage earned by such brokers in respect of transactions carried out through them by the mehta's master, and no express consideration was alleged or proved by the mehta, the Court refused to imply, as a consideration, an agreement by the mehta to induce his master to carry on business through such brokers, and was of opinion that such an agreement would be inconsistent with the relation of master and servant. But where the same brokers agreed with the mehta not to charge

**CONSIDERATION—continued.**

him brokerage on such private transactions as he should carry on through them, and the profits carried on private transactions through the brokers, it was held that the brokers were bound by that agreement, and could not maintain a claim for such brokerage. **VINAYAKRAV GASTATHAY v. HANSORDAS PRANJIVANDAS** . . . 7 Bom., A. C., 90

18. *Debt due—Consideration for power.*—*J M* executed in favour of *P* an instrument (authorizing *P* to recover by suit or otherwise from *W* and *N* a sum of Rs22,500) which contained this clause: "From whatever sum *P* may recover from *W* and *N*, he is to pay himself the sum of Rs5,640 which is due to himself, and also the expense he may incur in making recovery, and he is to hand over the surplus to me." Held that the above instrument was made on a good consideration, and was irrevocable. **PESTANJI MACHANJI WADIA v. MATCHETT** . . . 7 Bom., A. C., 10

is not, though the plaintiff has passed no similar agreement in favour of the defendant, invalid for want of consideration or mutuality of obligation. **SHAOTIDAS SHAQVANDAS v. OLIVER** . . . 9 Bom., 418

17. *Mutual consideration—Agreement to pay rent for ever.*—Where there was a written agreement between the first defendant's father and the Collector, in which the first

his agreement from being wholly defeated, to imply on the part of the Collector an agreement that he should hold the land for ever at that rent and no more. **SUBPALATI AXMAL v. APPAKUTTI AITAN-GAR** . . . 3 Mad., 109

from generation to generation, pay to the plaintiff Rs100 per annum out of a specified fund. Held that the undertaking of the plaintiff to refrain from enforcing the debt due to him prior to the contract was a sufficient new consideration to support the contract. **CHETU NARAYANA PILLAY v. ATAMPARNAL AMBALOM** . . . 4 Mad., 417

**CONSIDERATION—continued.**

19. *Contract to pay sum in event of pleader winning a case.*—A suit is not maintainable on a *rookha* for *shukrana* given after the terms of a pleader's remuneration have been agreed upon, and when his services are already engaged; there being no consideration for the contract. **PILLER v. BISHNOO KOOER** . . . 3 N. W., 25

20. *Debt due on decrees barred by limitation.*—A debt due on a decree is a sufficient consideration for the making of a promissory note, although execution of the decree be barred by limitation at the time the note is made. **MULLINS v. REDDY** . . . 6 N. W., 150

21. *Advance of money to save reputation of family—Moral obligation—Assignment of share in family estate.*—Where a Hindu partner voluntarily advanced money to his brother and co-partner for the purpose of his defence against a charge of forgery, without any previous

latter of his share in the undivided family estate. **VASUDEVI BHAT v. VENKATESH SANBHAY** . . . [10 Bom., 129]

22. *Moral consideration—Promise to pay at majority debt during infancy—Promise to pay barred debt.*—The general rule of law is that a consideration merely moral is not valuable consideration, such as would support a promise. But there are instances of enforceable promises which formerly were referred to the now exploded principle of presuns moral obligation, and which are still held to be binding, although that principle has been rejected. Amongst these instances is a promise after full age to pay a debt contracted during infancy, and a promise in renewal of a debt barred by the law of limitation. The efficacy of such promises is now based upon the principle that where the consideration was originally beneficial to the party promising, and he be protected from liability by some provision of the statute or common law meant for his advantage, he may renounce the benefit of that law, and if he promise to pay the debt, he is bound by the law to perform that promise. *D* executed a *namama* in favour of the plaintiff on 20th August 1848 transferring certain lands to the latter. The plaintiff, after giving the usual *hablat* to the Collector, was put in possession of the lands. On the 7th April 1869 *T* obtained a money decree against *D*, and on the 3rd July 1869 attached the lands as belonging to *D*. Held that a decree of 1865, which plaintiff held against *D*, though time barred, in 1868, was (being then still unsatisfied) a good consideration for *D*'s *namama* in 1868 in plaintiff's favour. **TILLACKCHAND HINDRUMAL v. JIWANLAL SUDARAM** . . . 10 Bom., 200

**SREENATH BANESEJI v. DOOLJA DASS REDDY** . . . [9 W. R., 210]

23. *Suit on bonds—Indorsement of hand.*—A *hundi* was drawn out of

**CONSIDERATION—continued.**

Bombay upon a person in Bombay, indorsed and delivered out of Bombay to one who out of Bombay indorsed and sent it to the plaintiff in Bombay, who received it, got it accepted, and presented it for payment to the drawee, by whom in Bombay it was dishonoured. The plaintiff, who was the agent and banker of an Ajmir constituent, on its acceptance by the drawee, credited the Ajmir constituent with the amount as of the date when the hundi would become payable. In a suit against the first indorser,—*Held* that, as between the Ajmir constituent and the first indorser (the defendant), the giving by the Ajmir constituent to the defendant of another hundi, which was never presented in Bombay for acceptance or payment, was a consideration for the indorsement by the defendant to the Ajmir constituent of the hundi sent by the latter to the plaintiff and sued on by him. **SUGANCHAND SHIVDAS v. MULCHAND JOHARMAL**

[12 Bom., 113]

Affirmed on appeal in **MULCHAND JOHARMAL v. SUGANCHAND SHIVDAS** . . . **I. L. R., 1 Bom., 23**

**24.** ————— *Contract to give lease—Proof of consideration.*—In a suit for a declaration of right to, and to obtain possession of, a raiyati jote by virtue of an amaldari pottah granted to plaintiff by defendant, where the terms of the pottah were substantially that the plaintiff was to have a raiyati jote at a certain jumma, and that, on there being a measurement and re-assessment, the plaintiff was to be liable to pay higher (i.e., per-gunnah) rates, there being no mention of consideration or any reference to a right of occupancy,—*Held* that plaintiff could not urge that the written contract conveyed to him a right of permanent possession for due consideration, nor could defendant be legally called upon to prove payment of consideration. **BUNGO CHANDER CHUCKERBUTTY v. NUZMOODEEN AHMED** . . . **11 W. R., 156**

**25.** ————— *Contract to pay maintenance.*—Plaintiff was brought from his native place by defendant's adoptive father, D, who had no one to inherit his property, except his daughter's daughter, with a view to give her to plaintiff in marriage, and confer on him all he possessed. After marriage D's grand-daughter died; but owing to defendant's being adopted, plaintiff was deprived of all the cherished hopes of his wife's future inheritance. Accordingly the adoptive mother and defendant executed a moshairah-patra in plaintiff's favour, promising him, in consideration of the above facts, a monthly allowance for maintenance. The present suit was to recover a balance due of this allowance. *Held* that, whether the English law was applied, or the principles of justice, equity, and good conscience, the deed disclosed a good and sufficient consideration for the promise to pay, and defendant was bound to pay, the stipulated allowance. **SHIB NUNDUN ROY v. SREE NARAIN ROY** . . . **11 W. R., 415**

**26.** ————— *Suit for land under pottah—Question of consideration.*—In a suit to recover certain land alleged to have been granted under a pottah, the Judge, finding that no consideration had been given by the plaintiff, pronounced the contract a *nudum pactum* on which no

**CONSIDERATION—continued.**

action would lie. *Held* that, as defendant had admitted the grant of the pottah, and contended that the whole of the lands had been made over to plaintiff's possession, no question of consideration could arise. **ROOP NARAIN SINGH v. CHATOOREE SINGH** [12 W. R., 288]

**27.** ————— *Contract to grow indigo—Extinguishment of original debt which was the consideration.*—Where a raiyat, in consideration of an advance of money, has stipulated to grow indigo for a certain number of years, the contract is not void as being without consideration because, during the period it had to run, the debt due from the raiyat is extinguished by the delivery of indigo leaves. The contract is one entire contract upon one entire consideration, and a contract which was at its commencement based upon a valid consideration cannot become void for want of consideration by any change whatever in the situation of the parties. **LEDIE v. GOPAL MUNDUL** . . . **17 W. R., 91**

**28.** ————— *Appointment of agent—Remedy in case of revocation of authority—Suit for specific performance.*—The defendant, by an agreement in the nature of a letter of attorney, constituted the plaintiff and his descendants the hereditary agents of the defendant, gave him authority to collect the rents of his share in an inam village, and promised to pay him an annual salary out of the rents. *Held* that, as between the parties and during their lifetime, the appointment was valid and binding, whether or not any valuable consideration passed; the mere acceptance of the office by the plaintiff being a sufficient consideration for the appointment. If the defendant had revoked the agency improperly, the remedy lay, under ordinary circumstances, in a suit by the plaintiff for damages for breach of contract. Where, however, the plaintiff chose to sue for specific performance and demanded arrears of salary,—*Held* that, without a valuable consideration for the defendant's promise, the agreement passed by him to the plaintiff would be *nudum pactum*, and the plaintiff would not be entitled to recover, except for work and services actually rendered. **VISHNUCHARYA v. RAMCHANDRA** . . . **I. L. R., 5 Bom., 253**

**29.** ————— *Promise to refrain from suing—Suit found to be barred.*—Where, by reason of a promise, the promisee refrains from bringing a suit which, but for the promise, he might have brought, there is good consideration for the promise, but, if at the time of the promise no remedy remained to the promisee by reason of limitation, there is no valid consideration, and the promise cannot be enforced at law. **PETER v. VARDON**

[23 W. R., 62]

**30.** ————— *Want of consideration—Decree, Adjustment of, out of Court—Civil Procedure Code (XIV of 1882), s. 258—Contract.*—The plaintiff held a decree against the defendant, and in execution of it attached the defendant's property. A compromise was then made by which the defendant executed to the plaintiff the bond sued upon, in satisfaction of the judgment-debt. The compromise, however, was not certified to the Court.

**CONSIDERATION—concluded.**

*Held* that the bond was without consideration. The adjustment of the decree, not having been certified to the Court, was not binding on the plaintiff, and, therefore, constituted no valid consideration. **PANDU-RANG RAOCHANDRA v. NARAYAN**

[L. L. R., 8 Bom., 300

31. ————— Uncertified ad-

*Gunasani Dasi v. Pran Kishori Dasi*, 5 B. L. R., 223, *Mirer Mahomed Kazem Jorharry v. Khetoo Bibee*, 20 B. R., 130, *Gani Khan v. Koonjoo Bihari Saia* 3 C. L. R. 414 *Darlatay Ganesht*

[L. L. R., 7 All., 121

32. ————— Inadequacy of consideration—*Suit to set aside deed.*—Party seeking to set aside a transaction on the ground of inadequacy of consideration must show such inadequacy as will involve the conclusion that he either did not understand what he was about, or was the victim of some imposition. **ADMINISTRATOR GENERAL OF BESOAL v. JUDGEMAN ROY**

[L. L. R., 3 Calc., 192; 1 C. L. R., 107

33. ————— Evidence of mala fides.—Inadequacy of consideration is not conclusive proof of mala fides. **KOMOLA PERMAN NARAIN SINGH v. NIRMAL LALL SARKO** . . . 3 W. R., 30

**CONSIGNEE OF WEST INDIAN ESTATE.**

See LIEN . . . 1 L. R., 3 Calc., 58

**CONSIGNOR AND CONSIGNEE.**

See CASES UNDER CONTRACT—CONSTRUCTION OF CONTRACTS.

See LIEN . . . 1 L. R., 18 Calc., 873

1. ————— Goods consigned to agent for sale on commission—*Warrant drawn against goods and paid by agent*—*Railway receipts sent to agent*—*Equitable assignment of goods by consignor*—*Goods attached by judgment-creditor of consignor*—*Claim by agent*.—*One Pat Viramram consigned certain bags of seed to J. H. & Co. at Bombay*

[L. L. R., 21 Bom., 287

2. ————— Duty of consignee as to clearing goods on arrival.—There is no duty cast upon the consignee of goods arriving by a vessel to remove them on the first day of the arrival of the vessel, in the absence of an express contract. **SAS-SOOK v. HARRY DAS BHUKT** . . . 1 C. W. N., 44

**CONSOLIDATION OF CLAIMS.**

See PRACTICE—CIVIL CASES—ADMIRALTY COURTS . . . 1 L. R., 23 Calc., 611

[3 C. W. N., 67

**CONSOLIDATION OF SUITS.**

1. ————— Consolidation of suits on application of plaintiffs.—Consolidation of suits on application of plaintiffs allowed. **PENROCK v. HIR-SATH** . . . 1 L. R., 10 Calc., 59

2. ————— Appeal.—Two suits having been instituted by a purchaser of two different portions of the same tenure for enhancement of the rent of the respective portions, the first Court treated them as if they constituted one suit, and gave one decree in both. *Held* that in doing so the Court acted legally and rationally, and that there could be no objection to one appeal being filed from what was substantially one decree. **EMATSOOLIAN v. HAPPA CHURN LOR** . . . 13 W. R., 395

**CONSOLIDATION OF SUITS—concluded.**

3. *Irregularity in bringing appeals.*—Where there were two suits separately instituted in the Collector's Court for partition of two mouzahs, and defendants appeared in both cases, but preferred only one appeal relating to both mouzahs instead of appealing separately, *Held* that the Collector's decision as to one mouzah, of which no notice was taken by the Judge, must virtually be deemed as unappealed. **ALUR RAI v. SHRO DAL** [2 Agra, 142]

4. *Application for leave to appeal to Privy Council.*—*Quere*—Whether the Court has power to consolidate two suits on an application for leave to appeal to the Privy Council. **AJNAS KOOR v. LATEEPA** 18 W. R., 21

5. *Power of Court to consolidate without consent of parties.*—When several cases are before a Court and the subject of suit and the defendants vary with each case, the Court has no authority to order them to be tried as one case against the will of the parties; and without the consent of all the parties no such consolidation can be effected by the Court as to make the evidence given by any party in one case evidence in all the case. **SOORENDRO PERSHAD DOBEY v. NUNDUN MISSEH** [21 W. R., 198]

**CONSPIRACY.**

to plaintiff b. CONSPIRACY substantially that.

See ABETMENT

*Evidence Act (I of 1872), s. 10—Proof requisite for charge of conspiracy.*—A conspiracy within the terms of s. 10 of the Evidence Act contemplates more than the joint action of two or more persons to commit an offence. **NOGENDRABALA DEBEE v. EXPRESS** [4 C. W. N., 528]

**CONSULAR COURT.**

— at Muscat.  
See HIGH COURT, JURISDICTION OF—  
BOMBAY—CRIMINAL. [I. L. R., 24 Bom., 471]

— at Uganda.  
See JURISDICTION OF CRIMINAL COURT—  
GENERAL JURISDICTION. [I. L. R., 22 Bom., 54]

— at Zanzibar.  
See HIGH COURT, JURISDICTION OF—  
BOMBAY—CIVIL. [I. L. R., 20 Bom., 480]

See JURISDICTION OF CRIMINAL COURT—  
GENERAL JURISDICTION. [I. L. R., 19 Bom., 741]

Registration of British subjects at Zanzibar—*Stat. 6 & 7 Vic., c. 94—Order in Council of 9th August 1866, arts. 1, 6, 25, 30, 32, 35—Stat. 39 & 40 Vic., c. 46—Attachment, Effect of.*—The jurisdiction of the British Consul at Zanzibar to hear and determine suits of a civil nature between British subjects depends

**CONSULAR COURT—concluded.**

upon whether the causes of action in such suits have arisen within the dominions of the Sultan of Zanzibar, and not upon the question whether parties to such suits are resident within those dominions. Under the treaty made in 1839 between Her Majesty the Queen and the Sultan of Muscat, British subjects are liable to be sued in the British Consular Courts at Zanzibar by Americans as being subjects of another Christian nation; and by convention with the Rao of Cutch, made with the acquiescence of the Sultan of Zanzibar, natives of Cutch, having been subjected to the British Consular Court in the same manner as if they were British subjects, may be sued by Americans and others in that Court. When the British Consul at Zanzibar has permitted persons, who have not been registered as under British protection, to bring and continue suits in his Court, that circumstance must be accepted as a sufficient indication that they have excused to his satisfaction their neglect to register under art. 30 of the Order in Council of 9th August 1866. *Quere*—Whether in Stat. 39 & 40 Vic., c. 46, deals with the order in Council of the 9th August 1866, except so far as that order relates to the slave trade. **WAGJI KORJI v. THARLA TOPAN** I. L. R., 3 Bom., 58

**CONTEMPT OF COURT—AUTHORITY OF PUBLIC SERVANT.**

See COMPLAINT.

[I. L. R., 2 Bom., 653]  
Penal Code, s. 185—*Bidding at auction without intending to purchase.*—A person is guilty of contempt under s. 185, Penal Code, who bids for the lease of a ferry sold at public auction by a Magistrate without intending to perform the obligation under which he lays himself by such bidding. **QUEEN v. REAZOODEEN** [3 W. R., Cr., 33]

**CONTEMPT OF COURT.**

	Col.
1. CONTEMPTS GENERALLY	1573
2. PENAL CODE, s. 174	1576
3. PENAL CODE, s. 175	1581
4. PENAL CODE, s. 223	1581
5. PROCEDURE	1582
6. EFFECT OF CONTEMPT	1584

See CASES UNDER CRIMINAL PROCEDURE CODE, 1882, s. 476 (1872, s. 471).

See CASES UNDER CRIMINAL PROCEDURE CODE, 1882, s. 487 (1872, s. 473).

See INJUNCTION—DISOBEDIENCE OF ORDER FOR INJUNCTION. [I. L. R., 6 Calc., 445]

See LETTERS PATENT, HIGH COURT, CL. 15. [I. L. R., 25 Calc., 236]

See MUNSIF, JURISDICTION OF. [I. L. R., 15 Mad., 131]

See RECEIVER. I. L. R., 22 Calc., 643

## CONTEMPT OF COURT—continued.

## 1. CONTEMPTS GENERALLY

## 1. ——— Sending officer to Judge to

It was guilty of contempt of Court. *IN THE MATTER OF FIFARD* 1 Hydo, 70

## 2. ——— Communication with Judge.

It is contrary to the practice of all Courts of Justice, unfair to an adversary, and a contempt of Court, for a suitor, under any pretext whatever, to communicate with a Judge, except by public proceedings.

[3 B. L. R., F. B., 21: 10 W. R., Cr., 43

*IN RE CHUNDER KANT CHUCKERBUTTY* overruled.  
[9 W. R., Cr., 63

[11 W. R., 62

## 5. ——— Carrying off crops pending

suit for rent—*Ground for dismissal of suit.*—During the pendency of a suit for rent the plaintiff procured an attachment of the growing crops; and afterwards, and without authority, and before the suit was determined, carried off some of the crops. *Held* that, although this was an act properly punished by the Court below as a contempt with a fine, it was no ground for dismissing the suit. *CHITTOOSAM SINGH v. NOODON SINGH*

[Marsh., 21: 1 Hy., 53

possession, his officers were turned out by A. who knew that they were in possession by order of the High Court. A. had purchased the right, title, and interest of N. B. in the land at a sale held in the Court of the Zilla Judge of the 24-Pargannas, in

## CONTEMPT OF COURT—continued.

## 1. CONTEMPTS GENERALLY—continued.

execution of a decree of that Court against N. B. A was put in possession by an officer of that Court. *Held* that the turning out of the Sheriff's officers was a contempt of the High Court. *BHUGOCHETTY DASSEE v. NODIN CHUNDER HOSE*

[3 Ind. Jur., N. B., 99

8. ——— Officer of Court accepting bribes—*Person offering bribes to officers—Power of High Court.*—The High Court, as a Court of Record, has the power of summarily punishing for contempt. Any officer of the High Court who asks for or accepts a present from any person in whose favour judgment is pronounced by the Court is guilty of a gross breach of duty and a contempt of Court. So also any person who offers or gives such present is guilty of a contempt of Court. *IN RE ARBOOD*

[8 W. R., Cr., 32

9. ——— Refusal to pay money under order of Civil Court—*Imprisonment—Jurisdiction of High Court—Civil Procedure Code, 1877, ss. 311, 312.*—The decree in an administration suit

months, she applied to the Judge of the Court below, under s. 311 of the Civil Procedure Code, to be discharged. This order was refused. *Held*, on appeal, that the proceeding under which A had been imprisoned was not in execution of a decree, but that she was imprisoned under process of contempt, and that the provisions of ss. 341 and 342 did not apply to the case. *PER WHITTY, J.*—The jurisdiction of the High Court to imprison for contempt is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown, which invested it with all the powers and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain, and this jurisdiction has not been removed or affected by the Civil Procedure Code. *MATHIE v. LAWRENCE* I. L. R., 4 Cal., 655

10. ——— Jurisdiction of High Court—*Civil Procedure Code, 1877, s. 156—Contempt for contempt—Power to commit for contempt—Procedure.*—Under the authority conferred by the Charters of the Supreme Court and contained in their own Letters Patent, the High Courts in India possess the power of enforcing obedience to their orders by a writ of contempt. As regards the High Courts in India, the remedy provided by s. 156 of the Civil Procedure Code (Act X of 1877) in cases

CONTEMPT OF COURT--continued.  
L. CONTEMPTS GENERALLY--continued.

1962-1963

... 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625,

H. L. R., 10 Cal., 100

13. *Impugnament—Practice—Cred. Proceedings—Cred.*

2. PENAL CODE, S. 174.

2. PENAL CODE, S. 174.  
14. ----- Penal Code, s. 174.—Non-at-  
tendance in obedience to a summons.—Summons,  
what it should contain.—Omission to state time  
and place of attendance.—A summons should be  
clear and specific in its terms as to the title of the

## CONTEMPT OF COURT—continued.

## 2. PENAL CODE, S. 174—continued.

Court, the place at which, the day and the time of the day when, the attendance of the person summoned is required, and it should go on to say that such person is not to leave the Court without leave, and,

obedience to such summons. *EMPEROR OF INDIA v. RAM SARAN* . . . 1 L. R., 5 All. 7

15. ———— *Defendant escaping from custody under civil warrant.*—S. 174 of the Penal Code does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a Civil Court. *REG. v. SARDAR PATHU* . . . 1 Bom., 39

16. ———— *Chairman of Municipal Commissioners—Act XXVI of 1850—Disobedience of order of public servant.*—The Chairman of Municipal Commissioners appointed under Act XXVI of 1850, although a public servant, is not legally competent as such to issue an order for attendance before him. *Held* accordingly that disobedience of such an order was not an offence within s. 174 of the Indian Penal Code. *REG. v. PURSHOTAM VALJI* . . . 5 Bom., Cr., 33

COMPTON . . . 5 Bom., 39

17. ———— *Verbal order to attend, Disobedience to.*—The defendant was arrested by a warrant, and was released on bail to appear before the Magistrate on a specified day. The defendant appeared on that day, but the Magistrate being unable to take up the case, a verbal order was given to the defendant to appear on the following day. This he omitted to do, and was convicted under s. 174 of the Penal Code. *Held* that the conviction was good. *ANONYMOUS* . . . 5 Mad., Ap., 15

*But see VENKATAPPA v. PARAMAM* . . . 5 Mad., 133  
and *ANONYMOUS* . . . 6 Mad., Ap., 10

18. ———— *Criminal Procedure Code, 1861, s. 219—Forfeiture of recognizance.*—In consequence of the default in the appearance by the person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. *Held* that, notwithstanding s. 219 of Act XXV of 1861, the accused might have been proceeded against for contempt of Court under s. 174 of the Penal Code. *QUEEN v. TAJIMAH LADDER* . . . (1 B. L. R., A. Cr., 1; 10 W. R., Cr., 4

## CONTEMPT OF COURT—continued.

## 2. PENAL CODE, S. 174—continued.

20. ———— *Disobedience of order of Mahalkari—Summons under s. 8, Act XI of 1843, power of Mahalkari to issue.*—A Mahalkari invested with the powers of a second class subordinate Magistrate cannot issue a summons under s. 8 of Act XI of 1843, nor can a person be convicted under s. 174 of the Penal Code for having disobeyed such a summons so issued. *REG. v. VENKAT BHASKAR* . . . 8 Bom., Cr., 10

21. ———— *Judge of Small Cause Court—Act XXIII of 1861, s. 21—Sentence of fine or imprisonment.*—The Judge of a

*VADAY CHETTI* . . . 3 Mad., 319

[4 Mad., Ap., 53

Correcting the decision in *ANONYMOUS CASE* . . . [4 Mad., Ap., 51

23. ———— *Disobedience to verbal order.*—A conviction under s. 174 of the Penal Code for disobeying a verbal order of a Village Magistrate is good. *ANONYMOUS* . . . 7 Mad., Ap., 3

24. ———— *Omission to state place of attendance in order.*—The summons must state the place where the person's attendance is required, otherwise no penalty can be attached to any disobedience of the order to attend. *ANONYMOUS* . . . [7 Mad., Ap., 14

*ANONYMOUS* . . . 7 Mad., Ap., 43

25. ———— *Willful disobedience—absence and consequent non-recognition of summons.*—The non-attendance must be in the nature of willful disobedience to attend. Where a witness was summoned for a certain day, and being absent from home did not receive the summons until after the day had passed, he could not be fined for non-attendance because he did not appear afterwards and state his reason for not attending. *QUEEN v. UGOT LALL* . . . (1 N. W., Ld. 1873, 303

26. ———— *Non-attendance in obedience to order of public servant.*—A conviction for non-attendance in obedience to an order from a public servant, under s. 174, Penal Code, cannot be had unless the person summoned was legally bound to attend, and refused or intentionally omitted to attend. *IN THE MATTER OF NARAYAN GHOSH* . . . (10 W. R., Cr., 33

## CONTEMPT OF COURT—continued.

## 2. PENAL CODE, S. 174—continued.

27. ————— *Summons to give information—Census, etc.—Madras Act III of 1869.*—A summons issued by a tahsildar to a village karnam to appear and give information required for the preparation of census, jumma bundi, and dowlah accounts is not within the purview of Madras Act III of 1869, and disobedience of such a summons is not an offence under s. 174 of the Penal Code. *QUEEN v. SUBRAMANYAM* . . . I. L. R., 5 Mad., 377

28. ————— *Disobedience of summons—Revenue inquiry—Power to issue summons.*—Under Madras Act III of 1869, Collectors and their subordinate officers may issue a summons for the purpose of any inquiry, however general, which they are empowered to make for the purposes of administration. *Queen v. Subramanyam, I. L. R., 5 Mad., 377*, overruled. *QUEEN-EMPERESS v. SUBBANNA* [I. L. R., 7 Mad., 187

29. ————— *Madras Act III of 1869—Disobedience to lawful order of public officer—Summons by revenue officer to give evidence in pauperism inquiry—Standing order of Board of Revenue (Madras), No. 48a.*—The accused, who were parties to a petition pending in a District Court, were summoned by a tahsildar to give evidence on an inquiry by him as to whether or not the petitioner was a pauper; they omitted to attend on the summons, and were charged in respect of such non-attendance under s. 174 of the Penal Code and were convicted. *Held* the conviction was bad, the tahsildar not being authorized to issue the summons under Act III of 1869 (Madras). *QUEEN-EMPERESS v. VARATHAPPA CHETTI* . . . I. L. R., 12 Mad., 297

30. ————— *Summons—Disobedience.*—A man who, in obedience to a summons to appear and answer a criminal charge, attends a Magistrate's Court, but, finding the Magistrate not present at the time mentioned in the summons, departs without waiting for a reasonable time, is guilty of an offence under s. 174 of the Penal Code. *QUEEN-EMPERESS v. KISHAN BAPU* . . . I. L. R., 10 Bom., 93

31. ————— *Non-attendance on service of summons—Appearance by mukhtar—Criminal Procedure Code, Act V of 1898, s. 205.*—In a summons case on the day fixed for trial an appearance was made on behalf of an accused person by his mukhtar, who asked the Magistrate, under s. 205 of the Code of Criminal Procedure, to dispense with the personal attendance of the accused. The Magistrate, however, regarding the non-attendance of the accused as a contempt of Court, called upon him to show cause why he should not be prosecuted under s. 174 of the Penal Code for non-attendance on service of summons. *Held* that the accused did make an appearance, though not a personal appearance on service of summons; but that he did not personally attend should not, under the circumstances, have been regarded as an offence under s. 174 of the Penal Code. *DURGA DAS BAKSHI v. UMESH CHUNDRA SEN* . . . I. L. R., 27 Calc., 985

32. ————— *Mad. Act III of 1869—Power to order subordinate to carry out*

## CONTEMPT OF COURT—continued.

## 2. PENAL CODE, S. 174—continued.

*sale for arrears of revenue.*—Madras Act III of 1869 confers no authority upon revenue officers to summon a subordinate to attend for the purpose of carrying out a sale of land for arrears of revenue, and therefore, on failure to attend, he cannot be convicted under s. 174 of the Penal Code. ANONYMOUS [5 Mad., Ap., 28

ANONYMOUS . . . 7 Mad., Ap., 11

33. ————— *Mad. Act III of 1869.*—A Subordinate Magistrate convicted certain persons, under s. 174 of the Penal Code, of disobedience to summonses issued by him as tahsildar. *Held* that the convictions under the first part of s. 174 were sustainable. Madras Act III of 1869 gives a tahsildar power to issue summonses. ANONYMOUS . . . 6 Mad., Ap., 44

This was the only law under which he can issue summonses, and on disobedience to them the persons summoned might be convicted under s. 174 of the Penal Code. ANONYMOUS . . . 7 Mad., Ap., 11

But he may not issue them to any person to appear before any one but himself, therefore a conviction for disobedience to a summons issued by him to appear before a revenue officer is illegal. ANONYMOUS . . . 7 Mad., Ap., 10, 11

34. ————— *Disobedience to summons served.*—In order to make a person summoned as a witness liable under s. 174 of the Penal Code, the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart. *QUEEN v. SUTHERLAND. QUEEN v. NARAIN SINGH* [14 W. R., Cr., 20

35. ————— *Evidence of notice to attend.*—Before convicting a person under s. 174 of the Penal Code, it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so. *IN THE MATTER OF SHIB PERSHAD CHUCKERBUTTY* . . . 17 W. R., Cr., 38

36. ————— *Mad. Reg. IV of 1816, ss. 15, 16—Disobedience of summons—Concurrent jurisdiction.*—The provisions of s. 174 of the Penal Code are not in conflict with the special provisions of ss. 15 and 16 of Regulation IV of 1816 (Madras). In ordinary cases disobedience to the summons of a Village Munsif should be dealt with under the Regulation. But if a charge is laid under the Penal Code, the Criminal Court must deal with it. *QUEEN v. RAMACHANDRAPPA* [I. L. R., 6 Mad., 249

37. ————— *Disobedience to a summons—Summons to appear at place outside British territory.*—It is not an offence under the Penal Code, s. 174, to disobey a summons issued by a British Magistrate directing the person summoned to appear before him at a place outside British territory. *QUEEN-EMPERESS v. PARANGA* [I. L. R., 16 Mad., 483

## CONTEMPT OF COURT—continued.

## 2. PENAL CODE, S. 174—continued.

## 38. ————— Non-attendance

[I. L. R., 30 Mad., 31]

## 3. PENAL CODE, S. 175.

## 39. ————— Penal Code, s. 175—Omission

480, nor s. 485 (which sections provide for the only cases in which a Court "other than a High Court, etc." can try persons for offences committed before itself) was applicable to the case, and the Magistrate was therefore precluded by s. 487 from trying the case. *QUEEN-EMPEROR v. SEAHAYTA*

[I. L. R., 13 Mad., 24]

It does not appear from the statement of the case whether or not the offence was committed "in view or presence of the Court" and taken "cognizance of the same day." From the judgment it would appear that it was *not*, and this must form the ground for the decision; for offences under s. 175, Penal Code, are expressly mentioned in s. 480 of the Criminal Procedure Code, and if committed "in view or presence of the Court," and taken "cognizance of the same day," the Magistrate would apparently have had clear power to try the offence and convict the accused as he did.

See *IN RE PREMCHAND DOWLATRAM*

[I. L. R., 12 Bom., 63]

## 4. PENAL CODE, S. 223.

40. ————— Penal Code, s. 223—Jurisdiction to try.—An officer before whom, whilst acting in a particular capacity, an offence under s. 223 of the Penal Code is committed cannot, in another capacity, take up and try the offence. *QUEEN v. CHUNDER DEKHA ROY* . . . 12 W. R., Cr., 13

41. ————— Preparation.—Refusing to answer questions.—Held that preparation while giving evidence does not constitute the

## CONTEMPT OF COURT—continued.

## 4. PENAL CODE, S. 223—continued.

offence under s. 223 of the Penal Code of intentionally causing interruption to a public servant sitting in a judicial proceeding. *REG. v. ADRA BHAI BHAI* [4 Bom., Cr., 6]

42. ————— Preparation.—Preparation may, though it does not necessarily amount to contempt of Court within s. 223, Penal Code, and s. 435 of the Criminal Procedure Code, 1872. *REG. v. JAIMAL SHIVAN* . . . 10 Bom., 60

interruption to a public servant sitting in a judicial proceeding. *REG. v. PANDU BHAI VITHOJI*

[4 Bom., Cr., 7]

44. ————— Giving evidence

time of the Court. *QUEEN v. HURRY PARAMANICK TANTER* . . . 15 W. R., Cr., 5

45. ————— Obstruction of

Court, and is guilty of contempt of Court, under s. 223 of the Penal Code. *IN RE MOUNGAN CHUNDER MOOKERJEE* . . . W. R., 1894, Mif., 3

46. ————— In a conviction under s. 223, Penal Code, it ought to be stated that the Judge was sitting in a stage of a judicial proceeding the nature of which should also be stated. *IN THE MATTER OF THE PETITION OF PHOKASH CHUNDER DOSS* . . . 12 W. R., Cr., 64

47. ————— Intention to in-

[15 W. R., Cr., 63]

## 5. PROCEDURE.

fail to record, with the finding and sentence, the statement of the offender. *LEEN RAJ v. PATEL RAM* [1 N. W., 103; 124, 1873, 241]

which the offence of contempt, under s. 179 of the Penal Code, is committed considers that a sentence of imprisonment is called for, it should record a statement of the facts constituting the contempt

## DIGEST OF CASES.

( 1593 )

## CONTEMPT OF COURT—continued.

## 6. PROCEDURE—continued.

and the statement of the accused, and forward the case to a Magistrate. *QUEEN v. RETTON SAHOO* [11 W. R., Cr., 49]

50. ——— Omission to call on party to make defence—*Criminal Procedure Code, 1861, s. 163*—Omission to follow *Directions of*—When a Civil Court omitted (as directed by s. 163 of the Code of Criminal Procedure) to call upon a person who was charged with contempt of Court to make any statement he might wish to make in his defence, it was held that this irregularity was fatal to the order, and that the High Court would exercise its extraordinary jurisdiction and reverse an order so made. *KASHINATH VITHAL v. DAIJOOVIND* [7 Bom., A. C., 102]

51. ——— Omission to state reasons and facts—*Fine for contempt of Court*—A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order inflicting a fine. *PANOHAT NADA TAMBIRAN* . . . . . 4 Mad., 229

52. ——— Sending case for investigation—*Penal Code, s. 171*—*Criminal Procedure Code (Act XXV of 1861), s. 171*—Power of Subordinate Magistrate.—A Subordinate Magistrate has no power to try an offence punishable under s. 174 of the Penal Code committed against his own Court, but is bound, under s. 171 of the Code of Criminal Procedure, to send the case, if in his opinion there is sufficient ground, for investigation to a Magistrate having power to try or commit for trial. *QUEEN v. CHANDRA SEKHAR ROY* [5 B. L. R., 100: 13 W. R., Cr., 66]

*CHUTTOORBHOOJ BHARTHEE v. MACNAGHTEN* [15 W. R., Cr., 2]  
IN THE MATTER OF TARAPROSHAD SAHOO [15 W. R., 88]

53. ——— Sending case for investigation—*Criminal Procedure Code, 1861, s. 171*—A Civil Court may, under s. 171 of the Code of Criminal Procedure, transfer a case to the Criminal Court for investigation, without specifying the particular officer by whom it is to be investigated, and the deposition of the Civil Court officer setting forth the charge on which he transferred the case to the Criminal Court is a sufficient complaint. *QUEEN v. MADHUB CHUNDER MISSE* . . . . . 13 W. R., Cr., 45

54. ——— *Criminal Procedure Code, 1861, s. 171*—Under s. 171 of the Criminal Procedure Code, a Court has no power to send a case to be investigated by the Magisterial authorities, but must specify the Magistrate by whom the investigation is to be made. *QUEEN v. NURPUT SINGH* [4 N. W., 86]

55. ——— Duty and power of Collector—*Criminal Procedure Code, 1861, s. 171*—*Act X of 1859, s. 147*—It is not necessary that the

## CONTEMPT OF COURT—continued.

## 5. PROCEDURE—concluded.

preliminary enquiry contemplated by s. 171 of the Code of Criminal Procedure should be conducted in the presence of the accused. All the Court (Revenue in this case) making the enquiry has to do is to satisfy itself that there are *prima facie* grounds for sending the case for investigation to a Magistrate; and the Collector is not bound to dispose of a case of contempt of the lawful authority of a public servant under s. 147, Act X of 1859, but it is discretionary with him to proceed under s. 171 of the Code of Criminal Procedure. *CHOTA SAHOO v. BHOONEN CHUCKERBUTTY* . . . . . 9 W. R., Cr., 3

56. ——— *Criminal Procedure Code, ss. 480, 537*—*Act XLV of 1860 (Penal Code), s. 228*—The procedure laid down in s. 480 of the Criminal Procedure Code should be strictly followed. The provisions of the section should be applied then and there, at any rate before its rising, by the Court in whose view or presence a contempt has been committed which it considers should be dealt with under s. 480. Where a Magistrate in whose presence contempt was committed took cognizance of the offence immediately, but, in order to give the accused an opportunity of showing cause, postponed his final order of some days,—*Held* that such action, though it might be irregular, was not illegal, and as the accused had not been in any way prejudiced, was covered by s. 537 of the Criminal Procedure Code. *Held* also that, under the circumstances, it was doubtful whether there was any necessity for the Magistrate to postpone the final order until the accused had had an opportunity of showing cause against it, and that he should have directed the detention of the accused and dealt with the matter at once or before his rising. *QUEEN-EMPRESS v. PALAMBAR BAKSHI* [I. L. R., 11 All., 361]

57. ——— Mode of arrest for contempt in foreign territory—*Punishment for contempt of Court*—The High Court will not send a special bailiff into the Gaikwad's territories to arrest a defendant who has been guilty of a contempt of Court, but the Court will send a special bailiff for such purpose beyond the local limits of the High Court to a place within the Presidency of Bombay. A defendant guilty of contempt of Court is liable to imprisonment on the criminal side of the Bombay Jail. *HARI-VALABHDAS KULLIANDAS v. UTAMCHAND MANIKCHAND* . . . . . 7 Bom., O. C., 172

58. ——— Application for discharge—*Practice*—When a person is in custody for contempt of Court, any application for release should be made to the committing Judge. It is advisable, but not necessary, to limit the period of commitment to a fixed time. *IN THE MATTER OF SITTARAM ATMARAM* [1 Ind. Jur., N. S., 23]

## 6. EFFECT OF CONTEMPT.

59. ——— Person under contempt—*Privilege from arrest*—*Party to suit proceeding to Court*—When a writ of attachment for contempt was issued by the Court against a party to a suit in

**CONTEMPT OF COURT—concluded.****G. EFFECT OF CONTEMPT—concluded.**

that Court.—*Held* he could not claim privilege from arrest while proceeding to Court for the purpose of attending the hearing of his suit. **JOHN v. CARTER**  
[4 B. L. R., O. C., 80]

**CONTINUING OFFENCE.**

*See* Bombay Municipal Act, 1888, s. 472.

[I. L. R., 23 Bom., 768]

*See* Cantonment Act, 1889.

[I. L. R., 23 Bom., 841]

*See* Conviction.

*See* Kidnapping I. L. R., 10 All., 108

**CONTINUING RIGHT.**

*See* Limitation Act, 1877, Art. 120.

[I. L. R., 20 Calc., 908]

**CONTRACT.**

Col.

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|--|------|
| 1. CONSTRUCTION OF CONTRACTS . . .                         | 1238 |
| 2. CONDITIONS PRECEDENT . . .                              | 1610 |
| 3. PRIVITY OF CONTRACT . . .                               | 1615 |
| 4. REPUDIATION OF CONTRACT . . .                           | 1615 |
| 5. BOUGHT AND SOLD NOTES . . .                             | 1616 |
| 6. CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES . . .     | 1617 |
| 7. WAGERING CONTRACTS . . .                                | 1620 |
| 8. ALIENATION OF CONTRACTS . . .                           | 1623 |
| (a) ALIENATION BY PARTY . . .                              | 1623 |
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| 9. BREACH OF CONTRACT . . .                                | 1647 |
| 10. LAW GOVERNING CONTRACTS . . .                          | 1653 |

*See* CASES UNDER CONTRACT ACT.

*See* CASES UNDER HINDU LAW—CONTRACT.

*See* CASES UNDER INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS.

*See* CASES UNDER LIMITATION ACT, 1877, ARTS. 115, 116.

*See* CASES UNDER MINOR—LIABILITY OF MINOR ON AND RIGHT TO ENFORCE CONTRACTS.

*See* CASES UNDER RIGHT OF SUE—CONTRACTS OR AGREEMENTS.

*See* SMALL CAUSE COURT, MOVABLE—JURISDICTION—CONTRACTS.

*See* CASES UNDER SPECIFIC PERFORMANCE.

— Avoidance of—

*See* DEBTS.

— Breach of—

*See* CASES UNDER ACT XIII OF 1859.

**CONTRACT—continued.**

*See* CASES UNDER DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACTS.

*See* CASES UNDER DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACTS.

*See* JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT.

*See* CASES UNDER LIMITATION ACT, 1877, SS. 115, 116 (1859, s. 1, CLS. 9 AND 10).

*See* SMALL CAUSE COURT—PRESIDENCY TOWNS—DAMAGES FOR BREACH OF CONTRACT I. L. R., 10 Mad., 304

— Continuing breach of—

*See* INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED.

[I. L. R., 10 All., 39]

*See* LIMITATION ACT, 1877, s. 23.

[I. L. R., 2 Bom., 273]

— Illegal—

*See* CASES UNDER CONTRACT ACT, s. 23.

— Implied—

*See* MADRAS RENT RECOVERY ACT, s. 11.

[I. L. R., 14 Mad., 44]

I. L. R., 15 Mad., 47

I. L. R., 17 Mad., 43, 50, 54, 73

— in restraint of trade.

*See* CASES UNDER CONTRACT ACT, s. 27.

— of service, Breach of—

*See* CASES UNDER ACT XIII OF 1859.

— Post-nuptial—

*See* CONTRACT ACT, s. 25.

[15 B. L. R., Ap., 5]

**1. CONSTRUCTION OF CONTRACTS.**

1. — Printed form of contract—  
*Writing and printing—Sale of goods to arrive.*—  
The defendants contracted to purchase certain pieces of goods from the plaintiffs, who were dealers in these goods. The contract of sale was written out on one of the printed forms of the plaintiffs' firm, which forms contained in print the words "now in course of landing or in the said godowns" and "now on board ship." As a matter of fact, well known to both parties, the goods contracted for were neither in the godowns nor on board ship. *Held* that, under the circumstances, the printed words were set out formed no part of the contract entered into between the parties. **CANLISSE NEPHEWS AND COMPANY v. LITKMOOK ROY**

[I. L. R., 9 Calc., 679; 13 C. L. R., 120]

2. — Contract partly written and partly printed.—Where a contract is

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
*—continued.*

partly printed and partly written, and there is a conflict between the printed and written part, the written part must be taken to control the printed part. **CARLISLE v. NUTHMILL NOWLUCKEE**

[2 Hyde, 242]

**3. ——— “Tallow,” Contract to deliver—**A contract for “tallow” is fulfilled by the delivery of the fat of sheep, goats, and other animals besides oxen. **MAHOMED IBRAHIM v. LAUDER**

[Cor., 42]

**4. ——— Rope; Contract to purchase.**—A contract in writing to “take all your rope and Manila rope at the following prices” construed to mean all the vendor’s rope in a certain godown on a particular day. **TARRACKNAUTH PAULIT v. SHERBOURNE**

Cor., 62

**5. ——— Duration of contract—Effect of recital in regard to control over operative words.**—The parties during several years had transactions consisting of the deliveries of produce by the defendants to the plaintiff’s agent, under advances, upon separate contracts, specifying prices, and of consignments by the defendants through the plaintiffs. A “purchase account” and an “interest account” kept between them resulted in a “general account,” and in 1872 a large sum was due thereon to the plaintiffs, to whom, in 1873, the defendants sent letters mortgaging property with instruments of title accompanying. In the beginning of 1874 the parties entered into a written agreement, which described the balance due in respect of previous advances as the “block account,” comprising also an “interest account,” and the transactions proceeded. The intention was shown that the advances should be liquidated “by returns,” but the only date mentioned from which an inference could be drawn as to the intended duration of the arrangement between the parties show at 30th June 1875. In this suit, brought in December 1875, it was contended that the right construction of the agreement of 1874 required that it should continue to subsist (unless rescinded either by mutual agreement or on breach of its stipulations by one party justifying its rescission by the other) until the liquidation of the balance by returns; at all events, as regarded the “block account.” In order to the working of an agreement for a liquidation in such a way, it would have been necessary to imply obligations, for which no express provision had been made; nothing, for instance, having been fixed as to the extent, or duration, of the business, or as to the rats at which produce was to be offered or accepted. *Held* that such provisions could not now be supplied, and that the stipulations as to the “block account” were binding only during the continuance of the arrangement for the conduct of the business by the parties, such arrangement being terminable at will, after the 30th June 1875. The letters of 1873, and the documents of title deposited with them, were held to constitute a security for the general balance due from the defendants to the plaintiffs, and not only a security for advances on certain of the contracts referred

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
*—continued.*

to in a paragraph in the nature of a recital; for, the latter was not necessarily repugnant to the wider construction, and the operative words were wide enough to apply to all the transactions between the parties. The construction of an ambiguous stipulation in a written agreement may be governed or qualified by a recital; but, if the intention is clearly to be collected from the operative words, that intention is not to be defeated or controlled because it may go beyond what is expressed in the recital. **MARGAR v. SIGG**

I. L. R., 2 Mad., 239

**6. ——— Extras not mentioned in contract—Allowance for extras.**—The plaintiff, in answer to an application to him by the defendant for an estimate of the cost of some surveying tents, replied—“We send you, as requested, the prices of tents, flags, and poles, etc.,” enclosing a memorandum of prices in which there was no allusion to “flies” for the tents. It appeared that no mention had been made about the “flies” in a conversation which subsequently took place between the parties during the progress of the manufacture of the tents. *Held* that the plaintiff was not entitled to recover an extra price on account of “flies.” **LAUDER v. EASTERN BENGAL RAILWAY Co.**

I Ind. Jur., N. S., 320

**7. ——— Sale and purchase of indigo—Ground for rejection.**—A contract of sale and purchase of indigo, the produce of a certain concern, contained the following clause:—“The quality of the indigo to be equal to that usually made at the above concern, and to be delivered in good merchantable order, free from dampness; carefully packed, the contents of each chest to be of one quality, and got up with the usual care of the mark, and if not so delivered such allowance to be made to purchasers as shall be awarded by J P T.” *Held* the words “if not delivered” referred to all the several preceding stipulations, including the quality: and therefore inferiority of quality below that usually made at the concern was no ground for rejection of the indigo tendered, but only the subject for an allowance to be awarded by J P T. **MACFARLANE v. ROBERT**

[2 Ind. Jur., N. S., 258]

**8. ——— Contract for coal on behalf of Government—Default of contractor.**—Where C entered into a contract with the Government to construct a railway feeder, and purchased coal from a coal company, and after the coal had been delivered and deposited at a certain place, C absconded. *Held* that the Government had no right to detain or claim the coal, or to take the same out of the possession of the coal company, who were entitled to retain possession of the coal against any claimant but C himself. **GORDON, STUART & Co. v. EXECUTIVE ENGINEER OF THE CALCUTTA AND Jessore ROAD DIVISION.**

7 W. R., 420

**9. ——— Timber trade in Burma—Tainzaks.**—According to the timber trade in Burma, the holding of what are called tainzaks does not give possession of the timber; and where the parties in a contract use the word “received” and do not think

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
—continued.

fit to use the word "entered," they must be taken to have intended the word "received" to have the meaning of having obtained possession of the goods and not merely of having entered and got tainahs for them. **HEHMA COMPANY v. SHADDER**

[17 W. R., 120

**10. ——— Delivery by instalments—**  
**Tender—Abandonment of excess—Sale of goods.—**

and that the defendant having committed a breach of the contract in not accepting the bags, the plaintiffs were justified in reselling them at once and suing for damages. **SIMSON v. GORA CHAND DOS**

[I. L. R., 9 Cal., 473

bags, delivery from October to March, each month 15,000 bags." Subsequently the defendant contracted to sell to the plaintiffs these 90,000 bags "at H21-2 per 100 bags, delivery from October to March 15,000 each month, buyers to pay difference cash against delivery order on Mills." In August the defendant made out in the plaintiffs' favour a delivery order directing the mills to deliver 90,000 bags on receiving payment for the same at H21-3 per 100 bags, and on the same day sent to the plaintiffs a bill showing the amount of difference payable to him by them. The plaintiffs refused the delivery order on the ground that it had not been accepted by the mills; but on a subsequent tender of the order and bill, they offered, on the 5th September, to pay the

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
—continued.

the mills 90,000 bags, deliverable in lots of 15,000 per month after payment of the difference, and impliedly undertook that the mills would accept the delivery order and deliver the goods in terms thereof when presented; that the plaintiffs were entitled to get the delivery order at any reasonable time before the first monthly instalment fell due; and, further, that the defendant was not entitled to repudiate the contract after the plaintiffs' offer of the 5th September, and having done so was liable in damages. **KAMDEO v. CASSIM MAMOOJEE**

[I. L. R., 31 Cal., 173

**12. ——— Shipment at monthly intervals—Contract Act (IX of 1872), s. 39.—**The defendant agreed to purchase from the plaintiffs 120 cases of condensed milk which were to be shipped in London and delivered in Madras. The agreement stipulated for shipment in six lots of twenty cases each at monthly intervals, but it contained a proviso,

failed to make the second shipment by a steamer of which they might have availed themselves, the defendant was justified in rescinding the contract. **VOLKART BROTHERS v. RUTSAVELU CHETTI**

[I. L. R., 18 Mad., 63

**13. ——— Delivery in whole of November on seven days' notice from buyer—**

expiration of the seven days' notice. **JUDGESBAIN KHAN v. MATHANLAX**

[I. L. R., 8 Cal., 681; 8 C. L. R., 225

**14. ——— Non-acceptance—Breach of contract.—**The plaintiff entered into a contract with the defendant to deliver sugar, to be imported by

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
—continued.

the ship *Michael Angelo*. No sulphur arrived by the *Michael Angelo* consigned to the plaintiff, and he procured it elsewhere, but the defendant refused to accept it. In an action for non-acceptance,—*Held*, reversing the decision of the Court below (MARKBY, J., 2 B. L. R., S. N., 9), that the defendant was not bound to accept sulphur not imported by the *Michael Angelo*. *BIHARI LAL v. MADHUSUDAN KUNDU*  
[2 B. L. R., O. C., 154]

15. — Breach of contract—“*Ex a certain ship*.”—By a contract entered into between the plaintiffs and defendant, the plaintiffs agreed to sell certain goods *ex a specific ship* to the defendant, the goods to be taken delivery of within forty-five days, and ten days to be allowed for inspection, and claiming allowance for any damaged goods, the defendant to take the risk of damage from the date of the contract. The period for taking delivery and for inspection dated from the 13th May. The plaintiffs did not receive the whole of the goods until 16th of June, and therefore were not ready to perform their contract by submitting them for inspection within the specified time: the defendant did not call upon them to do so. In a suit for breach of the contract by the defendant in not accepting the goods,—*Held* that the plaintiffs not being in a position to complete the contract, no cause of action had arisen. *Held*, on appeal, that the goods ought to have been ready for inspection within the ten days stipulated, and the plaintiffs, not having shown that they were ready and willing so to perform the contract, had no right of action notwithstanding that the defendant never, in fact, called on them to deliver the goods for inspection. The words “*ex a certain ship*” must be taken to mean that the goods are really landed, and not in course of being landed, and therefore, independently of the question of the necessity on the part of the plaintiffs to show their readiness to perform their part of the contract, the defendant was not bound to take goods on board ship, in respect of which, if the contract were binding upon him, he would have been bound to take the risk of any damage or loss to the goods on board ship, or in the course of landing. *ROBERTSON GLADSTONE & Co. v. KUSTURY MULL*

[3 B. L. R., O. C., 103]

16. — Contract for freight—*June shipment*—*Naming probable date of arrival of steamer*—*Later arrival no breach of contract*—*Estoppel*—*Notice of readiness to load*.—The defendant in April 1891 contracted with the plaintiffs for freight for 375 tons seeds, wheat, etc., “by any first class steamer, etc. (subject to safe arrival), June shipment. Goods to be alongside in time to be all taken in on or before the second day after notice that steamer is ready for cargo; otherwise difference of freight at market rate to be payable on demand as liquidated damages,” etc. On the 29th May defendant wrote saying he would be glad to know the name and probable date of arrival of the steamer. On the 3rd June the plaintiffs replied declaring the S.S. *County of York* against the engagement, and

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
—continued.

adding, in a postscript, that the steamer would be ready to load on or about the 12th instant. The S.S. *County of York* arrived in Bombay on the 10th June, but from unforeseen circumstances had not a berth in the dock and was not ready to load until the 23rd instant. In the meantime, on the 18th June, the defendant repudiated the contract on the ground that, having been led by the plaintiffs to expect that the ship would be ready to load on the 12th instant, he had made telegraphic arrangements on that footing, and the ship not being ready he was compelled to ship his goods by other steamers, in order to fulfil his engagements. The plaintiffs accordingly re-let the freight on defendant's account, and brought this suit for the loss incurred in so doing. *Held* that the plaintiffs were entitled to succeed, for that nothing had occurred to alter the original contract, which gave them the whole of June in which to provide a steamer. The statement made by the plaintiffs on the 3rd of June (in answer to the defendant's enquiries as to the probable date of the arrival of the steamer), that the steamer would be ready to load on or about the 12th instant, was not a promise, but a mere expression of opinion. The question of estoppel did not arise. On the 22nd June the plaintiffs gave their shippers, amongst others the defendant, a notice to the following effect: “As the *County of York* will be in dock to-morrow ready to receive cargo, we have to request that your cargo be down not later than Wednesday, the 24th instant, etc.” *Quare*—Whether this was a “notice that the steamer was ready for cargo” as required by the contract. *BERTS, CRAIG & Co. v. MARTIN*. I. L. R., 16 Bom., 389

17. — Custom or usage qualifying contract—*Shipment, Meaning of*.—On 18th April 1890, the defendant signed a contract (No. 3053) to buy from the plaintiffs 25 bales grey dhooties, “June shipment, in four lots, with an interval of four weeks.” These goods were not supplied, as they could not be obtained at the price limited. On 24th September 1890, the defendant gave the plaintiffs an order at an increased limit of price in the following terms: “Please telegraph your Manchester friends to purchase on my account 25 bales grey dhooties relating to No. 3053 at an all-round advance of 1d. per pair on original limits for November, December, January shipments, in three monthly lots, about 8 bales to be shipped in each month.” This order was accepted, and the goods were shipped as follows:—6 bales were handed to the carriers (the S. and N. W. Railway Co.) in Manchester on the 28th November 1890, and were shipped at Birkenhead on the 9th December 1890; 6 bales were handed to the same carriers on the 4th December 1890, and were shipped on the 13th December 1890; 10 bales were handed to same carriers on the 23rd December and 1 bale on the 24th December, and these 11 bales were shipped on the 6th January 1891. The defendant refused to accept the goods. He contended that the documents of 18th April and 24th September should be read together, and that the final contract was for November, December, January shipments, in three

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS***—continued.*

monthly lots, at intervals of four weeks. He also contended that the shipment on the 9th December 1890 was a late shipment, and that he was not, therefore, bound to accept the goods under the contract. As to this last contention, the plaintiffs alleged that by the custom of Bombay in the case of contracts made with members of the Native Piece-goods Association, the date of the carrier's weight note was to be regarded as the date of shipment, and that, under such a contract as the one in question, delivery to the Railway Company or other inland carrier was equivalent to shipment. This custom, it was alleged, originated in consequence of the above Association having agreed that all piece-goods ordered out by its members should be conveyed to Bombay by certain lines of steamers only, and by no others. It was stated that, unless some such custom existed, it would

September 1890. SMITH v. LUDHA GHIELLA DAMODAR  
I. L. R., 17 Bom., 129

18. *—Sale of goods—Non-acceptance of goods—Contract for goods to be ordered from Europe—Performance of contract by offer of goods of same description not ordered out for purchasers, but bought by vendors in Bombay.*—On the 5th August the defendants commissioned the plaintiffs to order out from Europe 500 cwt. copper braziers, September shipment, assorted in the manner set out in the indent signed by the defendants, "free on board, Bombay harbour," at the rate of £53-5 per ton. On the same day the plaintiffs sent a reply to the defendants' order in their usual form partly lithographed and partly written, as follows:—  
"We have the pleasure to inform you that we have received a telegram from our Manchester friends, and so far as regards the cylinders therein named, we learn that they advise the following purchases, which will be intended to you at your limit, subject to confirmation by letter as usual. Order this day hundred bundles of copper braziers, at £53-5 per ton, free on board, Bombay." As a fact, however, no telegram had been received from the plaintiffs' Manchester friends, and the plaintiffs had not learned that they had advised the purchases referred to in their reply. The acceptance of the plaintiffs' offer was really based on the plaintiffs' view of the probability of the copper market. The agents in England were unable to carry out the order, and it remained unexecuted. On the 26th October, the plaintiffs, having negotiated with one Naga Ducha to take over from him a September

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS***—continued.*

shipment of copper by the S.S. *Merton Hall*, answering to the defendants' order, and for the purpose of fulfilling it, wrote to the defendants as follows:—

then on the 31st October wrote to the defendants, informing them that it was a mistake of their clerk to advise the arrival of the defendants' goods per *Merton Hall*, and handing the defendants invoice of 110 bundles arrived *ex Tabou Head*. The defendants discovered that the plaintiffs had not ordered out these

realized by the sale and the price which by their con-

business, and the plaintiffs' firm—the present case

tendering them to the person giving the order.  
BOMBAY UNITED MERCHANTS' COMPANY v. DOUGLASS  
NAN SAKUCHAND I. L. R., 13 Bom., 50

19. *—Contract to deliver goods—Suit for non-delivery—Agreement exempting from liability in case of loss of carrying ship—Necessity for declaring name of carrying ship to purchaser—Loss of ship. What is a July-August shipment. What amounts to—*The defendants agreed to sell to the plaintiff 100 tons of coal per steamer July-August shipment. The last clause of the agreement was as follows:—"In the event of the ship being lost, this contract to be null and void." The coal was put on board the S.S. *Eden* by the defendants at Sunderland on the 30th and 31st August. On the 1st September the *Eden* was sunk by collision in

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**

—continued.

dock, and remained at the bottom in twenty-three feet of water for sixteen hours, when she was raised and her cargo discharged. The coal was pronounced unfit for a voyage to Bombay. Extensive repairs to the ship were found necessary, and she was useless until the 6th October. The plaintiff sued for damages for non-delivery of the coal. The defendants relied on the last clause of the agreement as exempting them from liability. *Held* that the defendants were not liable. The *Rubens* was lost for the purpose for which she was required under the contract, viz., for a voyage in fulfilment of a July-August shipment, and the defendants, having proved that the coal had been duly shipped on board the vessel so lost, were exempt under the last clause of the agreement from liability for non-delivery. It was argued that until the name of the carrying ship was declared to the plaintiff as purchaser, neither the ship nor the coal was assigned to the contract, and, therefore, the loss could not be within the contract. *Held* that, if such a condition was intended, it should have been expressed. The appropriation of certain goods to the contract by the vendors (the defendants), the placing them on board the *Rubens*, and doing all in their power to despatch them to Bombay in fulfilment of the contract were enough to entitle them to the protection of the last clause of the agreement. **NUSSERVANJI JEHANGIR KHAMBATA v. VOLKART BROTHERS . I. L. R., 13 Bom., 15**

**20. ——— Contract to sell from 2,500 to 3,500 tons of coal—Breach of contract—Non-delivery of coal—Damages.**—On the 18th May 1893 the defendants sold to the plaintiffs "the entire cargo of coal per steam-ship—, May shipment *via* canal, amounting to 2,500 to 3,500 tons or thereabouts." The defendants intended a certain steam-ship called the *Ethelaida*, which carried a cargo of 3,395 tons of coal, to satisfy this contract. This ship, however, did not load in May, and consequently her cargo did not fulfil the condition of the contract. From the day of making the contract, the plaintiffs had been urging the defendants to declare the name of the vessel in which the coal contracted for was to be shipped. On the 14th June, the defendants by letter informed the plaintiffs that the "vessels chartered for their May shipment" had not loaded in May, and they offered to cancel the contract. On the same day, however, and about an hour after the plaintiffs had received this letter, and before they had replied to it, the defendants sent them another letter as follows:—"We have now been informed that the boat our coals have been loaded in is the *Ethelaida*, and we now beg to declare it." Correspondence subsequently passed between the parties. On the 15th June, the plaintiffs wrote to the defendants as follows:—"Please inform us finally what you intend. In case the *Ethelaida* is declared as bringing coals sold to us under contract of 18th May, please let us know the date of her sailing, lunding, and the particular date of her arrival in Bombay, and also how much coal she has on board." On the following day the defendants replied: "The *Ethelaida* is the boat

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**

—continued.

chartered for the cargo we sold you..... We do not positively know whether she commenced to load in May or June. She was expected to load about 3,300 tons." On the 28th June, the defendants wrote definitely stating that the "*Ethelaida* did not load in May." The plaintiffs refused her cargo, and sent in a statement of their alleged loss calculated upon 3,300 tons, the amount stated to be the cargo of the *Ethelaida* in the defendants' letter of the 14th June. *Held* that the damages must be calculated upon a cargo of 2,500 tons only. The *Ethelaida* was never incorporated into the contract. The defendants declared her against the contract; but, after they had informed the plaintiffs that she had not loaded in May, the plaintiffs refused her cargo. The contract, which the defendants failed to fulfil, was a contract to deliver the *Ethelaida* cargo, which they were always ready and willing to deliver. The option rested with the defendants whether they would deliver 2,500 or 3,500 tons, or any intermediate quantity, and upon no principle could the Court exercise that option for them and declare that they were liable to deliver more than a cargo of 2,500 tons. **CURSETJI JEWANGIR KHAMBATA v. CROWDER**

**[I. L. R., 18 Bom., 299]**

**21. ——— Suit for non-delivery—**  
*Clause exempting from liability in case of loss of carrying ship—Loss of ship—Declaration of ship after date of loss—Appropriation of goods after goods lost.*—The defendants by a contract dated 10th January 1896 sold 2,500 tons of coal to the plaintiff of the February and March shipment to be delivered in Bombay. No ship was named in the contract, which contained the following clause:—"In the event of the ship being lost, this contract shall be null and void." February and March shipments ordinarily arrive in Bombay on or before the 30th April following. All of the coal contracted for was duly delivered by the defendants except 1,376 tons, which still remained to be delivered to the plaintiffs. By a letter dated 25th April 1896 addressed to the plaintiff, the defendants declared the S.S. *Eastby Abbey* as the ship carrying the said 1,376 tons of coal remaining due under the contract. There was no evidence of any appropriation of coal on board the *Eastby Abbey* to the purpose of the above contract prior to this declaration. It subsequently transpired that the *Eastby Abbey* had run on a reef in the Red Sea on the 16th April and so seriously damaged that being taken to Suez (where such of her cargo as had not been thrown overboard was sold) she was found unable to proceed to Bombay, and she returned to England for repairs. The plaintiff sued the defendants for non-delivery of 1,376 tons of coal. The defendants pleaded that, the ship having been lost, they were exempt from liability under the above clause in the contract. *Held* that the defendants were liable for the non-delivery of the coal. There having been previously to the declaration of the ship no appropriation of the coal on board to the purposes of the contract, the exemption clause did not apply. *Semle*—In case of a contract containing such an

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS***—continued.*

exemption clause as the one in question, the declaration of a ship so as thereby to appropriate goods on board to the purposes of the contract is useless if made after the ship has been lost, whether the fact of the loss is known to the declarant or not. **DADABHAI HOMMUSJI DUNASH v. KHAMBATTA**

**[I. L. R., 23 Bom., 189]**

**22. ——— Continuing offer—Successive contracts—Reasonable notice—Offer**—The plaintiffs were the agents of two mills in Bombay. The defendants were a coal company carrying on business in Bombay by their agents, the Bombay Company, Limited. The defendants on the 19th of August 1897 signed a memorandum in the form of a letter addressed to the plaintiffs, of which the first two clauses were as follows:—"The undersigned have this day made a contract with Messrs. Homce Wadia

able notice to be given of such requirements. The total quantity indicated for during the year shall not

quantity ordered. The offer of the defendants and

a reasonable notice within the meaning of the memorandum of the 19th August 1897. **BENGAL COAL CO. v. HOMCE WADIA & CO.**

**[I. L. R., 24 Bom., 97]**

to the plaintiffs for the purchase of 200 bales of pepperill drill at 9s. 2d. A few days later the plaintiffs' salesman tendered for signature to the

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS***—continued.*

home firm, and on receipt of a favourable reply communicated this acceptance to the defendant. This acceptance the defendant said he had returned. The plaintiffs denied that he had done so. *Held per JENKINS, C.J.*—"The law on this point is thus formulated in the most authoritative mode by the

panies unless it is agreed to by the person from whom the offer comes. In other words, an acceptance with a variation is no acceptance; it is simply a counter-proposal, which must be accepted by the original

signed, but the defendant refused to sign one. **MAHOMED HAJI JIVA v. SPINNER**

**[I. L. R., 24 Bom., 510]**

**24. ——— Executory contract involving personal considerations—Assignment of**

benefit of A such quantities of salt as he might require them to manufacture each season for seven years, in consideration of A's paying them at the rate of Rs. 8-0 per garce of salt (four months' credit after each delivery being allowed to A), and of his paying Government taxes and dues, and executing

## CONTRACT—continued.

1. CONSTRUCTION OF CONTRACTS  
—continued.

defendants be directed to deliver to the plaintiffs the salt collected during 1886; (2) that defendants 2, 4, and 7 should be held liable for any damages plaintiffs might suffer through a fall in the price of salt. The Court of first instance, having held that the contract contained seven separate and distinct contracts, each defendant having contracted with reference to his own pans only, decreed (1) that the seven defendants should pay damages at the rate of Rs-12-0 per garce for the salt collected by each during the years 1886 to 1889, leaving the quantity to be ascertained in the execution of the decree; (2) that the defendant should pay the plaintiffs costs. On appeal the District Judge modified the decree by fixing the rate of damages at Rs-10-0 for each garce of salt. *Held* on appeal that A was not competent to assign his interest in the contract to the second plaintiff, since the contract was based on personal considerations, and that the assignment of it as an executory contract was invalid without the consent of the defendants. *Farrow v. Wilson, L. R., 4 C. P., 744, Humble v. Hunter, 12 Q. B., 310, Arkansas Valley Melting Company v. Belden Mining Company, 127 U. S. R., 379, followed. NAMASIVAYA GURUKAL v. KADIR AMMAL, I. L. R., 17 Mad., 163*

25. — Sale of goods—Special place of delivery “to be mentioned hereafter.”—Assessment of damages—Contract Act (IX of 1872), ss. 49, 94, and 231.—Bought and sold notes of Purneah indigo seed provided: “The seed to be delivered at any place in Bengal in March and April 1891.” It was added, “the place of delivery to be mentioned hereafter.” The buyer made mention of this on the 20th March 1891 in a letter to the broker for both parties. This letter, specifying Howrah railway station as the place, was forwarded to the vendor, who replied that he would deliver at his own godowns at Sulkea. This the buyer declined. The vendor and the buyer each insisting that the place named by him was the proper one for delivery, the buyer refused to accept at the vendor's godowns, or at any place other than Howrah station. The vendor remained for a certain time ready and willing to deliver at his godowns at Sulkea; and the buyer not accepting delivery at that place, the vendor declared the contract cancelled. The buyer then sued him for breach of the contract to deliver at the place mentioned by the buyer. On the question whether the vendor had discharged his liability by readiness and willingness to deliver at his own godowns at Sulkea,—*Held* that the choice of place given originally by the contract to the buyer, subject only to the express contract that it must be in Bengal, and to the implied one that it must be reasonable, had not been converted, by the words about “mention” thereafter, into a deferred question to be settled by a subsequent agreement. The buyer, according to the contract already subsisting, had the right to fix the place. There was a special promise in the contract as to the delivery, and to complete its terms nothing more was required than a mention by the buyer of a reasonable place within Bengal. This had been made by him. The contract therefore did

## CONTRACT—continued.

1. CONSTRUCTION OF CONTRACTS  
—continued.

not fall within s. 94 of the Indian Contract Act (IX of 1872) dealing with cases where there has been no special promise as to delivery, and fixing the place of production as the place for delivery, but rather resembled what was contemplated in s. 49. And the buyer was entitled to damages on the contract. *GRENON v. LACHMI NARAIN AUGURWALA, [I. L. R., 24 Calo., 8 L. R., 23 I. A., 119]*

26.

goods at fixed price—Duty imposed on material subsequently to date of contract—Liability to supply goods—Indian Tariff Act (VIII of 1894), s. 10.—On 2nd November 1894 the defendant contracted to supply the plaintiff with a certain quantity of dhottars made of European or Egyptian yarn No. 80 at the rate of 225 pairs each month for a period of one year. In January 1895 an import duty of five per cent. was imposed by Government on the yarn. The defendant thereupon declined to supply the dhottars unless the plaintiff paid the duty in addition to the contract price. *Held* that under s. 10 of Act VIII of 1894 the defendant could call on the plaintiff to pay the duty which he had paid on the yarn, that is, he could add so much to the contract price as would be equivalent to the duty which he himself had paid. The question was whether the dhottars supplied to the plaintiff were actually made out of yarn on which duty had been paid by the defendant. *TRIKAMTAL JAMNADAS v. KAMDAS DALPATRAM, [I. L. R., 21 Bom., 628]*

27.

Offer of performance—Tender of railway receipts endorsed in blank—Goods tendered—Goods subject to demurrage or freight—Duty of seller.—P agreed to sell, and F to buy, certain goods to be delivered to F in April-May 1897. The contract of sale contained (inter alia) the following clauses: “(10) The goods to be tendered fully 48 hours before the expiration of the present term of 72 hours granted by the railway company in order to enable buyers to weigh, sample, and inspect the same; and the delivery not to be considered complete until the samples have been refracted and examined, and any dispute about quality, etc., settled. (11) If railway receipt be tendered, such to be handed to buyers 48 hours before the goods are liable to demurrage under the present term of 72 hours granted by the railway company.” P, not having before the 31st May goods of his own to meet the contract, arranged with H for certain goods of H to be delivered under it, and tendered to F. On that day, certain railway receipts, which had been endorsed in blank by H in respect of the said goods, were tendered to F. F was ready to pay for the goods; but, before tendering the price, he insisted upon an endorsement of the railway receipts by H to P and by P to himself. P was unable to point out the goods to be delivered under the contract, nor could he indicate the wagon-numbers. P refused to procure the endorsements required by F, and thereupon F declined to take delivery as proposed, though he tendered the price in

## CONTRACT—continued.

## 1. CONSTRUCTION OF CONTRACTS

—continued.

which his rights must  
rely upon. *Cowan v. Milburn, L. R., 2 Kech., 200,*  
and *Mothoormohun Roy v. Bank of Bengal, I. L.*  
*R., 3 Calc., 392,* referred to. *MOTIOMAND v. FU-*  
*CHAND, I. L. R., 26 Calc., 142*  
*[3 C. W. N., 118]*

Tender of rail-

granted by the railway company, must  
must be present at the time of delivery to inspect the  
weighing and sampling," and in their default "buyers  
weight and sample and sellers must abide by the

the receipts. The defendants received  
railway receipts until they were endorsed by the  
plaintiff and by the

and that the

## CONTRACT—continued.

## 1. CONSTRUCTION OF CONTRACTS

—continued.

## 29. Collateral agreement—Con-

tr. to Collateral Agreement

of the lease. Held that, assuming  
Contract Act was not intended to vary the rule, that  
a mistake of law is no ground for relieving a party  
from his own contract, plaintiff was nevertheless en-  
titled to recover on the ground that the agreement  
which provided for repayment was collateral, and had  
failed. An agreement that an obligation which is  
contracted shall be discharged in some particular  
mode is collateral to the primary contract which  
created the obligation, though the two agreements  
may be mixed up in one contract. *KRISHNAN v.*  
*I. L. R., 9 Mad., 441*

with which  
third, and to  
defendants, i  
of list, whic  
contrary to  
The defend  
were not in v  
The Court  
On appeal, the

—fatal to the right to mortgage  
Accordingly he reversed the

effect; that there was nothing

tendering of railway receipts upon

TRACT—continued.  
1. CONSTRUCTION OF CONTRACTS  
—continued.

25. \_\_\_\_\_ Sale of goods—Special place of  
\_\_\_\_\_ mentioned hereafter"—Assessment  
\_\_\_\_\_ (1870). 33. 49.

1. CONSTRUCTION OF CONTRACTS  
—continued.

AUGURWALA  
[L. L. R., 24 Calc., 8  
L. R., 23 I. A., 113

[L. L. R., 21 Bom., 628.

27. —Tender of railway receipts, endorsed in blank—Goods subject to demurrage or freight—Duty of seller.—P agreed to sell, and F to buy, certain goods to be delivered to F. in April-May 1897. The contract of sale contained (*inter alia*) the following clauses: "(10) The goods to be tendered fully 48 hours before the expiration of the present term of 72 hours granted by the railway company in order to enable buyers to weigh, sample, and inspect the same; and the delivery very not to be considered complete until the samples have been refracted and examined, and any dispute about quality, etc., settled. (11) If railway receipt be tendered, such to be handed to buyers 48 hours before the goods are liable to demurrage under the present term of 72 hours granted by the railway company." P, not having before the 31st May goods of his own to meet the contract, arranged with H for certain goods of H to be delivered under it, and tendered to F. On that day, certain railway receipts, which had been endorsed in blank by H in respect of the said goods; but, before tendering the price, to pay for the goods; and by P to himself. P was he insisted upon an endorsement of the railway receipts by H to P and by P to himself. P was unable to point out the goods to be delivered under the contract, nor could he indicate the wagon-numbers. P refused to procure the endorsements required by F, and thereupon F declined to take delivery as proposed, though he tendered the price in

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**

—continued.

33.

*Breach of contract—Non-completion of agreement of compromise as part performance of contract to sow indigo.*—Where a contract for sowing indigo was entered into, and advances made in part performance

part of the contract for sowing indigo. *SARDIS v. BEWEL MUNDUL*. 10 W. R., 420

37.

*Cash on delivery—Readiness and willingness to take delivery—Delivery, Failure of, in terms of contract—Breach of contract—Cus-*

tracts with the plaintiffs, the consignees of the cargo, each for the purchase of 600 tons of coal per S.S. *Dunedin* then in harbour. The contracts provided (*inter alia*) "delivery to be taken at a rate of not

exception of 26½ tons, which remained to be delivered to the defendant. The cargo to be discharged subsequently to 2nd of June would have been discharged within the lay days, but for the want of lighters on

the charter party) to take delivery within the lay days, or to pay demurrage, being absolute, he could

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**

—continued.

only excuse non-performance of his contract by showing it was due either to default of the captain of the ship, or of the plaintiffs themselves, neither of which had been shown. The plaintiffs were not to blame for any difficulties occurring by reason of there being other purchasers. That was the well-known nature

per diem, was not one on which the defendant could insist, but was an independent stipulation in favour of the cargo. *VOLKART BROTHERS v. NESSERVANJI JENANGIR KHAMBATTA*. 1 L. R., 13 Bom., 393

39. *Sale of goods—Delivery—Delivery on Sunday—Custom as to delivery.*—Where the defendant, a European, was sued for damages for non-delivery of goods and contended that he was not bound to deliver on Sunday. *Held* that delivery on Sunday was not unlawful, and that, in the absence of custom to the contrary, the defendant was bound to deliver the goods on that day if they had not already been delivered. *LAICHARD BALKISSAN v. KERSTEN*. 1 L. R., 15 Bom., 336

40. *Goods ordered through commission agents—Contract of agency—Contract of sale—Form of action.*—The defendants traded in Bombay as merchants and commission agents, under the style of *S D & Co.*, being a branch of a French firm trading in Paris under the same name, of which firm also the defendants were members. The Paris firm were agents for certain manufacturers of zinc. The plaintiff, a Bombay merchant, ordered out 48 casks of zinc sheets through the defendants' firm in Bombay by an indent in the following form:—"I hereby request you to instruct your agents to purchase for me (if possible) the under-mentioned goods on my account and risk upon the terms stated below." Such terms, *inter alia*, limited the price of the goods and the time within which the shipments were to be made. Later, the plaintiff consented to increase his limit of price. The defendants, having communicated with their Paris firm, wrote to the plaintiff as follows:—"We have the pleasure to inform you that our home firm has reported by wire concerning your esteemed order as follows:—'Placed at your increased limit.' Subsequently the plaintiff was informed by the defendants that the manufacturers being full with orders, the zinc sheets would not be ready for shipment as soon as had been expected; and he was asked whether he agreed to give an extension of time, or desired to cancel the indent. Simultaneously the plaintiff wrote that the contract time had been exceeded, and that he would buy similar goods in Bombay on the defendants' account. This the plaintiff did, and brought this action to recover the difference in price as damages on account of the defendants having failed to perform their contract for the delivery of 48 casks of zinc sheets. *Held*

( 1603 )

## DIGEST OF CASES.

( 1604 )

## CONTRACT—continued.

## 1. CONSTRUCTION OF CONTRACTS—continued.

show that the payment of that fixed portion had been rendered less certain by the transfer of the villages to the mortgagees; that, consequently, the beneficial interest of the plaintiff, as trustee under the razi-nama, was not impaired, and the mortgages were not made in violation of the provisions of the machalka. *Per HOLLOWAY, J.*, that the right set up was based upon a purely capricious exercise of the plaintiff's will, in the effectuation of which he had no conceivable interest; that contractual words seeking to create a right of this sort are ineffective to create it; and that, consequently, the alienations by mortgage were wrongly declared void. *KRISTNA MADALI v. SHANMUGA MUDALIAR* 6 Mad., 248

31. — Agreement to share costs of litigation to be prosecuted to its furthest limits.—*Failure on advice to appeal to Privy Council.*—Plaintiffs having sought to recover from defendants their share of the costs of certain litigation which plaintiffs had set agoing at the instance of defendant's father, who was jointly interested with plaintiffs in certain property in suit, but who wanted the means to prosecute the litigation for its recovery, and who, accordingly, executed an ikrarnamah agreeing to share the costs of the necessary litigation proportionably with plaintiffs, provided they furnished the funds for prosecuting that litigation to the furthest limits; and the said litigation having terminated adversely to the interests of both plaintiffs and defendants, without any appeal having been preferred to all Privy Council, and defendants having repudiated all responsibility for costs on the ground of default in prosecution of litigation to the furthest possible limit.—*Held* that, as plaintiffs had merely undertaken to furnish the means for carrying on the litigation, but had not actually undertaken the conduct of that litigation, and as it was not in evidence that defendants had wished to go up to the Privy Council, and to this end had made a demand on, but had been frustrated by, plaintiffs, the plaintiffs were entitled to recover proportionate costs in the concerted litigation, with costs in the present suit proportioned to the amount thus obtained by them. The lower Courts in this case found that it had not been proved either that the pleaders had advised, or that defendant's father had agreed, that there should be an appeal to the Privy Council. *SHUSHREE MOHUN SHAMA CHOWDHRY v. TABA PURSHAD MOJOMDAR*. 25 W. R., 478

32. — Settlement of dispute between Hindu widow and reversioners.—*Ikarnamah—Condition in restraint of lease.*—*Transfer of Property Act (IV of 1882), ss. 10 and 15.*—In an ikrarnamah executed by a Hindu widow on the one side, and her husband's cousins on the other, in settlement of disputes regarding her husband's estate, one of the parties should want to execute a lease, if either of the parties should want to execute and jointly or individually, "it would be executed and delivered by mutual consultation of both the parties," and if "the document be not signed and consented to by both parties, it shall be null and void." In a suit brought on the basis of the ikrarnamah to set

## CONTRACT—continued.

## 1. CONSTRUCTION OF CONTRACTS—continued.

aside a lease granted by the widow,—*Held* there is nothing in any statute law which renders such a provision inoperative; neither ss. 10 and 15 of the Transfer of Property Act (IV of 1882) nor any principle underlying them is applicable to it; it is not an unreasonable provision; there was no absence of equity in the arrangement, and effect should be given to it. *KULDIP SINGH v. KHETRANI KOER* [I. L. R., 25 Calc., 889 2 C. W. N., 463]

33. — Agreement to give refusal of purchase—Contract between purchaser from Hindu widow and reversioners.—*Breach of contract in leasing to others.*—*W* purchased an estate from a Hindu widow. On her death the reversioners brought a suit to set aside the sale and recover possession. Upon this *W* entered into an ikrar or undertaking, in which he agreed, on consideration of their desisting from the suit, that he would remain in possession as long as he pleased, and, when he had occasion to sell the property, would give them the refusal. Several years after, *W* entered into negotiations with third parties for the sale of the concern to which the property was annexed, but not being able to come to terms with them, he broke off the negotiation, and the property was subsequently leased to others. Upon this the reversioners sued to have the property conveyed to them. *Held* that *W*'s promise not to alienate the property, coupled with the promise that he would personally retain possession, amounted to an undertaking which was violated by what had taken place. Plaintiffs were therefore entitled to the conveyance sought for upon payment of the price. *RAM NATH SEN LUSHK v. RASH MOHUN MOOKERJEE* 24 W. R., 2

34. — Contract to cultivate of indigo.—By a contract for the cultivation of certain indigo defendant agreed, in consideration of certain payments, to prepare the land, sow the seeds that should be supplied, reap the crop, etc. And it was stipulated that in case the defendant should neglect to cultivate the lands, the amla of the factory might claim them and deduct the expense from the money able to the defendant. *Held* that it was not obligatory upon the plaintiff to enter upon the land to cultivate them on default by the defendant. *M v. JHOMUCK MISSE* [Marsh., 386: 2 He

35. — Right of suit to recover advances.—*Right of suit to recover advances from an indigo factory.*—*Construc-* raynt took advances from an indigo factory, tion that he was not to repay any portion of until the expiration of the agreement, and he was not to be bound to repay the mone but had the option either to pay the same continue to cultivate the land with indigo, the plants grown thereon until the wh advances were satisfied. *Held* that an advance not lie for a refund of the balance in of the plaintiff closing the factory before tion of the contract. *WATSON & Co. v. F SIRCAR* 7

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
—continued.

36. ————— Breach of contract—Non-completion of agreement of compromise as part performance of contract to sow indigo.—Where a contract for sowing indigo was entered into, and advances made in part perform-

son.—Where a contract is for delivery "free on board," and cash on delivery is provided for, payment may be enquired upon delivery of the goods at the time and place mentioned for delivery in the contract. *HEILIGES & Co v. JADVELALL SHAW*  
[I. L. R., 18 Cal., 417]

38. ————— Demurrage—Sale of cargo by

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
—continued.

OTHER PURCHASES—

per them, was not one on which the defendant could insist, but was an independent stipulation in favour of the cargo. *VOLKART BROTHERS v. NUSSERVANJI JEHANGIR KHAMBHATA*. I. L. R., 13 Bom., 392

39. ————— Sale of goods—Delivery—Delivery on Sunday—Custom as to delivery.—Where

on Sunday was not a custom, the defendant was bound to deliver the goods on that day if they had not already been delivered. *LALCHAND BALKISSAN v. KERSTEN*. I. L. R., 15 Bom., 338

40. ————— Goods ordered through commission agents—Contract of agency—Con-

Paris firm were agents for certain manufacturers of zinc. The plaintiff, a Bombay merchant, ordered out 48 casks of zinc sheets through the defendants' firm in Bombay by an indent in the following

contracted to increase his limit of price. The defen-

'Placed at your increased limit.' Subsequently the

the defendant. Held that the defendant was liable. The contract of the defendant (by incorporation of the charter party) to take delivery within the lay days, or to pay demurrage, being absolute, he could

cover the difference in price as damages on account of the defendants having failed to perform their contract for the delivery of 48 casks of zinc sheets. Held

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS***—continued.*

that neither the defendants nor their Paris firm had entered into any contract of sale on which they were liable to the plaintiff. They had only constituted themselves his agents to 'place' his order, *i.e.* to effect a contract of purchase on his account with the manufacturers of zinc—and consequently the action as brought would not lie. *Ireland v. Livingston, L. R., 5 E. & I., Ap., 395, and Cassaboglon v. Gibb, L. R., 11 Q. B. D., 797, discussed and considered.* MAHOMED ALIY EBBARIM PIRKHAN v. SCHILLER DOSOGNE & Co. . . I. L. R., 13 Bom., 470

**41. — Agreement for permission to quarry—License, Non-renewal of—Implied condition.**—By an agreement (in renewal of similar agreements for the two previous years) dated the 3rd September 1888, the defendant agreed to pay the plaintiff 'rent' for a piece of hilly ground at the rate of R329 per month for one year, during which time the defendant was to be allowed to blast stones and carry on the work of quarrying to the extent of seven crow-bars, such quarrying to be done at such places as the plaintiff had pointed out, or should choose to point out, from time to time. The rent to be paid was arrived at on a calculation of R47 per crow-bar, and was to be payable whether defendant employed the seven crow-bars or less. The defendant by the sixth clause of the agreement further undertook as follows:—"As regards the police arrangement and other expenses at the time of blasting stones, and obtaining an order or license, etc., and as to any other kind of expenses, risk, and responsibility, all these are upon me. I will duly pay you at the rate of R329 per month clear until the fixed time." The defendant was a stone contractor, and had been employed in this work of quarrying all his life, and for the previous two years on this very spot, and was well aware that blasting could not be carried on without a license from the authorities, which was revocable at any time, and required renewal annually. At the time of the agreement the defendant was in possession of a license, which expired on the 31st December 1888. After that date the authorities refused to renew the license on the ground that the quarry, where operations were being carried on, was surrounded by houses on all sides, and the defendant thereupon refused to continue the payment of the monthly rent of R329. The plaintiff accordingly brought this suit in the Small Cause Court for three months' rent at the above rate. *Held*, looking at the nature of the contract, that it must be taken to have been the intention of the parties to it that the monthly sum of R329 should only be payable so long as quarrying was permitted by the authorities, and that there was no unconditional contract to pay R329 in all events in cl. 6 of the agreement or elsewhere. *Taylor v. Caldwell, 3 B. and S., 826; 32 L. J. Q. B., 164, followed. Marguis of Bute v. Thompson, 13 M. and W., 487, and Ridgway v. Sneyd, Kay, 627, commented on and distinguished.* GOULDAS MADHAYJI v. NARSU YENKUJI. . . I. L. R., 13 Bom., 630

**42. — Personal contract—Assignment—Suit by assignee—When considerations con-**

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS***—continued.*

nected with the person with whom a contract is made form a material element of the contract, it may well be that such a contract on that ground alone is one which cannot be assigned without the promisor's consent so as to entitle the assignee to sue him on it. *Stevens v. Benning, 1 K. and J., 168, referred to.* By an agreement in writing, dated 13th December 1882, and executed in favour of *M D* and *H D*, who were the proprietors of an indigo concern, the defendant *R* agreed to sow indigo, taking the seed and tandi from *M D* and *H D*'s concern, on four bighas of land out of his holding selected, measured, and prepared by *M D* and *H D* or their amlah; and when the indigo was fit for weeding, "to weed, reweved, and turn it up to the extent necessary according to the directions of the amlah of the concern;" and when the indigo was fit for reaping, to "reap and load it on carts according to the directions of the amlah of the concern;" and "if any portion of the said indigo land" was "in the judgment of the amlah of the concern found bad," in lieu thereof to get some other land in his holding measured, and "on the land so measured in Bysack" to "sow Bhaddon crops only, which will be reaped in Bhadur." The defendant also agreed not to sow on the land measured any crop that might "cause obstacle to the cultivation of indigo," and, if he did so, "the amlah of the concern" should "be at liberty to destroy such crop," and he should not "oppose the destruction thereof, nor sue in the Courts, Civil or Criminal, for destruction of the same." As regards a breach of any condition, it was provided: "If I or my heirs depart from the conditions of this indigo engagement directly or indirectly or in any way neglect to cultivate or do not cultivate indigo, I or they shall pay to the above-named *M D* and *H D* damages for the same from my or their person and property and shall raise no plea or objection." In 1886, *M D* and *H D* assigned the entire benefit of this agreement to the plaintiff. In a suit by the plaintiff against the defendant for damages on account of his alleged failure to cultivate indigo for the plaintiff's concern in accordance with the terms of the agreement of the 13th December 1882,—*Held* that the agreement must be construed as one which had been entered into by the defendant with reference to the personal position, circumstances, and qualifications of *M D* and *H D* and their amlah; and that therefore it was not assignable so as to give the assignee a right to sue upon it in his own name as for a breach of contract. *TOOMBY v. RAMA SAHAI*

[I. L. R., 17 Calc., 116]

**43. — Agreement to pay an annual sum in consideration for abolishing a bazar, Suit upon—Subsequent sale of the land on which the bazar stood—Right to annual sum payable under the agreement.**—Plaintiff and defendants entered into an agreement by virtue of which they settled their disputes, and amongst other matters it was agreed that the plaintiff should abolish her bazar at a certain place within her zamindari, which she had established in opposition to a bazar belonging to the defendants; and it was further agreed that the

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
—continued.

herself to a continuance of the payment from the time when she made it impossible for herself to secure the fulfilment of the condition by parting with the land. **SARAT MOHINI DAS v. BRUDAN MOHAN GHOSH** 3 C. W. N., 182

44. ———— **Consideration—Compromise of a bond fide claim—Good consideration—Agree-**

31st August 1891. The plaintiff agreed to lend the

**CONTRACT—continued.****1. CONSTRUCTION OF CONTRACTS**  
—concluded.

gage-deed was duly engrossed with a stipulation for payment of interest from the 21th September 1891, and the 26th January 1892 was fixed as the day for execution. On that day, however, one of the defendant's daughters who had to execute the deed was

The lower Court held that, although the original

the defendant to agree to the plaintiff's terms, and the principle laid down in *Miles v. New Zealand Alford Estate Co.*, L. R., 32 Ch. D., 266, applied. **DADABHOY DADIBHOY BAREA v. PRSTONJI MERWANJI BARUCHA** L. L. R., 17 Bom., 467

**2. CONDITIONS PRECEDENT.**

45. ———— **Intention to execute more formal contract—Final agreement, Effect of.**—Where two parties have come to a final agreement,

[L. L. R., 3 All., 469]

46. ———— **Intention to make more formal contract—Binding effect of preliminary agreement—Agreement to adjust suit, suit for damages for breach of—**Even where formalities in the embodiment of contracts are at the option of the parties, there may be a concluded and binding contract, although there is an intention to put its terms into a more formal shape. The existence of such intention is evidence that neither party was to be

**CONTRACT—continued.****2. CONDITIONS PRECEDENT—continued.**

bound until the intended formalities have been complied with. But when a sale, so as to pass an interest, requires certain formal steps, and nothing turns upon the intention of the parties, no inference against a concluded agreement can be drawn from the non-completion of formalities which are not of their selection. The parties to a suit executed a written agreement, which was duly registered, whereby the plaintiff agreed to accept the property of the defendant, specified in the agreement, in adjustment of the said suit. The agreement was not recorded under s. 98, Act VIII of 1859. The plaintiff proceeded with his suit, obtained a decree, and sold the property mentioned in the agreement, in execution of the said decree. The sale-proceeds being insufficient to satisfy the decree, other property belonging to the defendant was attached and sold for ₹23,360. In a suit for damages brought by the defendant, —*Held* that the agreements to withdraw the previous suit and to accept the properties of the present plaintiff in discharge of the claim were concluded agreements, and that, therefore, the present plaintiff was entitled with interest to the sum which property not mentioned in the agreement fetched at the sale under the decree obtained by the defendant. **VENKATACHELASEMI CHETTIAR v. KRISTNASAWMY IYER**

[8 Mad., 1

**47. — Unseaworthiness—Breach of contract in not shipping goods—Part performance.** —In an action for breach of contract in not shipping certain goods, the defendants pleaded the unseaworthiness of the vessel. It was found that the ship was unseaworthy at the time of sailing, and that the defendants had placed part of the goods on board. *Held* that it is a condition precedent that a vessel shall be in a proper state to take the goods on board for the purpose of the particular voyage; or in such a state that she may be made fit for the voyage with the goods on board, without such a delay as to frustrate the object of the merchant in shipping his goods. *Held* that the putting part of the goods on board without knowledge of the unseaworthiness of the vessel was not a waiver of the performance of the condition. *Semle*—Unseaworthiness at the time of sailing is not a breach of the condition. **TURNER MORRISON v. RALLI MAYROJANI**

[2 B. L. R., O. C., 127

**48. — Agreement to ship after two country voyages—Contract of affreightment, Construction of.** —When a ship-owner has contracted to give a certain notice to a charterer, or to do any other act, with a view to inform the charterer when the ship will be ready, the charterer is not bound to ship his goods until the ship-owner has given him that notice or has done that act. *Held*, therefore, in an action for not shipping goods under the following contract:—"If S to arrive after completion of two country voyages for London on notice in May or June," it appearing that the plaintiffs had sent the vessel for one country voyage only, that the defendants were entitled to refuse to ship the goods. **FLEMING v. KOBELER**

[I. L. R., 4 Calc., 237; 3 C. L. R., 297

**CONTRACT—continued.****2. CONDITIONS PRECEDENT—continued.**

Affirming decision in S. C. 2 C. L. R., 169

**49. — Stipulation not to sell to others same description of goods—Suit for breach of contract.** —The plaintiffs on the 4th August 1881 entered into a contract with the defendant for the sale to the latter of a quantity of goods of a certain description "to be delivered up to the 31st December 1881." The plaintiffs stipulated that they would make no sales of goods of the same description to others before the 1st December 1881. The goods arrived in Calcutta between the 4th and 24th November 1881. On the 15th August the plaintiffs entered into other contracts with other buyers for the sale of the same description of goods at a lower price than that at which they had sold to the defendant, these contracts being on terms that the goods were not to arrive in Calcutta until after the 31st December 1881. In a suit to recover damages for breach of the contract by the defendant in not accepting the goods, —*Held* that the stipulation not to sell the goods to others itself amounted to a condition precedent to the defendant's obligation to accept the goods, and therefore the plaintiffs were not entitled to damages. **CARLISLES NEPHEWS & Co. v. RICKNAUTH BUCKTEARMULL**

[I. L. R., 8 Calc., 809

**50. — Condition to abide by interested referee—Maxim "No man can be judge in his own cause."** —A entered into a contract to supply Government with timber of a certain quality to be approved by K, the superintendent of the gun carriage factory, for which the timber was required, before acceptance. K *bona fide* tested and rejected the timber tendered. *Held* that it was not open to A to question the reasonableness of K's refusal to accept the timber or to show that the timber was of the quality stipulated for. *Per INNES, J.* —The rule of civil law that a condition the happening of which is at the will of the party making it is null and void, as being destructive of the contract, is not a rule of the Indian Law of Contracts. *Per MUTTUSAMI AYYAR, J.* —The maxim that no man shall be a judge in his own cause does not apply where one party to a contract agrees to abide by the judgment of the other, or where both parties agree to abide by the decision of an interested third party. **SECRETARY OF STATE FOR INDIA v. ARATHOON**

[I. L. R., 5 Mad., 173

**51. — Guarantee that casks for shipment are fit for purposes for which they are employed.** —If a party enters into a contract to provide and ship molasses at the risk and expense of the seller, he must be taken to guarantee that the casks are proper casks, and properly coppered for any voyage from Calcutta for which such goods may be reasonably ordered by the plaintiffs to be shipped. **PALMER v. COHEN**

1 Hyde, 123

**52. — Comparison of accounts of collection—Contract to be liable for outstanding balance.** —The defendant promised that in the event of his obtaining possession of certain land he would be responsible for all balances ascertained to

**CONTRACT—continued.****2. CONDITIONS PRECEDENT—continued.**

was also shown that the accounts had been compared, or an opportunity of comparing them had been afforded to the defendant. **LUCKHY DASS MURTOOFE v. JOGESHUR MOOKERJEE**

[Marsh, 563; 2 Hay, 607]

**53. ——— Payment for removal of ob-**

*T* being at liberty to take over the materials at a valuation." In a suit by the purchaser from one of the parties to the partition suit against *T*, charging that he obstructed the pathway, etc., such obstruction being the not removing the privy.—*Held* (reversing the decision of the Court below) that the payment to *T* of the price of the removal was a condition precedent to the obligation on *T* to remove the privy. **TARRUCK NAUTH GHOSH v. KALSH PERSHAD KHETTRY** . . . 2 Ind. Jur., N. S., 210

gilly seed on being put in possession of the necessary funds. In a suit for damages by reason of non-delivery.—*Held* that the plaintiffs, before they could recover must show that they paid or tendered the

**v. ATMAKURI ADINABAYANA CHETTI**

[3 Mad., 193]

**55. ——— Suit on non-deliv-****CONTRACT—continued.****2. CONDITIONS PRECEDENT—continued.**

repaid to *S* the balance due to him of the money advanced. In a suit by *S* against *V* for damages for non-delivery of 2,000 bags.—*Held* that *V* was not excused from performance of his promise by the failure of *S* to pay the balance due for the bags delivered, and that *S* was entitled to recover the difference between the market and the contract price on the day the contract was broken by *V*. **SIMSON v. VIRATTA** . . . I. L. R., 8 Mad., 359

**56. ——— Averment of readiness and**

mined in each case by ascertaining the intention of the parties from the language they have used. **YOUNG v. MANGALAPILLY RAMAIA** . . . 3 Mad., 125

**57. ——— Independent covenants.**—Where defendants sub-rented an abkari farm for one year, from 31st July 1894, under a

—*Held* that the covenants were independent, one not being a condition precedent to the other, and that therefore the non-performance by the plaintiff of the covenant to furnish accounts was not sufficient to

**58. ——— Deposit with Bank.**—Receipt given for loan—Statement in receipt that loan was repayable on production of receipt—Non-production.—The plaintiff deposited the sum

**CONTRACT—continued.****2. CONDITIONS PRECEDENT—concluded.**

of R2,454-7-7 with the defendants' bank in Bombay as a loan for a year, to bear interest at the rate of four-and-a-half per cent. He was given a receipt for the said sum, which stated that the money was "repayable here on production of this receipt." *Held* that the receipt contained the terms of the contract of loan between the plaintiff and the defendants, and that the production of the receipt was a condition precedent to the repayment of the money. **DIAS v. HONGKONG AND SHANGHAI BANKING CORPORATION** . . . **I. L. R., 14 Bom., 498**

**3. PRIVACY OF CONTRACT.**

**59. ——— Privity. Want of—Goods carried by two companies.**—Plaintiff delivered a certain quantity of jute to the India General Steam Navigation Company at Serajgunge, for delivery at the Eastern Bengal Railway Company's station at Sealdah, and it was arranged by the bill of lading (the contract in the case) that the freight from Serajgunge to Sealdah should be payable to the Eastern Bengal Railway Company at Sealdah, and it was so paid upon the delivery of the goods. A portion of the jute was not delivered, and this suit having been brought against the Eastern Bengal Railway Company for the value thereof, the Small Cause Court Judge was disposed to dismiss the suit without further enquiry, on the ground of want of privity between plaintiff and defendant. *Held* that it was premature for the Judge to say that the suit could not lie against defendant without proceeding with the further investigation of the case, and that, although plaintiff might have a remedy against the India General Steam Navigation Company, it by no means followed that he had none against the defendant company also. **GUJENDRO MOHUN SHAIKH v. EASTERN BENGAL RAILWAY COMPANY** . . . **17 W. R., 240**

*See S. C., after remand* . . . **18 W. R., 145**  
where it was held that the want of privity of contract was an inference the Judge might legally draw from the facts.

**60. ——— Purchase in one name—Agreement to hold on joint account.**—In an action by *A* against *B* for damages for non-acceptance of shares by *B*, alleged to have been bought by him of *A*, it was shown that the shares were bought by *C*, who, after the purchase, entered into an arrangement with *B* that the purchase should be on their (*B* and *C*'s) joint account. *Held* there was no contract between *A* and *B*, and the suit was dismissed. **BARROW v. STEWART** . . . **1 Ind. Jur., N. S., 228**

**4. REPUDIATION OF CONTRACT.**

**61. ——— Contract entered into by mistake—Power to replace parties in their original positions.**—He who would disaffirm a contract entered into by mistake must do so within a reasonable time, and will not be allowed to do so unless both parties can be replaced in their original position. **MUHAMMAD MOHIDIN v. OTTAYAL UMMACK** . . . **1 Mad., 390**

**CONTRACT—continued.****4. REPUDIATION OF CONTRACT—concluded.**

**62. ——— Delay—Right to have contract set aside.**—One who repudiates a contract and asks to have it treated as void is bound to take steps for this purpose at the earliest moment without avoidable delay. Although one of the parties to a contract was induced to enter into it by fraud of the other, he is nevertheless bound by the contract until he repudiates it, and this he cannot do when he has allowed that to occur on the footing, or in view, of the contract, which renders it impossible that the parties should be put in *status quo*. In such circumstances his proper remedy is by an action for damages. **TALEB HOSSEIN v. AMBER BAKSH** . . . **22 W. R., 529**

**5. BOUGHT AND SOLD NOTES.**

**63. ——— Evidence of contract—Material variation.**—*C. & Co.* and *H & Co.* were merchants at Calcutta. *H & Co.* sold to *C & Co.* a large quantity of indigo through the medium of a broker, who drew up a sold note addressed to *H & Co.* and submitted it to *H* for his approval, when *H* having objected to a particular word remaining, the broker took the sold note to *C* and informed him of *H*'s objection. *C* struck his pen through the word objected to by *H*, placing his initials over that emsure, and returned it to the broker, who thereupon delivered it, so altered, to *H & Co.* The broker delivered to *C & Co.* on the following day a bought note, which differed in certain material terms from the sold note. In an action brought by *H & Co.* against *C & Co.* for non-performance of the contract contained in the sold note, the Supreme Court at Calcutta was of opinion that the sold note alone formed the contract, and found for the plaintiffs. *Held* by the Privy Council on appeal (reversing that decision) that the transaction was one of bought and sold notes, and that the circumstances attending *C*'s alteration of the sold note, and affixing his initials, were not sufficient to make that note alone a binding contract; and that there being a material variation in the terms of the bought note with the sold note, they together did not constitute a binding contract. **COWIE v. REMFRY** . . . **3 Moore's I. A., 448**

**64. ——— Broker's bought note.**—A broker's bought note is not of itself evidence of a contract. It is signed by one only of the parties. To complete the evidence of the contract, there should also be a sold note signed by the other party showing that the buyer had duly accepted his supposed obligations. **MACKINNON v. SHIBCHUNDRA SEAL**  
[Bourco, O. C., 354]

**65. ——— Material variation in notes.**—The bought note in a contract for the purchase and sale of silk "chussam" was as follows:—"Bought by your order, and for your account, the following silk chussam, of Messrs. Jardine, Skinner & Co., as much as they may supply of November and March bund," etc. The sold note was in similar terms, but stated that as much "as you can supply" was sold. *Held* that the bought and sold

**CONTRACT—continued.****3. BOUGHT AND SOLD NOTES—concluded.**

notes did not constitute a contract binding Messrs. Jardine, Skinner & Co. to supply chussum of either the November or March bond at a loss. *TAMVACO v. SKINNER* 3 Ind. Jur., N. S., 221

66. ———— *Sold note differ-*

sold note. This was taken by the broker to the defendant firm, of which a member, before signing

of paddy not answering this description. For this the defendant firm made a part payment at a reduced rate. Of the rest they refused to take delivery, when tendered, because it was not of the quality contracted for. *Held* that the plaintiff's suit for the balance of the price of the part delivered, and for the rest, nor their ent to the re was no

contract entered into to buy. If, on the contrary, the plaintiffs had assented to that term, then the paddy was not of the quality required by the contract. *AN SHAIN SHOOK v. MOOTRIA CHERRY*

[I. L. R., 27 Calc., 403

L. R., 27 I. A., 30

4 C. W. N., 453

**6. CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES.**

68. ———— *Contract to deliver Government paper—Wagering—Contract Act XXI of 1848*—A Court will require strict evidence that a contract, *per se* legal, is intended to operate illegally. It is not necessary, in order to support a

**CONTRACT—continued.****G. CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES—continued.**

69. ———— *Suit for non-acceptance of Government paper—Contract Act, s. 30—Tender—Readiness and willingness—Action for non-acceptance*—Where a contract for the sale and purchase of Government paper provides for the delivery of the paper on a subsequent date, it is not necessary, in order to sustain an action against the buyer for non-acceptance on the due date, that the

70. ———— *Sale of shares for future delivery—Readiness and willingness*—In a suit

to recover, unless he proved performance of, or an

**CONTRACT—continued.****6. CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES—continued.**

him to become the legal owner of them. **PARBHU-DAS PRANJIVANDAS v. BAMEL BHAGRATH**  
[3 Bom., O. C., 89]

**73. —** *Covenants for transfer and payment—Readiness and willingness.*—*A* contracts with *B* to sell him three numbered shares to be transferred upon payment of the price on or before a certain day. *Held* that the covenants to transfer and to pay the price are concurrent; and that the ability of *A* to constitute *B* the legal owner of the shares contracted to be sold, together with willingness to do so, amounts to "readiness and willingness" on the part of *A* to fulfil his part of the contract. **IMPERIAL BANKING AND TRADING COMPANY v. ATMARAM MADHAVJI**  
[2 Bom., 260; 2nd Ed., 248]

**74. —** *Performance of contract—Readiness and willingness.*—Plaintiffs contracted with defendant to sell him 250 shares in the Alliance Financial Corporation, and 10 shares in the Mazagon Reclamation Company, delivery to be made at defendant's option within six months from date of contract, and cash to be paid on due delivery to defendant or his order. On the last day for delivery plaintiff produced allotment receipt papers, all bearing date prior to the date of the contract, for the numbered shares contracted to be sold in both companies. The Alliance Financial papers were endorsed by the original allottees; but neither transfers nor applications for transfers signed by the original allottees were offered, nor had any such been executed, although the Corporation had opened transfer-books long before. Of the Mazagon Reclamation receipts, nine were endorsed by the allottees, one had no endorsement, and over the allottees of it and of another receipt plaintiffs had no power to enforce delivery. The Mazagon Reclamation Company had not opened transfer-books until long after the last day of delivery. On the issue whether plaintiffs were ready and willing to deliver the shares, *Held*, as to the Alliance Financial shares, that plaintiffs, not being in a position to have constituted defendant as owner thereof, must fail in their suit in respect to them; and as to the Mazagon Reclamation shares that, although plaintiffs had done all that they were required to do by the usage of the market to transfer the interest in eight of them, yet the contract being an entire one, they must fail in respect to them also. If a party, bound to do an act upon request, is ready to do it when required, he will have performed his part of the contract, although he might have happened not to have been ready had he been called upon at some anterior period. **JIVARAJ MEGJI v. POULTON** . . . 2 Bom., 267; 2nd Ed., 253

**75. —** *Readiness and willingness.*—Plaintiffs contracted with defendants to sell them two hundred shares, on payment of the price by defendants on or before the 1st of July 1865. Plaintiffs were in possession of the shares at the time of the contract, and continued so until they sold them after default made by defendants, and

**CONTRACT—continued.****6. CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES—concluded.**

they were registered as holders of the shares on the 1st July, when the share certificates with transfer deeds in blank were tendered to defendants, who refused to accept them or to pay the purchase-money. On the issue whether plaintiffs were ready and willing to perform the contract on their part, *Held* that the acts necessary to be done on the 1st July were concurrent; and that plaintiffs, being able and willing on that day to make a valid transfer, if defendants had been ready to pay the price, were not bound to take any further steps until the purchase-money was paid by defendants. **IMPERIAL BANKING AND TRADING COMPANY v. PRANJIVANDAS HARJIVANDAS** . . . 2 Bom., 272; 2nd Ed., 258

**76. —** *Fraud—Contracts made with illegal object.*—In a suit brought by a company against a former director of the company for the price of shares bargained and sold to the defendant, but not accepted by him, and for money found to be due on an account stated, *Held* that the plaintiffs could not recover, *1st*,—because no shares were really bargained and sold, as the plaint alleged; and what was done was, according to the intention and understanding of the parties, a mere form gone through, for the purpose of deceiving the public, and making it appear that 10,000 shares had been sold at a certain price; and *secondly*, because the contracts were made for the purpose of defrauding other persons. **EASTERN FINANCIAL ASSOCIATION v. PESTONJI CURSETJI**  
[3 Bom., O. C., 9]

**7. WAGERING CONTRACTS.**

**77. —** *Wagers on price of opium at opium sales—Stat. 8 & 9 Vic., c. 109.*—By the common law of England, in force in India, an action may be maintained on a wager, although the parties had no previous interest in the subject-matter on which it is laid, if such wager be not against the interest or feelings of third parties, does not lead to indecent evidence, and is not contrary to public policy. The mere circumstance that a wager concerns the public revenue, or creates a temptation to do a wrong, will not render it illegal. A wager upon the average price which opium should fetch at the next Government sale at Calcutta, the plaintiffs having to pay the defendants the difference between such price and a sum named per chest, and the defendants having to pay the plaintiffs the difference between such price and the sum named, if the price should be above that sum, is not an illegal wager or contrary to public policy, though the proceeds of the opium sold at Calcutta formed part of the Government revenue. So held reversing the judgment of the Court at Bombay. The Stat. 8 & 9 Vic., c. 109, amending the law relating to games and wagers does not extend to India. **RANJOLIL THACKOORSEEDAS v. SOOJANMULL DHONDUMULL**  
[4 Moore's I. A., 339]

## CONTRACT—continued.

## 7. WAGERING CONTRACTS—continued.

## 7B. ————— Conspiracy—

... was no ... public, as he had a right, in common with all the world, to bid at such sale, and was not precluded from recovering the amount of such wager contracts by the fact that such bidding tended to bring about the event by which the wager was to be won. *Held*, also, that employing agents at such sale (all of whom were cognizant that the object was to enhance the price of opium sold) to bid, there being no *crimen falsi* committed, did not constitute an illegal conspiracy. The wager observed offence of respect to the rule of the convention between Great Britain and France, the French Government had a right to demand, out of quantities sold at the Government sale, 300 chests of opium at the average rate of sale. *Held* that no fraud on the vendors was committed by inducing the French Consul to exercise that option in favour of the plaintiffs. After the contracts were entered into,

through ...  
RAM LALL THACKOORSEY DASS

[5 Moore's I. A., 109]

... future Government sale held legal, and an action thereon maintained. RUGHOONATH SARAI CHOTAYLLO v. MANICKCHAND 6 Moore's I. A., 251

provisions of Act XXI of 1818 nor by Hindu law is the agent of a wagerer precluded from maintaining

## CONTRACT—continued.

## 7. WAGERING CONTRACTS—continued.

## 8L. ————— Transaction in nature of

a bond given by one of the subscribers who had received one month's subscriptions, to secure the payment of his subsequent monthly instalments. KAMAKSHI ACHARY v. APPAYU PILLAI

[1 Mad., 448]

## 82. ————— Companies' Act VI of

... sutta, or wagering contracts, no suit would lie in respect of them. The defendant was not a dealer in produce, and entered into these contracts as a speculation. His *modus operandi* was, when he entered into a contract of purchase or sale, to sell or purchase again the same quantity, in one or more contracts, either with the original vendor, or some one else.

**CONTRACT—continued.****7. WAGERING CONTRACTS—continued.**

to secure the profit, or ascertain the loss, before the "Vayda" day. The contracts were in the usual mercantile form, and were entered into through brokers, the principals not being brought into contract with each other until after the contract was made. S's procedure was also similar. S was a mukadam and guarantee broker to the plaintiffs; and he, too, entered into these contracts as a speculation, intending to settle them before the "Vayda" day, but prepared, if forced to do so, to perform them in kind. Held that the contracts sued on were not shown to have been agreements by way of wager. It was a highly speculative mode of doing business, but there is no law against speculation, as there is against gambling. Contracts are not wagering contracts, unless it be the intention of both contracting parties, at the time of entering into the contracts, under no circumstances to call for, or give delivery, from, or to, each other. In this case, even the defendant—seeing that he did not know with whom contracts might be made on his behalf by his brokers—must have contemplated the possibility of being called on to give, or take, delivery. *TOD v. LAKHMIDAS PURSHOTARIDAS* . . . **I. L. R., 16 Bom., 441**

**84. ——— Contract Act (IX of 1872), s. 30—Bombay Act III of 1865—Broker, Suit by, for differences paid in respect of contracts made by him for defendant.—**Act III of 1865 (Bombay) is still in force, and has not been repealed by the Contract Act. *Dayabhi v. Lakhmichand, I. L. R., 9 Bom., 358*, followed. As between the original parties, a promissory note which has for its consideration a debt due on a wagering contract is void and, therefore, not binding in the hands of the original payee. *Oulds v. Harrison, 10 Eech., 572*, distinguished. In order to constitute a wagering contract, neither party should intend to perform the contract itself, but only to pay the differences. In order to ascertain the real intentions of the parties, the Court must look at all the surrounding circumstances, and will even go behind a written provision of the contract to judge for itself whether such provision was inserted merely for the purpose of concealing the real nature of the transaction. *Tod v. Lakhmidas, I. L. R., 16 Bom., 441*, *Eshoor v. Venkatasubba, I. L. R., 17 Mad., 480*, and *University Stock Exchange v. Strachan, L. R., 1896, 4p. Ca., 166*, referred to. The defendant employed the plaintiff from time to time as a broker to purchase Government paper and shares of the Manekji Petit Spinning and Weaving Company. The plaintiff did so to the extent of many lakhs of rupees. No delivery was given or taken, but the differences only between the contract price and the price at the date of settlement (the Vaida day in each month) were paid or received by the defendant. The plaintiff now sued the defendant on two promissory notes given to the plaintiff by the defendant in respect of differences due by him in respect of the contracts thus made on his behalf. The defendant pleaded that he was not liable, the contracts being wagering contracts. It appeared from the evidence that the practice in the bazar (which was followed in this case) was for brokers to enter into such contracts in their own name,

**CONTRACT—continued.****7. WAGERING CONTRACTS—continued.**

and not to disclose the principals. The brokers became liable to give or take delivery. The defendant stated that he did not know the persons to whom the plaintiff sold or from whom he purchased. - *Held* (1) on the evidence that the defendant authorized the plaintiff as his broker to contract on his behalf, but in the plaintiff's own name, on the understanding that the defendant would indemnify the plaintiff and pay him brokerage in respect of the transactions entered into by him on behalf or for benefit of defendant. Accordingly the plaintiff did enter into contracts in his own name with third parties. The defendant was not directly a party to them, nor did his name appear anywhere in the contracts themselves. (2) That the plaintiff was entitled to recover from the defendant the losses which he paid to third parties in respect of the contracts made by the plaintiff on the defendant's behalf, and that such losses were a valid consideration *pro tanto* for the notes sued upon. No doubt, so far as the defendant was concerned, all the contracts were merely wagering or gambling transactions, but there was no evidence to show that, so far as the third parties were concerned, they were otherwise than genuine. The plaintiff was not, as between himself and the defendant, the principal in the transactions. He was merely the broker with a personal liability to the third parties. There was nothing to show that as between himself and the third parties the contracts were not perfectly genuine. The non-delivery and payment of differences on hand was a matter of subsequent arrangement. If he was liable to be called upon to receive or make actual delivery, then, in the absence of any express agreement to the contrary, a similar liability rested on the defendant himself, whatever might have been the defendant's own intentions. As the contracts between the plaintiff and the third parties were not void, so the contracts between the defendant and the plaintiff to indemnify the plaintiff in respect of these contracts were also valid. The mere fact that the plaintiff, knowing the defendant's position and means, must have inferred that he did not mean or intend to perform the contracts in specie, was not, *per se*, without more, sufficient to render the contracts invalid and not binding on the defendant. The inference of the plaintiff would not be, *per se*, a binding agreement. *PEROSHIA CURSETJI v. MANEKJI DOSSABHOY* **I. L. R., 22 Bom., 899**

**85. ——— Contracts to buy and sell Government promissory notes—Contract Act (IX of 1872), s. 30—Onus of proof.—**A, on various occasions, agreed to sell to B (a soukar) certain amounts of Government of India promissory notes, amounting in all to 4½ lakhs, for delivery on the following 30th of November. On the 28th of November, B agreed to sell, and A to buy, 4½ lakhs worth of the notes for delivery on the 30th November. A did not perform his contract to sell, and B sued him for damages, amounting to ₹7,109-6-0, being the difference between the price at which he (B) had agreed to buy, and the price at which he had agreed to sell. B denied that the transactions were bond

## CONTRACT—continued.

## 7. WAGERING CONTRACTS—continued.

of entering into the contracts to call for or give delivery from or to each other (see *Tod v. Lakshmidas Purshotamdas*, I. L. R., 16 Bom., 441, and *Grisewood v. Blane*, 11 C. B., 526), and that no such common intention having been proved, the contract was a valid one. *ESNOOR DOSS v. VENKATASUBBA RAU* I. L. R., 17 Mad., 480

a wagering contract, but a valid one. *VENKATACHELLALA CHETTI v. VENKATA SUBBA RAU*  
[I. L. R., 17 Mad., 496]

## CONTRACT—continued.

## 7. WAGERING CONTRACTS—continued.

*ALAMAI v. POSITIVE GOVERNMENT SECURITY LIFE ASSURANCE CO.* I. L. R., 23 Bom., 191

88. — *Sutta transactions*—*Suit to recover brokerage in respect of sutta transactions*—*Bombay Act III of 1865*.—Plaintiff was employed by defendants to enter into cotton transactions on their behalf at Dholera. The contracts for the sale and purchase of cotton were made on terms contained in a printed form which incorporated the rules framed by the cotton merchants of Dholera. These rules expressly provided for the delivery of cotton in every case and forbade all gambling in differences. In spite of these rules, and the express terms of the contracts, the course of dealings was such that none of the contracts were ever completed except by payment of differences between the contract price and the market price in Bombay on the *Varda* day. The plaintiff entered into numerous transactions of this kind on the defendants' behalf. He now sued to recover from them the balance due to

*DUSHA RAMANATHA v. SUBBARAO RAMANATHA*

[I. L. R., 24 Bom., 227]

*BANERJEE*

1 Ind. Jur., O. S., 129

But see *TRIBHUBANDAS JAGGIVANDAS v. MOTILAL RAMDAS* 1 Bom., 34

**CONTRACT—continued.****7. WAGERING CONTRACTS—continued.**

the plaintiff contracted to purchase from the defendant the right to receive the dividend on 50 shares of the Empress Mill at R37 per share, the plaintiff being under an impression that the dividend was to be declared on some subsequent day. The plaintiff deposited R100 with the defendant as part payment of the purchase-money. Subsequently it was ascertained that the dividend had been already declared on 17th January 1883 (*i.e.*, four days before the contract) at R25. The plaintiff thereupon sued the defendant to have the contract declared cancelled, and sought to recover the deposit of R100, with interest. The Judge of the Court of Small Causes at Brouh, being of opinion that the contract was in its nature a *sutta*, or wagering contract, rejected the plaintiff's claim. The plaintiff applied to the High Court, under its extraordinary jurisdiction, to set aside the lower Court's decision. *Held* that, in the first instance, the plaintiff, as framed, not disclosing any cause of action, ought to have been returned for amendment. It should either have alleged a mistake common to both parties to the contract or should have contained an allegation of fraud, on the defendant's part, inducing the plaintiff to enter into the agreement. The mere circumstance that the contract was "caused by one of the parties to it being under a mistake as to a matter of fact" would not, under s. 22 of the Contract Act (IX of 1872), have made the contract voidable. *Held*, also, that, if the contract was really a wager, the deposit could not be recovered under s. 65 of the Contract Act, as its nature must from the first have been known to the parties. To an agreement, so known to be void, s. 65 does not apply. If the contract was in the intention of both parties a wager, the suit would be barred by s. 1 of Bombay Act III of 1865, which, though it formed a part of Act XXI of 1848, which is repealed by the Contract Act, is not, being a special Act applicable to the Bombay Presidency, itself repealed. It must be read with s. 30 of the Contract Act. *Held*, also, that to constitute a wager, the transaction between the parties must "wholly depend on the risk in contemplation," and "neither party must look to anything but the payment of money on the determination of an uncertainty." But if one of the parties has "the event in his own hands," the transaction is not a wager. If the plaintiff's real contention was that defendant was aware of a declaration of dividends at R25 per share, and by keeping plaintiff in ignorance of the facts induced him to enter into a wagering agreement for payment of differences at a contract rate of R37 per share, then to a suit for the recovery of the deposit made to the defendant with reference to such an agreement, Bombay Act III of 1885 has no application. Wagering contracts are not illegal. They are simply destitute of legal effect. If fraud was practised on plaintiff, the maxim *potior est conditio defendentis* would not apply. **DADA-BHAI TRIBHOBANDAS v. LAKSHMOHANT PANACHAND**  
[I. L. R., 9 Bom., 358]

**91. ——— Illegal consideration in suit for money paid—Contract Act, s. 23 and s. 30—Betting on a horse race—Entrance money for horse**

**CONTRACT—continued.****7. WAGERING CONTRACTS—concluded.**

*race—Agreement by way of wager.*—Where a person who had lost a bet on a horse race requested another to pay the amount of such bet, agreeing to repay him, and the latter paid such amount,—*Held* that the money so paid was recoverable from the person for whom it was paid, the consideration for the agreement not being unlawful within the meaning of s. 23 of the Contract Act, 1872, and the agreement not being one by way of wager, within the meaning of s. 30 of the same Act. *Knight v. Fitch*, 21 L. J., C. P., 122, *Knight v. Cambers*, 21 L. J., C. P., 121, *Jessopp v. Lutwyche*, 10 Exch., 614, and *Beeston v. Beeston*, L. R., 1 Ex. D., 13, referred to. **PRINGLE v. JAPAR KIAN**  
I. L. R., 5 All., 443

**92. ——— Contract Act, IX of 1872, s. 30—Loan to facilitate gambling—Loan to aid in paying off gambling debt—Held** that the fact that the object with which the plaintiff lent money to the defendant was to enable him to pay off a gambling debt did not taint the transaction with immorality so as to disentitle the plaintiff to recover. **BENI MADHO DAS v. KAUNSAL KISHOR DHUSAR**  
[I. L. R., 22 All., 452]

**8. ALTERATION OF CONTRACTS.****(a) ALTERATION BY PARTY.**

**93. ——— Addition of words to contract—Sale of goods.**—*R G & Co.* entered into a contract to sell certain goods to *A S, N S*, both Calcutta firms. The contract, which was in a printed English form, was taken on the 18th December 1868 by one *M*, on behalf of the firm of *R G & Co.*, to obtain the signature of the vendee's firm. It was signed on their behalf by *A S*. Neither *M* nor *A S* understood English, and no explanation was given of the terms of the contract to *A S* at the time he signed it, but there had been negotiations between *M* and *A S* as to these goods prior to the time when *A S*'s signature was obtained. It did not appear that the goods had been identified in any way by the purchasers, who had merely seen a sample. After his signature, *A S* wrote in Nagri, "Goods fresh grenades five cases at two annas and three pie per yard." *A S, N S*, afterwards, on the 9th February 1869, paid R1,000 as earnest money, which was accepted by *R G & Co.*, who then allowed further time for taking delivery of the goods, which, however, *A S, N S*, finding some of the goods were stained, declined to do. *R G & Co.* thereupon brought an action for breach of contract in not taking delivery, and a cross-suit was brought by *A S, N S*, to recover the R1,000 paid as earnest money. *Held* that the words "fresh goods" after the signature of *A S* constituted part of the contract into which the parties entered, and by which they were bound. **MADHAN CHANDRA RUDAR v. AMRIT SING NARYAN SING**  
[5 B. L. R., 111]

**ROBERTSON GLADSTONE & Co. v. KASTURY MULL**  
[3 B. L. R., O. C., 103, at p. 103]

*See AN SHAIN SHOE v. MOOTHIA CHETTY*  
[I. L. R., 27 Calc., 403]  
where an alteration in a contract in English was made

**CONTRACT—continued****8. ALTERATION OF CONTRACTS—continued.**

in the Chinese language, which was not understood by the broker or the other party to the contract, and therefore was held not to have been agreed to.

many erasures, the plaintiffs on the same day sent a fair copy to the defendant for signature, but the defendant wrote repudiating the alleged contract, and refusing to sign the document. *Held* (confirming the decision of the Court below) there was no binding contract between the parties. The signature of the defendant put to the document on 17th May was not a sufficient signature by the party to be charged, so as to satisfy the statute of frauds. **CHARBLOU v. SHIRCORE** . . . **8 B. L. R., 305**

**v. KANTO NATH SHAW** . . . **I. L. R., 3 Cal., 220**

**99. — Filling up document after signature—Execution of document—Sufficiency of signature.**—Where a document, although blank

sent, been already drafted, the signature to the fair copy, although attached before the words were filled in, is just as binding as if it was attached to the document after the words had been written down in it. **AHMED HOSSEIN v. LALLA RAM SURUN**

**[1 W. R., 218]**

**CONTRACT—continued.****8. ALTERATION OF CONTRACTS—continued.**

by way of compensation for special damage, on the part of the plaintiff. **TIKANDAS JAYAHIRIDAS v. GANGA KUM MATHURADAS** . . . **11 Bom., 203.**

for recovery from the defendants personally, and in the second suit for recovery from the defendants and

the material part, viz., the date fixed for payment. *Held* that the documents might be used as evidence of the debt between the parties and also of the creation of the charge upon the property hypothecated. It lies upon the parties who seek to enforce an altered instrument to show the circumstances under which the alteration took place. **RAMASAMY KON v. BHAVANNI AYYAR. RAMASAMY KON v. SINTHIWAIYAN alias CRINNA BHAVANI AYYAR** . . . **3 Mad., 247**

**[I. L. R., 12 Mad., 239]**

**v. RAMACHANDRA** . . . **I. L. R., 7 Mad., 302**

**MOTILALCHAND MANICKJEE**

**[5 W. R., P. C., 53; 1 Moore's I. A., 420]**

( 1631 )

DIGEST OF CASES.

CONTRACT—continued.

8. ALTERATION OF CONTRACTS—continued.

102. — *Bond Forgery—Fraud.*—A person who had a bond executed in his favour by one of three brothers forged the signatures of the other two brothers to the bond, and brought a suit upon it in its altered form against the three brothers. The forgery having been established, the Court of first instance dismissed the suit as against all the three defendants, and this decision was affirmed on appeal. Or second appeal to the High Court.—*Held* that the decision was correct, as a material alteration in a bond is, if fraudulently made, sufficient to render the bond void. A party who has the custody of an instrument made for his benefit is bound to preserve it in its original state, and any material alteration of it will vitiate the instrument. Where a person brings a suit upon a document which, when produced in evidence, is found to have been fraudulently altered to the knowledge of the plaintiff, no Court ought to allow an amendment to enable him to succeed upon it in its original state. *GOGUN CHUNDER GHOSH v. DHURON-DHUR MUNDUL*  
[I. L. R., 7 Calc., 618 : 9 C. L. R., 257]

103. — *Material alteration—Alteration of rate of interest.*—An alteration which vitiates an instrument must be such as to cause the instrument on the face of it to operate differently from the original instrument. The alteration of the rate of interest in one of the clauses of a promissory note held to be a material alteration vitiating the note, although the clause so altered was a penal clause to which, even if unaltered, the Court would not give effect. *ODEY-CHAND BOODAJI v. BHASKAR JAGANNATH*  
[I. L. R., 6 Bom., 371]

See *ANANDJI VISEAM v. NARIAD SPINNING AND WEAVING COMPANY*  
[I. L. R., 1 Bom., 320]

104. — *Consent of parties—Material alteration of document.*—A material alteration made after execution does not vitiate a deed, if it be made with the consent of all the parties. *ISAC MAHOMED v. BAI FATMA*  
[I. L. R., 10 Bom., 487]

105. — *Fraudulent alteration of document, Effect of—English law how far applicable in mofussil.*—In a suit brought to recover Rs 15, principal and interest due according to the terms of a registered mortgage bond, it was found that the plaintiff had fraudulently altered the terms of the bond prior to registration (1) by inserting a condition making the whole sum payable upon default of payment of any instalment, and (2) by doubling the rate of interest. The defendant admitted in his written statement that he had received a certain portion of the consideration for the bond from the plaintiff. At the trial the plaintiff claimed to amend the plaint and recover the first instalment according to the terms of the bond as executed by defendant. *Held* by the Full Bench (KEENAN, OFFG. C.J., MUTTUSAMI AYYAR, HUTCHINS, PARKER, and HANDLEY, J.J.) that the suit must be dismissed. *Per KEENAN and MUTTUSAMI AYYAR, J.J.*—The decision in *Ramasamy Kon's case*, 3 Mad., 247, is in

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CONTRACT—continued.

8. ALTERATION OF CONTRACTS—continued.

conformity with the law of England. *Per KEENAN, HUTCHINS, PARKER, and HANDLEY, J.J.*—The rule in *Master v. Miller* is in consonance with equity and good conscience and applicable to the mofussil. *Per MUTTUSAMI AYYAR, J.*—That rule is more penal than equitable, but, having been adopted by the Courts since 1866, must be followed. *CHRISTACHARLU v. KARIBASAYYA*  
[I. L. R., 9 Mad., 399]

106. — *Effect of alteration as vitiating material part—Vesting of interest by execution of mortgage instrument.*—By an agreement entered into between plaintiff and defendants' predecessors in title plaintiff undertook to sell and convey certain lands to the purchasers and to allow half the purchase money to remain at interest for three years on security of the lands sold. Plaintiff's mother was alive, as also his son, who was then a minor. In order to protect the purchasers from any claims by the said mother or son as against the lands so agreed to be sold, plaintiff further agreed to give the purchasers a bond indemnifying them from any such or other claims. Plaintiff, in pursuance of the said agreement, duly executed a conveyance in respect of claims: gave the purchasers an indemnity in respect of claims by his mother as against the lands. The purchasers executed a mortgage over the lands in plaintiff's favour, in which the indemnity to be furnished by plaintiff was at first referred to in general terms, but the document concluded with the words, "a security should be furnished for this sum on account of the minor only." The balance of purchase money so secured not having been paid, plaintiff brought a suit for the sale of the mortgaged land, and before doing so tendered an indemnity protecting the defendants against any claims that might be made as against the lands by the plaintiff's said minor son. It was found that the mortgage instrument after its execution had been added to the mortgage document, and had been added to the mortgage document, and was a material one and vitiating the document, that the suit, being based on the altered document, must fail, and that the tender of a general guarantee as originally agreed upon was a condition precedent to the plaintiff's right to sue.—*Held per COLLINS, C.J., and BENSON, J.* (in an order calling for a finding as to whether the alteration had been made with the mortgagor's consent) that the mortgage instrument having provided for security to be given by plaintiff in general terms, the addition of the words "for the minor only" restricted the liability of the property to be given by plaintiff as security to claims made by the said minor son. It diminished the guarantee to be given by plaintiff against claims by the mother or others. It was thus an alteration in a material part of the document, and would vitiate it as a basis for the plaintiff's suit unless the plaintiff could show that the alteration had been made with the consent of the mortgagors, who executed the document. The finding of the lower Court was that the alteration had been made without the mortgagor's consent. *Held, SUBRAMANIA AYYAR, Offg. C.J., and MOORE, J. (O'FARRELL, J., dissenting),* that on the execution

**CONTRACT—continued.****8. ALTERATION OF CONTRACTS—continued.**

addition of the words referred to, and that in asking for the sale of the land plaintiff was seeking to enforce, not a right resting on the contract or covenant, but one arising by operation of law with reference to the vested interest created by the instrument having been executed; that, though reference was made in the plaint to the provisions relating to the mortgage instrument in its altered state, such reference was not an essential part of plaintiff's cause of action, and that the suit was not necessarily based on the altered instrument; that the execution of a security bond in terms of the mortgage instrument before it was altered was not a condition precedent, and the suit was sustainable,

missed; that the defendants' liability was contingent upon the prior execution by plaintiff of a general guarantee and not of the limited one which he, relying on the fraudulent alteration, had tendered; that where an agreement has, as to one of the parties,

[I. L. R., 23 Mad., 137]

**107. ——— Addition of false attestation—Bond—Material alteration of a document.**—In an action on an attested instrument not required by law to be attested, the obligee, while the instrument was in his possession and custody, got another

KRISHNA v. DASH DEVAJI . I. L. R., 7 Bom., 418

**108. ——— Interpolation of name of**

**CONTRACT—continued.**

**8. ALTERATION OF CONTRACTS—continued.**  
v. *Daji Dasaji*, I. L. R., 7 Bom., 418, dissented from.  
MOHESH CHANDER CHATTERJI v. KAMINI KUMARI DABIA . . . I. L. R., 12 Calc., 318

**109. ——— Addition of name of attesting witness—Forged attestation.**—In a suit on a hypothecation bond, dated before the Transfer of Property Act came into operation, and executed in favour of the plaintiff by the father (deceased) of defendant No. 1, it appeared that, after the bond had come into the hands of the plaintiff, the name of defendant No. 1 had been added as that of an attesting witness, and that this was a forgery. Held that the plaintiff was not precluded from recovering by reason of this alteration in the bond sued on. *KAM-ATTAR v. SHANNUGAM* . I. L. R., 15 Mad., 70

**110. ——— Material alteration—Addi-**

SUBBAYA . . . I. L. R., 15 Bom., 44

**(b) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)**

**111. ——— Power of Court—Alteration of, without consent of parties.**—The Court has no power, without the consent of the parties, to alter the contract, or substitute for it terms which the Court may prefer. *RAGHO GOBIND PARANJPE v. DITCHAND* [I. L. R., 4 Bom., 96]

KOTO v. KO PAY YAH . . . 6 W. R., 255

DIGAMBER DABEE v. NUNDGOPAL BANERJEE [1 W. R., Mis., 1]

But see *JUDHUNSEE BHUGARE v. MUKKIM KOWAREE* . . . 1 W. R., Mis., 6

**112. ——— Power of Government in its executive capacity.**—It is not within the power of a Court of law, in the face of the contracts originally made between the mulla-vargdars (superior holders) and their mul-ganidais (permanent tenants) to relieve the former from the hard-

[I. L. R., 4 Bom., 473]

**113. ——— Nature of alteration.**—The Court should not by its decree make for the parties a different contract from that which they themselves had entered into. *BALA VALAD SANTIA v. GABAJI BALVANT KULKARNI* [2 Bom., 175; 2nd Ed., 168]

**114. ——— Inequitable agreements—Alteration of rate of interest—Act XXVIII of**

**CONTRACT—continued.****S. ALTERATION OF CONTRACTS—continued.**

1855—*Fiduciary relationship*.—The provision contained in Act XXVIII of 1855, that any rule of interest which the parties may have agreed upon shall be awarded, in no way prevents a Civil Court in India, which administers both law and equity, from examining into the character of agreements made between persons, such as mortgagor and mortgagee, trustee and *cestui que trust*, between whom a relation exists, enabling one party to take advantage of the other, and from declining to enforce such agreements when they are shown to be unfair and extortionate. *VINAYAK SANSKRTI VOSE v. BAGHI*

[4 Bom., A. C., 202]

115. ———— **Power of Collector to alter contract.**—The Collector, when he has to enquire into contracts between the parties, and to determine whether a breach of any such contract has been committed, cannot, upon supposed considerations of equity, set aside that which the parties have deliberately agreed upon between themselves, and substitute further terms of his own. *RAM COOMAR BHATTACHARJEE v. RAM COOMAR SETH* . 7 W. R., 132

116. ———— **Suit to set aside agreement—Failure of consideration.**—A person cannot sue to set aside an agreement under which he has lent money on security of a lease of land subject to extension in the event of deficiency in the assets, unless he shows such gross and excessive deficiency in the assets as amounts to a failure of the consideration and deprives him of the security for his money, and unless he also shows that this deficiency was caused by the representations of the party to whom he lent the money, and in spite of due care and diligence on his own part. *MARQUEZ HOSSEN v. ORRORI NARARY PATR* . 4 W. R., 70

117. ———— **Application to alter contract with regard to payment of rent—Fraud.**—An application to have a contract altered in regard to the amount of rent to be paid under it in future cannot be generally entertained by a Civil Court, which can only reform a contract so as to make its terms accord with the original intentions of the parties. Where a party was induced to agree by fraudulent misrepresentation, this may entitle him to avoid a contract altogether: but if he abides by it, he cannot have its terms altered by the Civil Court. *NILMOYER SINGH DEO v. ISSUR CHANDER GHOSAL*

[9 W. R., 92]

118. ———— **Grounds for setting aside agreement—Error in statement of accounts.**—In a written agreement by a debtor to pay his debt by instalments, securing the payment by a mortgage of land, the amount of the debts was erroneously stated to be greater than it actually was. In a suit on the agreement, —Held that such an error was ground for reforming the account, but not for setting aside the agreement. *SATH GOVIND DASS GOPAL DASS v. MURLI*

[I L R., 3 Calc., 802; 2 C. L. R., 158]

119. ———— **Effect of misrepresentation by a party as to part of the subject-matter of a contract.**—Where one party induces

**CONTRACT—continued.****S. ALTERATION OF CONTRACTS—continued.**

another to contract on the faith of representations made to him, any one of which is untrue, the whole contract is in a Court of Equity considered as having been obtained fraudulently. Where a tenant had executed a habellat containing a stipulation which the landlord had told him would not be enforced, the tenant could not be held to have assented to it, and the habellat was not the real agreement between the parties. *PARAN CHANDER GHOSH v. MOHENDRANATH PUDHAI* . I L R., 17 Calc., 291

[I R., 18 I. A., 233]

120. ———— **Execution of deed obtained by misrepresentation—Cancellation of signature—Contract Act, ss. 13 and 19—Breach of duty—Ordinary diligence.**—The firm of Nicol & Co. having suspended payment, a general meeting of creditors was convened, at which it was unanimously resolved that the business of the firm should be wound up by voluntary liquidation under the supervision of a committee; and that the winding up should be conducted by two trustees under the supervision and control of the said committee. At a subsequent meeting of the creditors the above resolutions were confirmed, and it was further resolved that a composition-deed should be prepared in pursuance of the terms of the above resolutions. The adoption of this last resolution was strongly pressed upon the meeting by the solicitor for the insolvent firm on the ground that the mode of procedure therein proposed was proposed solely in the interest of the creditors. He entirely repudiated the idea that the members of the firm were to obtain any benefit by the proposed measure. No mention was made at either of the meetings of any release to be given to the parties. The plaintiffs were creditors of Nicol & Co., and R, S, and B were their respective agents in Bombay. R, S, and B attended the said meetings on the plaintiffs' behalf, and were appointed members of the committee of supervision and control. A few days after the last-mentioned meeting, M, one of the partners of the insolvent firm, called upon R, who at the time was deeply engaged in pressing an important business. M produced a deed which had been prepared by the solicitors of the firm, and which contained a clause by which the creditors, in consideration of the assignment of the estate to trustees, released and discharged the members of the firm from all claims. M was aware of the existence of the release in the deed. He asked R to execute the deed stating that it was "the most deed." R requested M to leave the document, saying that he would go over it and return it in the course of the day. M then earnestly pressed him to execute the document at once, stating that it was of the utmost importance that no time should be lost, as the native creditors were coming to his office, and that it was necessary that all the members of the committee of supervision should sign first. R objected to sign the document without reading it, and M thereupon led him to suppose that the deed only carried out what was agreed to at the creditors' meeting. Upon the faith of that assurance, R executed the deed on behalf of the first plaintiffs in the belief that it was nothing

**CONTRACT—continued.****8. ALTERATION OF CONTRACTS—continued.**

more than an assignment to trustees for the benefit of creditors. Subsequently, on the same day, *M* took the deed to *S* and asked him to sign. *S* was

**CONTRACT—continued.****8. ALTERATION OF CONTRACTS—continued.**

to receive orders in consequence of alterations on the part of the defendants in consequence

[13 B. L. R., Ap., 34; 22 W. R., 403

[3 Agra, 67

ment revenue and expenses, was to go in payment of interest on the money lent; half of the remaining three-fourths to go towards payment of the principal, and the other half to the defendants. If at the end of the term any balance remained due to the plaintiff, the

which led to the execution of the *ikrar* to show that a constructive fraud on the part of the

[12 B. L. R., 451; 20 W. R., 317

124. *Unconscionable agreement—Usury.*—The defendant borrowed a sum of money from the plaintiff, a professional money-lender, and agreed by his bond to repay the principal

**CONTRACT—continued.****S. ALTERATION OF CONTRACTS—continued.**

with interest at 36 per cent. per annum. The defendant having made default in payment, the plaintiff brought the present suit. The defendant pleaded his minority. The Court found he was not a minor at the time he entered into the contract, but on the merits of the case the lower Court (PHEAR, J.) found that the agreement was unconscionable, and one which a Court of Equity would not enforce. *Held* by the Appeal Court (GARTH, C.J., and MACPHERSON, J.), in accordance with the decision of PHEAR, J., that the plaintiff was only entitled to a decree for the amount actually received by the defendant from him, with interest at 6 per cent. **MOTHOORMONEN ROY v. SOORENDRO NARAIN DEB . I. L. R., 1 Calc., 108**

**125. — Unconscionable bargain—Usurious agreement—Contract Act, s. 74.**—Plaintiff sued to recover Rs 43-10-6, value of 1,230 paras of paddy, due under an account dated 8th September 1876. The account, on a cadjan, was for Rs 15 payable with 12 per cent. interest within fifteen days, and in default plaintiff to be paid, on 14th November 1876, paddy for the amount due calculated at the rate of 4 annas 7 pies per para. Immediately after the execution of this agreement the price of rice rose, the defendant did not pay within the fifteen days, and in the plaint in this suit the price of rice was calculated at 8 annas per para. *Held* that the bargain was unconscionable. Under the Contract Act, s. 74, in a case falling within its terms only reasonable compensation could be given, which in the present case would be interest at a somewhat high rate. The contract in effect was that, if the principal with 12 per cent. were not paid on 22nd September, double the amount should be payable on the 15th November. Such a contract a Court of Equity would not enforce. **VENKITTARAMA PATTAB v. KESHAVA MENON**

[I. L. R., 1 Mad., 349]

**126. — Unconscionable bargain—Parda-nashin lady.**—Fraud apart, a loan to a parda-nashin woman from her own mukhtiar at an exorbitant rate of interest, the security being ample, may be a hard and unconscionable bargain on which the contract for such rate of interest will not be enforced. *Benyon v. Cook, L. R., 10 Ch. Ap., 589*, referred to and followed. **KAMINI SUNDARI CHOWDHURANI v. KALI PROSUNNO GHOSH . I. L. R., 12 Calc., 225**  
[I. R., 12 I. A., 215]

**127. — Undue influence—Ground for setting aside deed.**—In this case an ikramnamah, whereby the three plaintiffs (two of them being under age) parted with half of their property, without consideration, whilst not fully acquainted with their rights, without professional advice, and during a state of things likely to overawe them and materially affect the free exercise of their will, was set aside. **PREM NARAIN SINGH v. PARASRAM SINGH. PREM NARAIN SINGH v. ROODER NARAIN SINGH**

[I. R., 4 I. A., 101]

**128. — Contract Act (IX of 1872), s. 16, Award made under—Coercion—Civil Procedure Code, ss. 522, 526.**—Under s. 16 of the Indian Contract Act, 1872, as it stood before

**CONTRACT—continued.****S. ALTERATION OF CONTRACTS—continued.**

amended by Act VI of 1899, it is not sufficient, in order to render a contract voidable on account of undue influence, that the party claiming to avoid the contract should have been at the time he entered into it in a state of fear amounting to mental distress which enfeebled the mind: but there must further be action of some kind, the employment of pressure or influence by or on behalf of the other party to the contract. *Jones v. Merionethshire Buildings Society, L. R., 1892, 1 Ch., 173*, referred to. **GOBARDHAN DAS v. JAI KISHEN DAS . I. L. R., 22 All., 224**

**129. — Voluntary transfer—Act IX of 1872 (Contract Act), s. 16.**—In a transaction between two persons where one is so situated as to be under the control and influence of the other, the Courts in this country have to see that such other does not unduly and unfairly exercise that influence and control over such person for his own advantage or benefit, or for the advantage or benefit of some religious object in which he is interested, and will call upon him to give clear and cogent proof that the transaction complained of was such a one as the law would support and recognize. Where a fiduciary or quasi-fiduciary relation had existed, Courts of Equity have invariably placed the burden of sustaining the transaction upon the party benefited by it, requiring him to show that it was of an unobjectionable character and one which it ought not to disturb. The exercise of this beneficial jurisdiction is not confined to cases only between guardian and ward, attorney and client, father and son, but the relief thus granted stands upon a general principle applying to all the variety of relations in which dominion may be exercised by one person over another. The plaintiff, who on the death of the widow of his brother became entitled to the estate of the deceased, found himself resisted in his claim by wealthy relatives. He was a man without means. The defendant took him to his house, kept him there, found him all the money for the purpose of carrying on his litigation with his relatives, in which the plaintiff succeeded. While the litigation for mutation of names in respect of the property was pending in the Revenue Court, and while plaintiff was residing with the defendant, he executed the sale deed in favour of defendant's brother for the nominal consideration of Rs 9,500, or half the property he claimed: and again, shortly after the mutation case had terminated in his favour, he executed a deed of endowment of the remaining half in favour of a temple founded by the ancestor of the defendant, and in which the defendant was interested, and the result was that plaintiff was left as poor as he was when he first came into the defendant's hands. Plaintiff sued for cancellation of the deed of endowment, on the ground that the same had been obtained from him by the exercise of undue influence and by means of fraud, and obtained a decree. On appeal by the defendant it was *held* that, looking at all the facts, such a relation between plaintiff and defendant in the course of the year 1885 had been established as to cast upon the latter the obligation of satisfying the Court that the transaction, which was given effect to by the deed of endowment, was an honest bona fide transaction.

**CONTRACT—continued.**

8. ALTERATION OF CONTRACTS—*continued.*  
and one that ought to be upheld SITAL PRASAD v.  
PARBU LAL . . . I. L. R., 10 All., 535

action, that the Court is justified in interfering  
MACKINTOSH v. WINGROVE  
[I. L. R., 4 Calc., 137; 2 C. L. R., 433]

was not more than equal to half the value of the  
annual produce of the land, and to remain liable  
to the remaining two-thirds of that debt with interest,  
and even if no default should occur on their parts

*Held*, also, that if in execution of the reversed  
decrees the lands had been made over to the mortgagors  
as purchasers, they should be restored to the mort-

of consideration when found in conjunction with

RANU v. ATMARAMBHAT . . . 3 Bom., A. C., 11

132. ——— Extortionate claims made  
by professional persons to litigants—*Fiduciary*  
*relationship.*—All litigants are entitled to the

**CONTRACT—continued.**

8. ALTERATION OF CONTRACTS—*continued.*  
protection of the Court from extortionate claims made  
upon them by those whose professional aid they seek.  
Brokers and meddlers in litigation, who avail them-  
selves of the weakness and ignorance of suitors to be  
obtained from them, under a pretence of services to be  
rendered, engagements for the payment of money,  
will find that protection will be afforded by the  
Court against them also ROOP NARAIN MISHRA v.  
KUSHI RAM SINGH TANBIRAM . . . 2 N. W., 67

133. ——— Parties dealing on un-  
equal terms—*Inequitable contract.*—Assuming  
that the same principles are applicable here as in the  
English Court of Chancery, the High Court held  
that, although in a class of cases without positive  
fraud a contract may be set aside unless it is shown to

less it can be shown that the contract was in fact one  
which a prudent person with proper advice and assist-  
ance might well have made. JUGO BUNDOO TE-  
WAREE v. KARUM SINGH . . . 23 W. R., 341

134. ——— Release by wi-  
dow, *Suit to set aside—Duress—Coercion—Fraud*  
—*Grounds on which relief is granted.*—B. R., the  
widow of a zamindar, having for valuable considera-  
tion released all her claims on her husband's estate

and fraud, and to recover the estate. *Held* that  
it was not sufficient to find that the consent given

REMYA v. JAGAPATHI . . . I. L. R., 8 Mad., 304

much more than Rs. 3,000, he was made to appear in

AWESTLE v. BROOKMAN . . . 23 W. R., 400

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CONTRACT—continued.

8. ALTERATION OF CONTRACTS—continued.

130. ——— Unconscionable bargain.—  
Interest—"Dharta"—Illiterate agriculturist.—  
The High Court as a Court of equity possesses the power exercised by the Court of Chancery of granting relief in cases of such unconscionable or grossly unequal and oppressive bargains as no man of ordinary prudence would enter into, and which, from their nature and the relative positions of the parties, raises a presumption of fraud or undue influence. The principles upon which such relief is granted apply to contracts in which exceedingly onerous conditions are imposed by money-lenders upon poor and ignorant persons in rural districts. The exercise of such power has not been affected by the repeal of the usury laws. *Chesterfield v. Janssen*, 2 Ves., 155, *O'Rourke v. Bulington*, L. R., 2 Ap. Cas., 514, *Earl of Aylesford v. Morris*, L. R., 8 Ch. D., 481, *Earl of Suellington*, L. R., 15 Ch. D., 389, *Ap. 481*, and *Beynon v. Cook*, L. R., 10 Ch. Ap., 389, referred to. An illiterate Kurmi in the position of a peasant proprietor executed a mortgage-deed in favour of a professional money-lender to whom he owed Rs. 7, by which he agreed to pay interest on that sum at the rate of 24 per cent. per annum at compound interest. He further, agreed that "dharta" or a yearly fine at the rate of one anna per rupee should be allowed to the mortgagee, to be calculated by yearly rests. It was also provided that the interest should be paid from the profits of certain malikana land of the mortgagor, and that, if the interest were not paid for two years, the mortgagee should be put in possession of this land. As security for the debt, a six pies zamindari share was mortgaged for a term of eleven years. The effect of the stipulation as to "dharta" was that one anna per rupee would be added at the end of every year, not only to the principal mortgage-money, but also to the interest due, and the total would be again regarded as the principal sum for the ensuing year. Ten years after the date of the mortgage, the mortgagor brought a suit for redemption on payment of only Rs. 7 or such sum as the Court might determine as due to the mortgagee. At that time the accounts made up by the mortgagee showed that the debt of Rs. 7 with compound interest had swollen to Rs. 111. Held that the stipulation in the deed as to "dharta" was not of the kind referred to in s. 74 of the Contract Act (IX of 1872), and that there was no question of penalty, but that, looking to the relative positions of the parties, and the unconscionable and oppressive nature of the stipulation, the benefit thereof should be disallowed to the mortgagee and the mortgagor permitted to redeem on payment of the mortgage-money and interest, no appeal having been preferred by him from the decree of the first Court making redemption subject to the payment of interest. *LALLI v. RAM PRASAD*. I. L. R., 9 All., 74

CONTRACT—continued.

8. ALTERATION OF CONTRACTS—continued.

found that advantage was taken by the plaintiff of the fact that the defendant was being pressed in the tahsili for immediate payment of revenue due, to induce him to execute the bond, charging compound interest at the above-mentioned rate, notwithstanding that ample security was given by mortgage of landed property. It was also found that, although, under the terms of the bond, the plaintiff had power to enforce the same at any time by bringing to sale the mortgaged property, he had wilfully allowed the debt to remain unsatisfied, in order that compound interest at a high rate might accumulate. Held that the bargain was a hard and unconscionable one, which the Court had undoubted power to refuse to enforce, and which, under all the circumstances, it would be unreasonable and inequitable for a Court of justice to give full effect to; and that, under the circumstances, compound interest should not be allowed. *Kumini Sundari Chaudhrani v. Kali Prosunno Ghose*, I. L. R., 12 Calc., 225, *Beynon v. Cook*, L. R., 10 Ch. Ap., 389, and *Lall v. Ram Prasad*, I. L. R., 9 All., 74, referred to. The Court decreed the principal sum of Rs. 99, with simple interest at 24 per cent. per annum, up to the date of institution of the suit. *MADHO SING v. KASHI RAM* [I. L. R., 9 All., 228]

138. ——— *Contract to pay expenses of litigation*.—The result of the English cases regarding "hard" or "unconscionable bargains" is that in dealings with expectant heirs, reversioners, or remaindermen, the fact that the bargain was declined by others as not being sufficiently advantageous, does not raise a presumption that it was fair and reasonable; and that until the contrary is satisfactorily proved by the party trying to maintain the bargain, the Court may presume that a bargain which apparently provides, in the opinion of the Court, for an unusually high return or for an exceptionally high rate of interest is a hard and unconscionable bargain against which relief should be granted. The doctrine of equity on the subject of such bargains is applicable in England only to dealings with expectant heirs, reversioners, or remaindermen. The judgment of the Privy Council in *Kumini Sundari Chaudhrani v. Kali Prosunno Ghose*, I. L. R., 12 Calc., 225: L. R., 12 I. A., 215, does not imply that the doctrine is to be applied in India to cases except where it would have been applied in England, or except where the case is in some way analogous to a case of snatching a bargain with an expectant heir, reversioner, or remainderman, or except where there is some fiduciary relationship between the lender and the borrower, although there may be no fraud or undue influence, or except there is some incapacity, such as ignorance, on the part of the borrower to appreciate the true effect of his bargain. For the purposes of meeting the expenses of an appeal to the High Court, the appellant, on the advice of his legal advisers, executed a bond for Rs. 25,000 in consideration of the obligor agreeing to defray such expenses. The obligor agreed to pay the Rs. 25,000 within one year from his recovering possession of the property in

137. ——— *Bond—Compound interest*.—In a suit for the recovery of a principal sum of Rs. 99 due upon a bond, with compound interest at 2 per cent. per mensem, it was

**CONTRACT—continued.****8. ALTERATION OF CONTRACTS—continued.**

suit; and, at the request of the obligor's pleader, the obligee advanced Rs3,700, which was applied to

his appeal, and he obtained possession of the property in suit, but declined to pay the Rs25,000, upon

his position and the effect of both the instruments executed by him; that no fraud or improper pressure appeared to have been allowed to him, that his legal advisers had acted honestly and to the best of their ability in his interests; that there was

obligor could have obtained an advance on terms more advantageous to himself, it was for the obligee to establish to the Court's satisfaction, without

able one, which should not be enforced. The Court gave the plaintiff a decree for the Rs3,700 actually advanced, with simple interest at 20 per cent. per annum from the date of the bond to the date of the decree, with costs in proportion and interest at 6 per cent. per annum on the Rs3,700, interest and costs, from the date of the decree until payment. *CHUNNI KUAR v. RUP SINGH*

[I. L. R., 11 All, 57]

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on the plaintiff, but, on the contrary, he and his agent put pressure on them to agree to the terms of the deed. It appeared that, apart from the moneys borrowed by him from time to time, he was without

**CONTRACT—continued.****8. ALTERATION OF CONTRACTS—concluded.**

even the means of subsistence; that he fully under-

R7,542. The appeal was successful. The appellant having failed to put the vendees in possession of the property conveyed by the deed, and recovered by him under the Privy Council's decree, the vendees sued him for possession of the property and mesne profits, afterwards agreeing that the Court should in lieu thereof award them compensation in money

the plaintiffs under the contract and the reward which they were to obtain in the event of defendant's

contract could not be enforced in its terms. *Held also* that, if the doctrine of equity applicable to such

dant from all liability; that it was only fair that he should compensate the plaintiffs for the use of their security bonds from the date when they were deposited in the High Court to the earliest date after the judgment of the Privy Council when the plaintiffs could have obtained them back, that simple interest at 12 per cent. per annum on the amounts of the bonds for the period would be reasonable compensation for such use; that the defendant should also

amount thus decreed at 6 per cent. from the date of the decree till payment. *CHUNNI KUAR v. RUP SINGH*, I. L. R., 11 All, 57, *Prabhat Sen v. Budhu Singh*, 12 Moore's I. A., 1275, and *Bones v. Heaps*, 3 F and B., 117, referred to. *LOKE INDR SINGH v. RUP SINGH*. I. L. R., 11 All, 118

See *HUSAIN BUKSH v. RAHMAT HUSAIN*.

[I. L. R., 11 All, 128]

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## DIGEST OF CASES.

## CONTRACT—continued.

## 2. BREACH OF CONTRACT.

140. — *Contract to carry coolies by ship.* — *Applicant of master prohibited from taking ship.* — *Acting against Regulation Act, XIII of 1851.* — Where a contract was entered into for the carriage of coolies, the shipowner was held guilty of breach of contract in appointing a master who was prohibited by an order of Government from commanding a ship carrying emigrants. *RAJEE C. PERUMBAHARIAN*. 1 Ind. Jur., N. S., 131

141. — *Act alleged to be not a breach of contract.* — *Owner of goods.* — An agreement entered into between the plaintiff and defendant, members of the same caste, contained a stipulation that in the event of the defendant objecting to the receiving of a girl from, or the giving a girl to, the plaintiff in marriage, the defendant should be bound to return Rs. 1000 with interest, which the plaintiff had paid to the defendant under the agreement. It was found by the Civil Judge that the fifteenth defendant's son was engaged to be married to the second plaintiff's daughter, and that the marriage was broken off on the part of the fifteenth defendant. *Held*, on special appeal, that this was *prima facie* a breach of the agreement which entitled the plaintiff to recover, and that it was for the defendants to show that it did not bring them within the terms of the agreement. *KEST CHERRY C. VENTURA CHERRY*. [1 Mad., 325]

142. — *Time for performance.* — *Conditional grant of lease.* — When an agreement to grant a lease was incomplete and conditional upon an advance within eight days or a reasonable time required to meet pressing demands, a delay of nineteen days was held to be unreasonable, and likely to defeat the object of the lease. *PISCHEK C. KAMALA NAIRKUN*. [3 W. R., P. C., 33; 8 Moore's I. A., 170]

143. — *Contract for sale of seed.* — *Excess refraction.* — A contract for the sale of seed contained the following provision:—"Refraction guaranteed at four per cent., with usual allowance up to six per cent., exceeding which the seller is to reclaim the seed at his expense within a week; failing which, buyers to have the option of cancelling that portion of the contract tendered, or of buying against the seller, or of taking the parcel as it stands, with usual allowance for excess refraction. Delivery from seller's godown in pile up to the 15th of July next." On the 10th July, the vendor tendered the seed. On examination the refraction was found to be above the contract rate; and it was agreed that the vendor should reclaim the seed; and on the 15th July, the purchasers went to take delivery of the seed, which was found still to be not sufficiently cleared. On the 16th July, the vendor said that he should require a week longer for that purpose. The purchasers then cancelled the contract. In a suit by the vendor for damages for breach of contract, — *Held* (1) that the breach of the contract was committed by the vendor on the 10th July; and (2) that the week allowed for re-refraction was to run from the 10th July, reckoning

( 1248 )

## CONTRACT—continued.

2. BREACH OF CONTRACT—continued.  
the rate of refraction to the contract rate, the defendants had a right to reject the seed; and that the plaintiff was not entitled to further time to reclaim it again. *BENNIGER DOSS C. RALLI*. [I. L. R., 8 Cal., 678; 8 C. L. R., 294]

144. — *Agreement to deliver goods at specified place.* — *Tender of goods.* — *Right to rescind contract.* — If a person contracts to deliver goods at a specified place, he must be there in person or by agent, and be ready to deliver them; if to deliver them by a certain time for examination and so as to allow sufficient time for examination and receipt. But when a thing is to be performed at a certain place, on or before a certain day, to another party to a contract, the tender must be to the other party at that place, and that other party must be present at some particular part of the day before sunset, so that the act may be completed by daylight. Where a thing is to be done anywhere, a tender at a convenient time before midnight is sufficient. In case of violation of a contract by one party, the other party may ordinarily rescind it totally or partially, provided he himself is guilty of no default or violation, and exercises the right within a reasonable time. If, after default of the other party, he does an act recognizing the contract, he cannot afterwards rescind it. *KARTICK NATH PANDY C. GOVERNMENT*. [11 W. R., 58]

145. — *Failure in performance of stipulation giving party right to rescind.* — *Impossibility of strict and literal performance.* — When an agreement provides that an act is to be done by one of the parties within a limited time, and the party fails to perform the act within such time, the other party elects notwithstanding to take the benefit of the contract, the latter must perform his part of it; and though exact and literal performance of the original stipulation has become impossible, the terms of the contract must be carried out as nearly as possible. *BRUJO SOONDUBER DEOLA C. COLLINS*. [13 W. R., 359]

146. — *Revocation of contract by new agreement.* — *Breach of new contract.* — If a second contract be entered into between two parties in revocation of a previous one, the contractee cannot fall back upon the conditions of the first contract, on the ground of the breach by the contractor of the subsequent one, unless there be express conditions in the latter agreement to that effect. *KALLIPERSAD SINGH C. GRANT*. [2 Hay, 329]

147. — *Prevention by one party of completion of contract.* — *Contract to cut trees.* — *Right of action.* — Plaintiff purchased, at advertised Government sale by auction, certain felled trees then lying in the forest of K. He also contracted for the delivery to Government of certain "sleepers" to be cut in the said forest. The Government refused to admit plaintiff's agent to the forest, and thereby prevented him from completing his contract. The remedy for such loss is by a common law action, and not by bill in equity, and a bill for the purpose

**CONTRACT—continued.****9. BREACH OF CONTRACT—continued.**

bought consequently to be dismissed with costs.  
JOHNSON v. SECRETARY OF STATE

[Cor., 71: 2 Hyde, 153]

148. — Difference between articles contracted for and those tendered—  
*Action for non-acceptance.*—The plaintiffs contracted to supply the defendants with from 275,000 to 300,000 of gunny bags described as No. 6 quality, size 40 by 28 inches, "the defendants to have the option of taking bags of a longer or shorter length at proportionate prices, duly giving a fortnight's notice to the plaintiffs, delivery to be taken in August 1870." The defendants, after taking delivery of 11,600 of the bags, found that the bags tendered were mixed in size, some being longer and some

TO TAKE DELIVERY, AND THE  
bags by the plaintiffs was not a substantial performance of the contract. MILLER v. GOVERNMENT COMPANY

8 B. L. R., 285

149. — *Part acceptance of goods by defendant not according to contract—*

new seed, and that seed so mixed had been accepted as a performance of contracts for 1870-71, yet there was no evidence that, under such contracts as the present, the seller was by custom at liberty to mix

**CONTRACT—continued.****9. BREACH OF CONTRACT—continued.**

seeds of two crops so as to bring the sample up to an average quality, and, further, that a custom, so directly at variance with the express terms of the contract, could not, if proved, be allowed to prevail. *Held*, also, that the defendants had waived any objection to the 865 maunds which must therefore be taken as a good delivery *pro tanto* under the contract accordingly. *Held on*

8 B. L. R., 400

150. — *Endorsement by parties on original contract—Transfer of contract—Action for non-acceptance.*—On the 18th April 1870 the plaintiffs contracted to purchase from the

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## CONTRACT—continued.

## 9. BREACH OF CONTRACT—continued.

hundred full-grown bales—fully good fair Kishli cotton" at Rs. 85-8 per candy, to be delivered from March 15th to April 1st. On March 21st the plaintiffs sent the defendant a letter reminding him of the contract and requesting him to take delivery. On receipt of this letter, the defendant put the matter into the hands of F. The plaintiff had then no cotton of the specific kind to deliver, nor did the letter refer to any particular bales. At 11-30 o'clock on March 30th, the plaintiffs sent the defendant a letter enclosing a sampling order directed to an employe of Messrs. H and S, on whose premises the bales referred to in the order were lying. F, on behalf of the defendant, got samples taken of the cotton and examined them, but without reference on that day to any standard. He then, however, expressed his doubts as to the quality of the cotton, and pressed his doubts to the plaintiff in the evening of that day. On 31st March the plaintiffs sent the defendant a delivery order enclosed in a letter from their solicitors calling on the defendant to attend with his surveyor at 1 P.M. on that day to survey the cotton, as otherwise an *ex-parte* survey would be held. This letter reached the defendant at 11-30 o'clock A.M., and was given by him to F at noon of the same day. F applied to M to attend as surveyor, but M was unable to do so. The plaintiffs had an *ex-parte* survey held by Messrs. C and B at 1 P.M., and they pronounced the cotton, samples of which were submitted to them, to be "fully good fair Kishli cotton." While this survey was going on, the defendant was on the Cotton Green, but declined to attend, saying that F and his surveyor were coming. Shortly afterwards F did come, and subsequently wrote a letter to plaintiffs in the defendant's name, stating that the cotton was not of the description contracted to be sold by them, and asking for a survey. This letter reached the plaintiffs at 2-19 o'clock P.M. After this there was a discussion between plaintiffs and defendant and F. On that afternoon (the 31st March) the plaintiffs' solicitors sent a letter to the defendant stating the result of the survey and requiring him to take delivery. This was answered by a letter of next day (April 1st) from the defendant's solicitors denying that the cotton had been quality or that proper notice of the survey had been given, alleging that the defendant had asked leave to survey the cotton which had been refused, and stating that the contract must be treated as cancelled. The cotton was sold by auction on April 5th. The plaintiffs brought this suit to recover Rs. 1,631-1-11 as damages for non-acceptance of the cotton. The defendant contended that there had been no reasonable time allowed by the plaintiffs for the examination of the cotton, and that a joint survey was not necessary under the terms of s. 33 of the Indian Contract Act (IX of 1872), and that the defendant, having had a period of twenty-four hours for inspection, had had a reasonable opportunity of seeing whether the cotton offered by the plaintiffs was such cotton as the plaintiffs were bound by their contract to deliver. A purchaser of goods is not entitled to continue inspecting

## CONTRACT—continued.

## 9. BREACH OF CONTRACT—continued.

and examining the goods offered by the vendor until the expiration of the period for delivery. A reasonable opportunity for such inspection and examination is all that he is entitled to. *BUTCHER v. MORGAN & JAMES PRINCEP* [L. L. R., 8 Bom., 692]

152. Breach of warranty—Goods not agreeing with sample—Conduct of parties—Estoppel.—In a suit for damages for breach of warranty, where the dispute was whether the goods tendered (shellac) were according to the plaintiff's sample, and referred to the selling broker to decide whether the goods from which it had been taken ought to be accepted, and he decided that they should be taken at one rupee per pound less than the contract rate, which award the parties agreed to abide by. The broker then went to the godown of the defendants, thoroughly examined the undelivered shellac, and removed it to the godown of the plaintiffs. Held that after this the parties could not be allowed to raise the question whether there had been a breach of that contract and to ask for damages by reason of the goods not being of the quality contracted for. *FORNABO v. RAMSARAS SODHER* [4 B. L. R., 180; 23 W. R., 136]

153. Alleged breach of warranty by vendor on a sale and delivery of goods—Burden of proof after acceptance, following upon an examination by purchaser.—Under five contracts for the sale of good Burma catch, to be delivered to a Calcutta firm, in Calcutta, by the vendors, who knew that it was bought for the export market, delivery and acceptance followed upon a searching examination of the catch by the purchasers. The latter having sent advices of this purchase to a New York firm, with which they were in partnership, parcels of catch were sold to different buyers in America, to whom, under such "forward" contracts, the catch was shipped in separate shipments by the Calcutta firm. On the arrival of the catch, objection was taken to its quality by the American buyers, who refused to take delivery. The Calcutta firm thereupon sued the vendors under the five contracts above mentioned. The burden of proof being upon the plaintiffs, who had accepted the catch after full examination in Calcutta, to prove the breach of contract by the vendors by cogent evidence that arose from the presumption of due performance that arose from such acceptance.—Held that this presumption was not rebutted in the absence of evidence as to the treatment of the catch on its re-shipment by the plaintiffs on the voyage from India to America, and at the port of arrival. *GAN KIM SWEE v. RAJLI BROTHERS* [L. L. R., 13 Cal., 23; L. R., 13 I. A., 60]

154. Executory sale—Delivery of goods to contract—Substitution of liability—Condition precedent—Delivery in certain months—Payment in advance—Refusal to deliver—Damages.—In January 1883, W & Co., of Madras, contracted to deliver to P & Co., of

**CONTRACT—continued.****9. BREACH OF CONTRACT—continued.**

Madras, certain goods of a certain quality, subject to survey before shipment, at a certain price "f. o. b. Cocanada, delivery in April and May, terms full

17th June the ship arrived at Cocanada. On the 21st

not be inferred. (3) That as S N & Co., by accepting the delivery order, were estopped from denying that they had possession of the goods as against P & Co., S N & Co. were discharged as against W & Co., and therefore P & Co. had no remedy against

**CONTRACT—continued.****9. BREACH OF CONTRACT—continued.**

entitled to recover the price paid. *Held* that W & Co. were not entitled to rescind the contract. *Held*, also, that P & Co., having paid in advance, were entitled to a reasonable time after the 29th

155. ——— Sale of unascertained goods—Appropriation by vendor—Passing of property—Power of re-sale—Contract Act (IX of 1872), s. 107—Measure of damages.—The contract was for sale by description of 15 bales of grey

the vendor for the unpaid purchase-money. The plaintiffs were entitled to receive only the difference between the market price of the day and the contract price, and that was the true measure of damages. *YIE & Co. v. MAHOMED HOSSEIN*

(L. L. R., 24 Cal., 124  
1 C. W. N., 71)

156. ——— Passing of property—Power of re-sale—Contract Act (IX of

the goods so appropriated to be marked and dispatched for shipment according to certain instructions. The plaintiffs carried out those instructions but the goods could not be shipped, as the vendors which they were to be shipped were not at their usual place. *Held* the contract was transferred to the defendants

## CONTRACT—continued.

9. BREACH OF CONTRACT—continued.  
 plaintiffs became entitled under s. 107 of the Contract Act, after due notice, to re-sell them on the defendant's refusal to take delivery and to recover as damages the difference between the contract price of the goods and the price at which they were re-sold.  
**CLIVE JURE MILLS Co. v. KURAHIM ARAB**  
 [I. L. R., 24 Cal., 177]

See PRAG NARAIN v. MULCHAND  
 [I. L. R., 19 All., 535]

See BASHDEO v. SMIDT . I. L. R., 23 All., 55  
 157. ———— Breach of contract—Power of re-sale—Contract Act (IX of 1872), s. 107—Damages.—The plaintiffs sold to the defendant under an "Indent" contract ten cases of tobacco at an agreed price. On arrival, the defendant refused to pay for and take delivery of the goods on the ground that they were not the goods contracted for. After notice to the defendant, the plaintiffs re-sold the goods and sued to recover the expenses of the re-sale and the difference between the price realized and the contract price with interest. Held that cl. 1 of the Indent contract gave the plaintiffs a right to re-sell the goods and sue for the damages mentioned therein. **S. 107 of the Contract Act had no bearing on the case.** **Fule & Co. v. Mahommed Hossain, I. L. R., 24 Cal., 124.**  
 dissented from. **MOLL SCHUTTE & Co. v. LUDWIG**  
**CHAND** . I. L. R., 25 Cal., 505  
 [2 C. W. N., 283]

158. ———— Failure to take delivery under indent of goods—Right of re-sale—Contract Act (IX of 1872), s. 107—Liability for loss.—Plaintiffs had procured certain goods in pursuance of indents signed by defendants, which provided that in the event of defendants failing to take due delivery of the goods, plaintiffs should be at liberty to re-sell them on defendants' account, and that defendants should pay to plaintiffs any deficiency arising from such re-sale. Goods were re-sold at a loss, and in a suit to recover such loss it was contended, in defence, that the property in the goods had not passed to the defendants, and that plaintiffs' only remedy was by way of damages. Held that a clause such as that contained in the indent came into operation notwithstanding that the property had not passed to the buyers; and that plaintiffs were entitled to recover the deficiency arising from the re-sale. **BEST v. MUHAMMAD SAIT**  
 [I. L. R., 23 Mad., 18]

159. ———— Carriers—Railway receipt—Jus tertii—Title.—In March 1871, T & Co., brokers in Calcutta, sold to S & Co., on account of C, an up-country seed merchant, 200 tons of poppy-seed, and allowed C to draw upon them to the extent of the value of fifty tons before despatch, on the terms of a previous contract, by which they had allowed C to draw against cotton to arrive in Calcutta before the drafts matured, C authorizing them to receive payment on his account on goods sold and delivered through them. Towards the end of March, C entered into an agreement with E, a merchant in

## CONTRACT—continued.

## 9. BREACH OF CONTRACT—continued.

Calcutta, under which E accepted bills to a large amount for C, upon C's promise to cover the bills before maturity. In June C ordered the defendant Railway Company to consign all goods despatched from Fyzabad to E's address, and empowered E to take delivery of, and give receipts for, all such goods. In the same month, C despatched from Patna, in bags supplied by S & Co., fifty-five tons of poppy-seed to Calcutta, and sent the railway receipt to E, who was therein named as the consignee. One of the terms printed on the receipt stated that goods would only be delivered to the consignee named in the receipt, or to his order. In advising E of the despatch of poppy-seed, C informed him that it had been sold to S & Co., and that delivery was to be made through T & Co.; and E had also seen letters which passed between C and his agents, in which the following passages occurred: "Our Calcutta firm will deliver the poppy to T & Co.," and "Do your best, and hurry off despatches of fifty tons of poppy; the rest of the poppy and linseed can go to E." E endorsed the railway's receipt to S & Co. together with freight, and sircars of E and S & Co. together went to the railway station and demanded delivery, which the Railway Company at first promised to give, but afterwards, under an order from C to "deliver fifty tons to T & Co., and to no other party, the rest of the seed to be delivered according to documents," they, at T & Co.'s request, delivered the whole fifty-five tons to them. In an action by E against the Railway Company for non-delivery of the seed to him,—Held (per MARKES, J.) E was mere agent of the vendor for the delivery of the goods; T & Co. had superior title to the goods, of which E had notice. Held (per COUCH, C.J., and MAOPHEERSON, J., on appeal) the Railway Company was bound to deliver to E. The property in the goods and the right of possession was in him; he had an authority coupled with an interest which C could not revoke; he had no notice of the title of T & Co., which was an equitable right only. **EAGLETON v. EAST INDIAN RAILWAY COMPANY**  
 [8 B. L. R., 581: 17 W. R., 532]

160. ———— Betrothal—Marriage—Breach of promise of marriage—Reciprocal contingent contract—Damages—Upariyaman—Halai Bhatia caste.—The plaintiffs alleged that by a written agreement dated the 18th March 1882 the first defendant and her deceased son L agreed that the second defendant, who was the daughter of the first defendant, should be given in marriage to the second plaintiff, who was the son of plaintiff No. 1; and that the betrothal of these two persons took place accordingly. The agreement was executed by the said L, as eldest male member of his family, in the name of his deceased father. In pursuance of this agreement, the plaintiffs paid to the first defendant Rs700 as "upariyaman," and they presented K with ornaments and clothes of considerable value. The plaintiffs refused to carry out the contract of marriage and had married her daughter, K (defendant No. 2), to another person. They claimed in

**CONTRACT—continued.****9. BREACH OF CONTRACT—continued.**

this suit to recover the ornaments and clothes, together with the ₹700 paid to the first defendant as "upariyaman" and ₹10,000 as damages. The first defendant was sued both in her personal capacity and as heir and legal representative of her son L. The first defendant pleaded that neither she nor the second defendant were bound by the betrothal agreement, as they were not parties to it, that the contract had been a contingent contract, inasmuch as her son, L, had agreed to give K (defendant No. 2) in marriage to the second plaintiff only on condition that he (L) should obtain in marriage U, the daughter of the third plaintiff, and that L and U were accordingly betrothed; that L had died in 1884, and that the contract had been thereby determined; that she had been willing to renew it, and had proposed that a younger son of hers (J) should be accepted as the husband of U, but that the plaintiffs had declined this offer. In proof of her allegation that the contract was a reciprocal contingent contract, the first defendant relied upon

defendant the value of the ornaments and the ₹700 paid by the plaintiffs as "upariyaman," together contract.  
held not dismissed.

[I. L. R., 11 Bom., 412]

**161. ——— Building contract—Breach of contract—Power of re-entry—Certificate of architect, how far conclusive.**—By a building contract entered into between plaintiff and defendants, it was agreed that plaintiff should erect certain

that the decision of the architect with respect to

**CONTRACT—concluded.****9. BREACH OF CONTRACT—concluded.**

work, whereupon defendants, after giving due notice, entered upon the premises. Plaintiff sued for damages in consequence of the defendants having taken possession and for the balance due on the accounts. *Held* (1) that the defendants committed a breach of the contract by refusing to pay the full amount due under the architect's certificate; (2) that the plaintiff thereupon rescinded the contract, and that, therefore, defendants were entitled after due notice to enter and take possession; (3) that in the absence of proof of collusion between the architect and the plaintiff, the defendants were bound by the architect's certificate as to the amount due to the plaintiff. **KUPPUSAMI NAIDU v. SMITH & Co.** . . . I. L. R., 19 Mad., 178

**10. LAW GOVERNING CONTRACT.****162. ——— Contract made out of Bri-**

on its demand, the money advanced, with some deduction on account of a part performance. For this amount the surety sued the principals, who were

of British India, but what was in the contemplation of the parties as to the result of the contract when they entered into it, must be regarded. **SUJAN SINGH v. GUNGA RAM** . I. L. R., 8 Cal., 337  
[I. L. R., 9 I. A., 68]

**CONTRACT ACT (IX OF 1872).****See CASES UNDER CONTRACT.**

**1. ——— Operation of.—Semble**—The Contract Act is not retrospective. **OMDA KHANUM v. BROJESDRO COOMAR ROY CHOWDHRY**  
[12 B. L. R., 451; 20 W. R., 317; and 21 W. R., 352]

**2. ——— Illustrations appended to sections, How far binding.**—*Per STUART, C.J.*—Remarks on the legal character of the "Illustrations" attached to Acts of the Indian Legislature, and opinion expressed that they form no part of these Acts. **NARAYAN KAK v. MITHU LAL**  
[I. L. R., 1 All., 457]

**CONTRACT ACT (IX OF 1872)—continued.**

3. ——— Illustrations appended to sections.—The practice of looking more at the illustrations in the Contract Act than at the words of the sections of the Act pointed out as a mistake. *OMED ALI v. NIDHEE RAM* . . . 22 W. R., 367

— s. 2.

See PROMISSORY NOTE—FORM OF.

[I. L. R., 16 Mad., 283

— s. 2, cl. (d).

See CONSIDERATION.

[I. L. R., 4 Mad., 137

I. L. R., 6 Mad., 351

— ss. 2 (d) and 25—*Services rendered during the defendant's minority at his desire and continued at his request after his majority—Agreement to compensate for services.*—Services rendered at the desire of a minor expressed during his minority and continued at the same request after his majority form a good consideration for a subsequent express promise by him in favour of the person who rendered the services. By s. 2 (d) of the Contract Act, services already rendered at the desire of the promisor are placed on the same footing with such services to be rendered and constitute a good consideration for a definite agreement. Cases where a person without the knowledge of the promisor or otherwise than at his request does the latter some service, and the promisor undertakes to compensate him for it, are covered by s. 25 of the Contract Act (IX of 1872); in them the promise does not need a consideration to support it. *SINDHA SHRI GANPAT-SINGJI HIMATSINGJI v. ABRAHAM*

[I. L. R., 20 Bom., 755

— s. 4.

See PROMISSORY NOTE—FORM OF.

[I. L. R., 13 Bom., 669

See STAMP ACT, s. 34.

[I. L. R., 13 Bom., 669

— Letter of acceptance incorrectly addressed.—A letter of acceptance to a proposer, not correctly addressed, could not, although posted, be said to have been "put in a course of transmission" to him within the meaning of s. 4 of the Contract Act (IX of 1872). *Townsend's case, L. R., 13 Eq., 148*, referred to. *RAM DAS CHAKRABARTY v. OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY* . . . I. L. R., 9 All., 366

— s. 10.

See CHARTER PARTY.

[I. L. R., 14 Bom., 241

I. L. R., 15 Bom., 389

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE CONTRACTS.

[I. L. R., 11 Calc., 552

I. L. R., 23 Bom., 146

— s. 11.

See DOMICILE . I. L. R., 19 Bom., 697

**CONTRACT ACT (IX OF 1872)—continued.**

See MAJORITY, AGE OF.

[I. L. R., 7 All., 490, 763

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE CONTRACTS.

[I. L. R., 13 Bom., 50

I. L. R., 19 Bom., 697

I. L. R., 18 Mad., 415

I. L. R., 20 Calc., 508

I. L. R., 26 Calc., 381

I. L. R., 27 Calc., 276

3 C. W. N., 466

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS . I. L. R., 13 Bom., 50

See SPECIFIC PERFORMANCE—SPECIAL CASES . . . I. L. R., 18 Mad., 415

[I. L. R., 22 Calc., 545

I. L. R., 27 Calc., 276

— s. 13.

See LACHES . I. L. R., 4 All., 334

— ss. 13 and 14.

See CHARTER PARTY.

[I. L. R., 14 Bom., 241

I. L. R., 15 Bom., 389

— ss. 15 and 16—*Obstructing removal of corpse of husband until widow has accepted a boy in adoption and signed a deed of adoption.*—The minor widow of a deceased Hindu (who had authorized her to adopt a son) corporeally accepted a boy as in adoption from his natural father who belonged to a different gotra from her deceased husband. At the time when the child was handed over to the widow, her husband's corpse was still in the house, and the relatives of the child and other members of the caste obstructed the removal of the corpse until the child had been accepted in adoption, and until the widow had executed a deed of adoption. Held that obstructing the removal of the corpse by deceased's widow or her guardian unless she made an adoption and signed a document was an unlawful act, and amounted to "coercion" and "undue influence," such as are defined in s. 15 or 16 of the Contract Act. *RANGANAYA RAMMA v. ALWAR SETTI* . . . I. L. R., 13 Mad., 214

— s. 16.

See DEED—CANCELLATION.

[I. L. R., 10 All., 535

— ss. 16 and 17.

See DEBTOR AND CREDITOR.

[I. L. R., 11 Bom., 686

See GIFT . . . I. L. R., 23 Calc., 15

— s. 17.

See REGISTRATION ACT, s. 35.

[I. L. R., 21 Calc., 872

— ss. 17 and 19.

See VENDOR AND PURCHASER—FRAUD.

[I. L. R., 11 Mad., 410

**CONTRACT ACT (IX OF 1872)—continued.**

ss. 18 and 19.

*See* CHARTER PARTY.

[I. L. R., 14 Bom., 241

I. L. R., 15 Bom., 389

*See* COMPANY—POWERS, DUTIES, AND  
LIABILITIES OF DIRECTORS.

[4 C. W. N., 369

s. 20.

*See* COMPROMISE—CONSTRUCTION, EN-  
FORCING, EFFECT OF, AND SETTING  
ASIDE DEEDS OF COMPROMISE.

[I. L. R., 8 Cal., 687

*See* LACHES . I. L. R., 4 All., 334*See* SETTLEMENT—CONSTRUCTION.

[I. L. R., 17 Bom., 407

**CONTRACT ACT (IX OF 1872)—continued.**

redeemed; and in 1859, B, in whose name the land was entered in the Government records, executed a *razinama* in favour of V, and V passed a *labulati* purporting the land R and R then became V's

[I. L. R., 11 Bom., 174

s. 22.

*See* PLAINT—AMENDMENT OF PLAINT.

[I. L. R., 9 Bom., 358

s. 23.

ILLEGAL CONTRACTS	Col.
	1662

(a) GENERALLY . . . 1662

(b) AGAINST PUBLIC POLICY . . . 1670

(c) COMPOUNDING CRIMINAL OFFENCES 1678

(d) ILLEGAL CEASES . . . 1681

*See* ACT XL OF 1858, s. 18.

[I. L. R., 2 All., 902

*See* BENGAL TENANCY ACT, s. 29.

[I. L. R., 24 Cal., 895

*See* CHARTER PARTY . I. L. R., 11 All., 58*See* CONTRACT—ALTERATION OF CON-  
TRACTS—ALTERATION BY COURT.

[I. L. R., 11 All., 118

*See* CONTRACT—WAGERING CONTRACTS.

[I. L. R., 5 All., 443

I. L. R., 9 Bom., 359

*See* EXECUTOR . I. L. R., 22 Cal., 14*See* INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 9 All., 497*See* RIGHT OF OCCUPANCY—TRANSFER OF  
RIGHT . I. L. R., 7 All., 511, 878**ILLEGAL CONTRACTS.**

(a) GENERALLY.

1. ——— Contract void as contrary  
to law—Agreement partly void and partly valid.

A mistake as to existing facts may invalidate a contract; but an erroneous expectation, which events entirely falsify, has no effect. *BABSHETTI v. VENKATARAMANA* . . . I. L. R., 3 Bom., 154

2. ——— *Mula-vargdars, Power of, to raise rent of mul-gainidar—Enhancement of assessment—Power of the State.*—A *mula-vargdar*, or superior holder, cannot raise the rent of his *mul-gainidar*, or permanent tenant holding at a fixed rent on the ground that the assessment on the land has been enhanced at the Government survey. *Babshetti v. Venkataramana*, I. L. R., 3 Bom., 154, and *Ramkrishna Kine v. Narahiva Shanbog*, S. A. No. 46 of 1879, followed. *Vyakunta Bapuji v. Government of Bombay*, 12 Bom. Ap., 1, referred to. *RANGA v. SUBBA HEGDE*

[I. L. R., 4 Bom., 473

s. 21—*Mortgage with proviso that in case of non-redemption in a prescribed time it should become a sale—Razinama by mortgagor declaring*

of many years, unless there has been some fraud or misrepresentation and an absence of negligence. In 1848, B and R mortgaged a piece of land to V. It was to be redeemed in eight years, or else to become the absolute property of the mortgagee. It was not

and whereby some upon would . . .  
nor the sureties can be sued. *DAVLATING C. P. P. P.*  
[I. L. R., 9 Bom., 17

( 1663 )

# CONTRACT ACT (IX OF 1872)—continued.

**2.** *Contract between brokers to divide profits.*—A contract between two brokers to divide the profits of a transaction is not an illegal contract, and an action to enforce it is therefore maintainable. *SUHAJ v. BISHUN DYAL* [1 Agra, 269]

**3.** *Contract in consideration that person will give evidence in civil suit—Void contract—Consideration.*—A contract to pay money upon the consideration that the plaintiff would give evidence in a civil suit on behalf of the defendant cannot be enforced. Such a contract is either for true evidence, and then there is no consideration, or for favourable evidence, either true or false, and then the consideration is vicious. *Semble*—If the consideration had been the plaintiff's promise not to evade process, that would still be no consideration for the defendant's undertaking. *SASHANNAH CHETTI v. RAMASAMY CHETTI* 4 Mad., 7

**4.** *Contract illegal and fraudulent as against third parties, but enforceable between the parties to it.*—A contract between several persons to make separate tenders to Government, and that whoever should obtain a contract from Government should share the profits with the others, although fraudulent towards the Government, will be enforced against any of such persons at the suit of any one of them who may have made the tender in pursuance of the contract. *ISSER CHUNDRA GHOSE v. BHOOBUN MOHUN BANERJEE* Bourke, O. C., 313

**5.** *Agreement to join Somaj.*—A suit, brought to enforce a penalty for breach of an agreement by which the defendant contracted to join a certain Somaj, of which the plaintiffs were members, and agreed that he would not, without the plaintiffs' permission, leave the community or join any other, it was held must be dismissed, the contract not being one capable of being enforced in a Court of law. *NITAI SHAHA v. SHUBAL SHAHA* [2 B. L. R., S. N., 4: 10 W. R., 349]

**6.** *Contract made by company before Registration Act XIX of 1857, s. 2.*—In a suit filed on the 28th of April 1866 and brought by a joint-stock company, after registration, to recover damages for breach of a contract made with the defendants before registration, *Held* (by *Couch, C.J.*, and *ARNOLD, J.*, affirming on appeal the decree of *SARGENT, J.*) that the contract was illegal under s. 2 of Act XIX of 1857, and that the plaintiffs could not sue upon it. *GUJERAT TRADING COMPANY v. TRIKAMJI VEJI* 3 Bom., O. C., 45

**7.** *Contract made by company before Registration Act XIX of 1857, s. 2.*—In a suit brought by a transferee of shares in a joint-stock banking company formed after the passing of Act VII of 1860, and neither incorporated nor registered when the plaint was filed, to compel the directors, trustees, and public officers of the company to give up the share certificates which had come into the possession of the bank, or to pay damages to the plaintiff, *Held* (by *Couch, C.J.*, and *SARGENT, J.*) affirming on appeal the decree of *ARNOLD, J.* that

# CONTRACT ACT (IX OF 1872)—continued.

**ILLEGAL CONTRACTS—continued.**  
the company being illegal under s. 2, Act XIX of 1857, the suit was not maintainable. *MANIKJI SORABJI v. CAMA* 3 Bom., O. C., 159

**8.** *Payment in consideration of releasing person from prison.*—The plaintiff's husband being in jail, the plaintiff agreed with the defendants to pay them Rs50 in consideration of their obtaining her husband's release, which they stated they could do. She accordingly paid the money. In an action for breach of contract, *Held* that action would not lie, as the contract was an illegal one. *PROTIMA AULAT v. DUKHINA SIKHAR* [9 B. L. R., Ap., 38: 18 W. R., 450]

**9.** *Contract to obtain more favourable assessment by means not stated.*—In a written agreement the defendant, in consideration of a sum of money received by him, promised to obtain a more favourable assessment upon certain villages in respect of waste and cultivated lands, and in case of failure to repay the amount received, *Held* that the contract was not vitiated by reason of illegality. *Aliter* if it appeared upon the face of the plaint, or if it were established by evidence independently of written agreement, that the arrangement was that the defendant should use corrupt or illegal means, or improperly exercise any personal influence which he possessed or professed to possess over a public servant. *PICHARKUTTY MUDALI v. NARAYANAPPA AYYAN* [2 Mad., 243]

**10.** *Suit to recover bribe to Ameen.*—A civil suit does not lie to recover money paid to a Civil Court Ameen to induce him to make a favourable report. *GOGUN CHUNDER DUTT v. JANAKEE* 20 W. R., 235

**11.** *Contract not to alienate—Agreement—Consideration.*—By a written instrument, duly registered, T agreed, in consideration of the recognition by his two brothers of his rights in the joint and undivided property of the three brothers, not to sell, transfer, or mortgage his share except to them, and, should he desire to dispose of it, to dispose of it to them for a certain sum. In breach of this agreement, he gave a usufructuary mortgage of his share to L. *Held*, in a suit by L to enforce the mortgage, that the agreement was valid, and that the mortgage was bad against T's brothers. *LAKHMI CHAND v. TORI LAL* I. L. R., 1 All., 618

**12.** *Agreement for release of attached property—Contract Act, s. 20—Mistake of fact.*—Where the property of a judgment-debtor had been attached in execution for a sum claimed to be due under a decree, but which sum in fact included interest not awarded by the decree, *Held* that an agreement, whereby the debtor obtained the release of his property on condition of paying by instalments the entire amount claimed inclusive of the interest, was not unlawful and void under cl. 2, s. 23 of the Indian Contract Act; and that the mistaken belief of the parties to the agreement that interest could be recovered by proceedings in execution was not a mistake of fact rendering the agreement

**CONTRACT ACT (IX OF 1872)—continued.**  
**ILLEGAL CONTRACTS—continued.**

voidable under s. 20 of that Act. **SATH GORUL DAS GOPAL DAS v. MURLI**

[I. L. R., 3 Calc., 602; 2 C. L. R., 158  
 I. R., 5 I. A., 78]

a certain sum. *S* agreed to become a surety on condition that *F* would deposit with him the amount of the security. *F* made the deposit, and *S* became a surety. The period for which *S* was responsible for *F*'s good conduct having expired without *F* committing any act to forfeit the security and *S* refusing to return the deposit, *F* sued *S* to recover the deposit. *Held* that, as the consideration for the agreement defeated the object of the law, the consideration was unlawful, and *F* was not entitled to relief. **FATEH SINGH v. SANWAL SINGH**

[I. L. R., 1 All., 751]

14. — *Champerly and maintenance—Assignment of chose in action—Illegal consideration.*—A *bona fide* purchase of a share in a claim about to be enforced by a suit is not void under s. 23 of the Indian Contract Act, and a suit may,

enforcement, sold fourteen annas or fourteen-six-

for two annas only of their entire claim. *Held* that the sale to *D* was not void; that the suit was properly framed, and that, even if the sale had been void, the suit by *A* and *B* was not liable to dismissal. **ABDOOL HAKIM v. DOORGA PRASHAD BANERJEE**

[I. L. R., 5 Calc., 4]

ing of those sections. **RAJAN HARJI v. ARDESHIR HORMUJI WADIA**

I. L. R., 4 Bom., 70

19. — *Government ferry—Lease—Ben. Reg. VI of 1819—Illegality of contract.*—*M* took a lease for three years of a Government ferry, and covenanted with the Magistrate, who granted the

such partnership was not void by reason of the covenant not to underlet or assign the lease. *S. A*

**CONTRACT ACT (IX OF 1872)—continued.**  
**ILLEGAL CONTRACTS—continued.**

No. 119 of 1782, decided on the 1st August 1872, overruled. **GAURI SHANKAR v. MUMTAZ ALI KHAN**  
 [I. L. R., 2 All., 411]

17. — *Contract entered into in violation of the law—Partnership—Illegal*

the partnership in direct violation of the law. **HORMASJI MOTABHAI v. PESTANJI DHANJIBHAI**

[I. L. R., 12 Bom., 422]

18. — *Excise Act XXII of 1881, s. 42—License—Sub-lease—Breach of conditions—Consideration forbidden by law—Immoral*

*v. RUP RAM* . . . I. L. R., 10 All., 577

19. — *Lease of a firm to retail opium at certain shops in a district—Sub-lease of such shops without the Collector's permission—Opium Act (I of 1878), s. 4—Rules made under Opium Act, ss. 43, 44, 45, and 52—Right to recover advances made for an illegal purpose subsequently carried out.*—The plaintiff who held the

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—continued.**

farm of the right of retail opium at certain shops in a district, and whose lease contained a clause prohibiting sub-letting without the Collector's permission, entered into an agreement with the defendant to sub-let to him, on certain conditions, the management of certain shops in the district for one year without the Collector's permission. After the expiration of the year, the plaintiff brought a suit against the defendant to recover the balance due to him under the agreement, and obtained a decree. *Held*, reversing the decree, that the agreement not being permitted by the rules framed under the Opium Act (I of 1878) was forbidden by s. 4 of the Act, and was void as having in view an object forbidden by law. *Held*, further, that the plaintiff could not recover the price of the opium supplied to the defendant, inasmuch as advances made for an illegal purpose, subsequently carried out, cannot be recovered. **RAGHUNATH LALMAN v. NATHU HIRJI BHATA** [I. L. R., 19 Bom., 638]

20. — *Agreement to relinquish exproprietary rights—Partition—N. W. P. Rent Act (XII of 1881), ss. 7 and 9—N. W. P. Land Revenue Act (XIX of 1873), s. 125.*—By a mutual agreement entered into between the parties to a private partition of certain villages held by them jointly the parties agreed that, if either party at the time of the partition was holding sir land in a village which upon partition fell into the share of the other party, he would relinquish his rights in such sir land in favour of the party into whose share the said village had fallen. *Held* that under such private partition the holder of the sir land became, on partition being effected, an exproprietary tenant in respect of the land previously held by him as sir, and that consequently the agreement to relinquish his rights in such land was not enforceable in law. **KASHI PRASAD c. KEDAR NATH SAHU** [I. L. R., 20 All., 219]

21. — *Agreement by plaintiff and defendant not to bid against each other at an auction.*—There is nothing necessarily unlawful in two or more persons agreeing not to bid against one another at an auction-sale. **HARI BALKRISHNA v. NABO MORRESHVAR** . I. L. R., 18 Bom., 342

22. — *Condition against sub-contract—sub-contract made notwithstanding condition—Suit by sub-contractor—Illegality of sub-contract—Damages—Compensation for work done.*—Defendant contracted with the Executive Engineer of the Public Works Department to supply materials for the construction of a public road. One of the conditions of the contract was that no work was to be underlet, or let by task work, by the contractor without the express permission, in writing, of the Executive Engineer or his duly authorized agent. Subsequently the defendant, without obtaining the requisite permission, entered into an oral agreement with the plaintiff, under which the plaintiff was to do the contract work and the defendant to pay him all moneys received from the Executive Engineer under the contract, after deducting ten per cent., as the defendant's profit. It did not appear that the plaintiff

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—continued.**

knew of the condition against underletting contained in the contract. The plaintiff sued the defendant for the balance of money due to him under the oral agreement. The first Court found that the plaintiff had executed the whole of the contract work; and that the defendant had received from the Executive Engineer a total sum of R2,766-11-11, and of this had paid to the plaintiff R2,334-13-6, leaving a sum of R431-14-5 still in his hands. It ordered the defendant to pay this sum to the plaintiff less 10 per cent. of the whole sum of R2,766-11-11, and passed a decree accordingly for R155-3-8. On appeal the Judge varied the decree by awarding to the plaintiff the whole sum of R431-14-5. He found that it had been agreed that the defendant should retain 10 per cent., but *held* that the agreement to assign or sublet the contract was contrary to public policy, and bad under s. 23 of the Contract Act (IX of 1872). On appeal to the High Court, — *Held* (reversing the decree of the Judge and restoring that of the first Court) that as it did not appear that the plaintiff knew of the condition in the contract, and as the objection of illegality was not taken by the defendant, the plaintiff was not precluded from enforcing against the defendant his own contract. Even if, however, the plaintiff could not enforce the contract, he would, under the circumstances, be entitled to receive from the defendant compensation for the work and labour of which the defendant had received the benefit. The only question was how the work done should be valued. There was no direct test of its market value. The best available test was the amount which the plaintiff, at the time when he entered into the agreement, accepted as sufficient, namely, the amount to be paid by the Executive Engineer less 10 per cent. The High Court, therefore, restored the decree of the Subordinate Judge. **GAYADHAR RAGHUNATH JOSHI v. DAMODAR MOHANLAL** . . . I. L. R., 21 Bom., 522

23. — *Unlawful agreement—Promissory note given in fraud of insolvency law—Illegal consideration.*—In a suit on a promissory note it appeared that it had been given by the defendant to the plaintiff in consideration of his withdrawing his threatened opposition to the discharge of an insolvent and consenting to an arrangement among the general body of creditors, who were not, though the insolvent was, aware of this transaction whereby the plaintiff was to obtain a special advantage. *Held* that the contract was unlawful, and the suit could not be maintained. **KRISHNAFFA CHETTI v. ADINUTLA MUDALI** . I. L. R., 20 Mad., 84

24. — *Illegal—contract—Compound interest—Sonthal Parganas Settlement Regulation (III of 1873), s. 6—Sonthal Parganas Justice Regulation (V of 1893), s. 21—Contract Act, s. 21—"Unlawful" consideration, meaning of.*—There is no law or regulation laying down that an agreement between any two persons living in the Sonthal Parganas to pay compound interest upon the amount borrowed is "unlawful" within the meaning of s. 23 of the Contract Act. All that the law provides is that compound interest

**CONTRACT ACT (IX OF 1872)—continued.**  
**ILLEGAL CONTRACTS—continued.**

**C. CHUNI LAL MARWARI I. L. R., 28 Calc., 238**

In a suit on the bond, it was contended that it was

time, consequently, the bond was not void under s. 23 of the Contract Act. *Semle*—The words "any law" in that section refer to some substantive law, and not to an adjective law, such as the Procedure Code is. **HUKUM CHAND OSWAL v. TAHARUNNESSA BIBI [I. L. R., 16 Calc., 504]**

*Suit on bond—Money*

prostitutes, and therefore to further an immoral purpose, which could not be separated from the legal

therefore went too far in concluding that the singing was necessarily intended, to the knowledge of the plaintiff, to increase the attractiveness of the

**CONTRACT ACT (IX OF 1872)—continued.**  
**ILLEGAL CONTRACTS—continued.**

mortgagor's daughters as prostitutes. **KHUBCHAND v. BEHAM I. L. R., 13 Bom., 160**

**27. ————— Illegal or immoral con-**

had acquired possession thereunder. **Ayerst v. Jenkins, L. R., 16 Eq., 275**, followed. **LACHMI NARAIN v. WILAYTI BEHAM**

**[I. L. R., 2 All., 433]**

Affirmed on appeal to the Privy Council in **RAM SARUP v. BELA I. L. R., 8 All., 313**

**[S. C., L. R., 11 I. A., 44]**

**28. — of part tion.—M concubation, G,**

March 1899, charging a portion of his real estate with the payment of such annuity. *Held* in a suit by M against G's heir, his married wife, to enforce the agreement, that the consideration for the agreement

of the estate charged with the payment of the annuity or other property of G. **MAN KUAR v. JASODHA KUAR I. L. R., 1 All., 473**

**29. ————— Gambling—Mofussil of Madras—Money lent for, recoverable.**—Gambling not being prohibited by law in the mofussil of the Madras Presidency, money lent for such gambling is recoverable by suit. **SEEBARAYA v. DEVANDRA [I. L. R., 7 Mad., 301]**

**(b) AGAINST PUBLIC POLICY.**

**30. ————— Contract against policy of the Insolvent Act.**—In a suit for money due on three promissory notes, two of them executed by

quant, and of customary

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—continued.**

as the consideration for the making of that note by T was the defendant's withdrawing his opposition in the Insolvent Court, that that arrangement was brought about by plaintiff to secure to himself and defendant an undue share of the insolvent's property, and was an arrangement contrary to the policy of the Insolvent Act, and therefore void. **AGAR CHAND v. VIRABHAGAVAT CHETTI**

[3 Mad., 172]

**31. — Prohibiting discharge of obligation attaching under decree of Court.**—A became surety for certain judgment-debtors, whose property had been attached in execution of a decree, but who had agreed with the decree-holder to liquidate the amount of the decree by yearly instalments. An agreement between A and the judgment-debtors contained the following conditions: "If any of the instalments be paid by the said A, the obligors shall not be at liberty to liquidate the remaining instalments either from their own funds or by borrowing money; but that A shall continue to pay the instalments as they fall due, and shall hold possession of the estate." The judgment-debtors afterwards satisfied the decree in full. *Held* in a suit against them by A that the above condition was void as contrary to public policy, as it prohibited the discharge of an obligation which, by decree of Court, the judgment-debtors were ordered to pay. **LALL MUNEE v. PRAGDUT DOORSEY** . . . 1 N. W., 137: Ed. 1873, 220

**32. — Agreement to officiate as patil—Illegal contract as opposed to public policy—Act XI of 1843.**—An agreement between two members of a patil family that they are to officiate in turns is not illegal as being opposed to public policy. The Court will not, however, compel the actual patil to vacate office under such an agreement as long as his appointment under Act XI of 1843 is unrevoked. **VARU TALAD RAM PATIL v. PAND VALAD MALJI PATIL** . . . 6 Bom., A. C., 243

**33. — Agreement to remunerate vakil proportionately to the amount recovered—Public policy.**—*Quare*—Whether a special agreement entered into by the agent of a Hindu widow acting on behalf of a minor, under which the vakil in an appeal he was conducting for her was to receive for his services a stated fee, and in case of success a further reward proportional to the amount recovered, was one which the Court would enforce. **RAO SAHEB V. N. MANDEK v. KAMALJABAI SAHEB NIMBALKAR** [10 Bom., 26]

See per WESTROPP, C.J., in VINAYAK BAGHUNATH v. GREAT INDIAN PENINSULA RAILWAY COMPANY . . . 7 Bom., O. C., 118

**34. — Unlawful consideration—Illegal contract.**—The defendant, with the expressed intention of benefiting the judgment-debtor, and of thwarting the judgment-creditor against whom he had a grudge and for whom he entertained ill-feeling, entered into a contract with a pleader of the Court in which the decree had been obtained to pay him ₹50 if he could get the case, which was decreed, dismissed, struck off, or anyhow rejected

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—continued.**

from the file of the Court. *Held* that the contract was one against public policy, and could not be enforced. **BAMANDAS BANERJEE v. HARULAL SHAHA** [1 B. L. R., S. N., 10: 10 W. R., 140]

**35. — Contract of partnership with overseer in Public Works Department—Fraud.**—Where an overseer in the Public Works Department, who is prohibited by the rules of his office from entering into any trade or contracts with that Department, enters into an agreement of partnership for carrying on business under contract with the Department, such agreement is a fraud upon the public, and is therefore one which a Court of Justice ought to treat as an absolute nullity. **SHARONA PERSHAD ROY v. BHOLA NATH BANERJEE**

[1 W. R., 441]

**36. — Marriage, Contract to invalidate Public policy—Hindu law.**—A contract entered into by Hindus living in Assam, by which it is agreed that, upon the happening of a certain event, a marriage is to become null and void, is contrary to the policy of the law, and a suit cannot be maintained upon it. **SITARAM v. AHEEREE HEEBAHNEE**

[1 B. L. R., 129: 20 W. R., 49]

**37. — Contract by person with license letting house or shop licensed—Beng. Act II of 1866—Contract against public policy.**—The intention of Bengal Act II of 1866 is that the person who has the license shall "keep," i.e., dwell in, and have the management and control of, the shop or place of entertainment. A contract by which he lets the shop and the use of the license for a fixed term, receiving rent, is contrary to the policy of the law, and comes within the rule that a contract which is illegal or is contrary to public policy cannot be enforced. **JUDOOXATH SHAHA v. NOBIN CRUNDER SHAHA** . . . 21 W. R., 289

**38. — Husband and wife—Divorce—Promise of marriage.**—In consideration of advances of money made by N to V, a married woman (both being of the Kumbi caste), in order to enable her to obtain a divorce from her husband, V promised to marry N as soon as she should obtain a divorce. N subsequently sued V to recover the advances. *Held* that the agreement, having for its object the divorce of the defendant from her husband and her marriage with the plaintiff, was *contra bonos mores*, and, therefore, void. **BAI VILTI v. NANA NAGAR** . . . 1 L. R., 10 Bom., 152

**39. — Agreement executed in consideration of staying criminal proceedings.**—Plaintiff sued to recover from defendants, his brothers, ₹25,000, with interest, on a deed of assignment "B" granted to him by one R G, dated 30th October 1870, transferring to plaintiff a promissory note "A" for ₹25,000, executed by first and second defendants to the aforesaid R G, as one of the mediators, in conjunction with one S G, in a division of family property between plaintiff and defendants, and others, agreeing to pay over on demand by the 30th September 1870 to plaintiff, through the mediators aforesaid, ₹25,000 in lieu and on account of

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—continued.**

family property in possession of defendants. The defendants admitted the execution by them of the document for Rs25,000, to be paid by them to plaintiff (A), and pleaded that it was given on consideration of the withdrawal of a criminal prosecution, or if not, that there was no consideration at all; and

Original Suit No. 2 of 1863, under the decree in which the defendants had recovered Rs13,00 and odd from the plaintiff. They denied any division of family property by mediation, as also that they

among other matters, the question of this alleged concealment, or theft, which the Court found the present plaintiff to have falsely asserted, there was here, therefore, no *res dubia* or *in incerta*, nor could either party believe that there was such. The final judgment of a competent Court in a suit to which the plaintiff was a party had determined the

be reversed. **NAMASIYAYA GAUNDAN v. KYLASA GAUNDAN** 7 Mad., 200  
See **PUDISHARY KRISHNAN v. KARAMALLY KUNHUNNI KABIP** 7 Mad., 378

customs, and which cannot be enforced by a Civil Court. An agreement between members of different *Somajes* to have social intercourse with each other, and to intermarry, is not opposed to public policy, but rather in accordance therewith. **HUBONATH PATTUR v. NITTO PARAMANICK** 23 W. R., 517

41. *Transaction defeating Government right of escheat—Contract Act, s. 65—Specific Relief Act, s. 35.*—Where the plaintiff and her mother executed in favour of the defendant a document which purported to divest the plaintiff and her mother of the entire property of the illam of which they were the sole proprietors, and to vest it in the defendant in consideration of his promising to marry and raise up heirs to the illam, and to

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—continued.**

maintain the plaintiff and her mother till death,—

ing of the property, as being the last owners and competent to dispose of it absolutely. **TAMARA SHERRI SETHURU ANDARJANOM v. MAHANAT VASUDRYAN NAMUDRIPAD** I. L. R., 3 Mad., 215

42. *Agreement to divide property—Hindu law—Public policy.*—There is nothing in Hindu law which makes illegal an agreement, entered into by expectants, to divide a parti-

**SINGH v. PRATAP SINGH**  
[I. L. R., 8 Calo., 138; 10 C. L. R., 68]

43. *Contract in consideration of marriage—Public policy.*—Where a Hindu, contracting a second marriage, agreed to confer, on the party whose sister was to be his second wife, a talukh which was to be carved out of his estate, and, until it was carved out, to make a yearly payment of a fixed sum,—*Held* that the undertaking was for ample consideration, and was not opposed to public policy. **LALLU MOHAR DOSS v. NORTON MOHUN SINGH** 25 W. R., 32

*See also—TAMARA SETHURU ANDARJANOM v. MAHANAT VASUDRYAN NAMUDRIPAD*  
payment of the Rs100 to the father of the minor as against the person engaging to marry the minor.  
**RAM CHAND SEN v. AUDAITO SEN**  
[I. L. R., 10 Calo., 1054]

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—continued.**

the bond. *Held* the consideration for the bond was not unlawful, nor was the contract illegal as being one contrary to public policy under s. 23 of the Contract Act. **VISVANATHAN v. SAMYNATHAN**

[I. L. R., 13 Mad., 83

46. ——— *Contract for marriage—Consideration, Suit for return of—Marriage brokerage.*—The plaintiff sued to recover the value of certain ornaments which he had presented to the defendant's daughter on his agreeing to marry her to plaintiff's brother. The plaintiff alleged that the defendant broke the agreement, and gave his daughter in marriage to another person. He, therefore, asked for the restoration of the ornaments, but the defendant refused to return them: hence the present suit. *Held* that the suit was maintainable, there being nothing in the plaintiff's claim which was either against morality or public policy. **RAMCHET v. TIMMAYA**

I. L. R., 16 Bom., 678

47. ——— *Illegal agreement—Agreement against public policy—Guardian and ward—Agreement for marriage by a guardian to give a ward in marriage on payment of a sum of money.*—The plaintiff stated as her cause of action that a young girl had been left in her charge and had been maintained by her for a number of years; that in January 1888, arrangements had been made with a Bhatia to get this girl married, and that she (the plaintiff) was to receive R2,500 on the marriage; that the defendant had also agreed to pay her (the plaintiff) R2,000 if she would give the girl to him in marriage; and that, before the marriage ceremony could be performed, the defendant had induced the girl to quit the plaintiff's house for immoral purposes. She claimed R2,500 as damages. *Held* that the alleged agreement on which the suit was brought was immoral and against public policy, and that the action was not maintainable. **DULARI v. VALLABDAS PRAGJI**

[I. L. R., 13 Bom., 126

48. ——— *Agreement to procure marriage in consideration of a money payment—Marriage brokerage—Illegal agreement—Public policy.*—The defendant was the eldest of three brothers whose mother on her marriage had been put out of the Lovana caste for having married a man belonging to a different caste. The defendant was anxious that he and his brothers should be re-admitted to the caste; and in 1864 he entered into an agreement with the plaintiff, who was at that time one of the setias of the caste, whereby the latter agreed to procure the admission of the plaintiff and his brothers and get them married to girls belonging to the caste. In consideration for these services, the defendant was to pay the plaintiff the sum of R5,000, which sum was to become due on the marriage of the defendant's youngest brother to a girl of the caste, and to be expended in purchasing caste utensils, which were to be kept for the use of the caste. The plaintiff alleged that part of this money had been already paid to him, and that on the marriage of the defendant's youngest brother in 1880

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—continued.**

he had demanded payment of the balance (*viz.*, R3,149), which the defendant had not paid. He now sued to recover this balance. *Held* that the contract sued on, in so far as it promised a money payment for the negotiations of a marriage by a third party, was immoral and contrary to public policy. **PITAMBER RATANSI v. JAGJIVAN HANSRAI**

[I. L. R., 13 Bom., 131

49. ——— *Agreement to procure marriage—Marriage brokerage contract—Hindu law.*—An agreement to assist a Hindu for reward in procuring a wife is void as being contrary to public policy. **VAITHYANATHAM v. GANGARAZU**

[I. L. R., 17 Mad., 9

50. ——— *Contract to pay money to a father for giving his child in marriage—Public policy.*—A contract which entitles a father to be paid money in consideration of giving his son or daughter in marriage is against public policy, and cannot be enforced in a Court of law. **DHOLIDAS ISHYAR v. FULCHAND CHHAGAN**

[I. L. R., 22 Bom., 658

51. ——— *Assignment of chose in action, Validity of—Void contract—Transfer of mortgage-bond for valuable consideration.*—An assignment of a mortgage-bond for a valuable consideration is not void under s. 23 of the Indian Contract Act (IX of 1872) as being opposed to public policy. **KEVAL VANMALI v. FAKIRA JIVAN**

[I. L. R., 13 Bom., 42

52. ——— *Agreement opposed to public policy.*—For the purpose of meeting the expenses of a suit for possession of immovable property, the plaintiff, who was in straitened circumstances, agreed with the defendant that the latter, in consideration of paying such expenses from the Court of first instance up to the High Court, should have half the property and half the mesne profits, with all his costs, in the event of success. The suit was brought, and was conducted by the plaintiff and the defendant jointly, and was decreed by the High Court on appeal, and the defendant obtained possession of half the property. The plaintiff sued to recover possession of the half on the ground that the agreement was illegal and void. It appeared that the amount actually spent by the defendant in the former litigation was R368, and that, if that suit had failed, he would have lost about R600. It was found that the value of the half share of the property was about R1,000. *Held* that the agreement was unfair, unreasonable, extortionate, and contrary to public policy within the meaning of s. 23 of the Contract Act (IX of 1872), and that the plaintiff was entitled to recover possession of the land in suit on payment of compensation for the advances made by the defendant in the former litigation, with interest at 12 per cent. per annum. **Chunni Kuar v. Rup Singh, I. L. R., 11 All., 57, and Loke Indar Singh v. Rup Singh, I. L. R., 11 All., 118, referred to.** **HUSAIN BAKSHI v. RAHMAT HUSAIN**

I. L. R., 11 All., 128

**CONTRACT ACT (IX OF 1872)—continued.**  
**ILLEGAL CONTRACTS—continued.**

not obtained a license under that Act, is void and cannot be recovered on. *BOISIRIA CHUAN NAUN v. WOOMA CHUAN SEN*. I L. R., 18 Cal., 438

plaintiff the levy of tolls on certain

the permission of the Collector and sued to recover a certain amount which the defendants promised to

it was forbidden under a pecuniary penalty by conditions in the lease to the plaintiff. The penal consequences of the breach were limited to the specific penalty, and did not make the contract void. *HIRKANDHAI v. HIRALAL KANDINSHAT MARWADI*

[I. L. R., 24 Bom., 622]

**55. Mortgage—Pre-emption**  
**—Covenant to give mortgages right of pre-emption.**

—An agreement by the mortgagor to give the mortgagee a preference of pre-emption in case of sale is not contrary to public policy, and may be enforced against a purchaser with notice of the covenant. *HARIS PAIK v. JAHURUDDI GAZI*

[3 C. W. N., 575]

**56. Contract relating to**

framed by the Board of Directors of the  
 patwaris. *SHIAM LAL v. CHIRAKI LAL*

[I. L. R., 22 All., 220]

**CONTRACT ACT (IX OF 1872)—continued.**  
**ILLEGAL CONTRACTS—continued.**

of R250. The property had previously belonged to the father, since deceased, of the first defendant's wife and her sister, defendant No. 2. Shortly after the father's death, a suit for maintenance was brought by his sister-in-law against his widow and two daughters, in which the then defendants alleged

*NAKALADA ARANNAW*

**58. Suit on ekhar executed by priest of Hindu idol—Consideration—Right to succeed to office of priest.**—In a suit on an ekhar executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus of the charao (offerings to the idol), and recoverable from the defendant's successors in office.—Held there having been at the date of the ekhar a *bond fide* dispute as to the right to succeed to the office of priest, there was consideration for the contract, and the contract in the circumstances of the pre-

*with Roy Chowdhry v. Kishen Pershad Surma, 7 W. R., 266, Durga Bibi v. Chanchal Ram, I. L. R., 4 All., 54, Narasimma Thatha Acharya v. Anantha Bhatta, I. L. R., 4 Mad., 39, Kappa Guntal v. Dorasami Gurukul, I. L. R., 6 Mad.,*

**(c) COMPOUNDING CRIMINAL OFFENCES.**

**59. Contract compounding an assault.**—A contract compounding an assault is not illegal, and may be sued upon. The fact of two of the defendants being Mahomedans does not affect the principle of this decision. *MORHOORAMATHI DEY v. GOPAL ROY*. 5 W. R., S. C. C. Rep., 16

and will not be enforced. This consideration to support the promise in such a contract is a vicious consideration. *Keir v. Leenan, 6 Q. B., 808 S. C. on appeal, 9 Q. B., 371, observed upon. KANDAR CHETTI v. COORAGEN SEIT*. 2 Mad., 187

**61. Execution of deed of sale in consideration of abstaining from criminal**

## CONTRACT ACT (IX OF 1872)—continued.

## ILLEGAL CONTRACTS—continued.

*proceedings.*—Where the defendant agreed to execute a kobala of certain lands in favour of plaintiff in consideration of the latter's abstaining from taking criminal proceedings against the former with respect to an offence which is compoundable.—*Held* that the contract could not be regarded as forbidden by law or as against public policy, and that it might be enforced. *AMIR KHAN v. AMIR JAN*

[3 C. W. N., 5

62. — *Consideration in part illegal—Stifling a prosecution.*—The plaintiff, claiming to be entitled together with two of the defendants to the office of archaka of a temple, sued in 1889 for a declaration of his title, and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them. These averments were proved. *Held* that the agreement was void, although the withdrawal of the criminal proceedings formed part only of the consideration for it. *SRI RANGACHARIAR v. RAMASAMI AYYANGAR*

[I. L. R., 18 Mad., 189

63. — *Agreement to abstain from prosecuting for giving false evidence.*—A Court cannot take cognizance of a bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence. *QUEEN v. BALKISHEN*

[3 N. W., 166: Agra, F. B., Ed. 1874, 252

64. — *Compounding charge of fraudulent abstraction of documents—English Common Law rule.*—The plaintiff, a resident of Pondicherry, held a bond from one of the defendants (the second) for a certain sum of money. This bond the plaintiff charged the said defendant before the French legal authorities with having fraudulently abstracted from his house in Pondicherry, and he obtained the arrest and extradition from the British territory of the second defendant, as also of his brother, the first defendant. The latter on his way to Pondicherry met the plaintiff, and a settlement of accounts took place. The fifth, sixth, seventh, and eighth defendants made themselves liable by executing the bond sued on for the sum found due to the plaintiff, and took indemnity bonds to themselves from the first defendant, the consideration being the agreement of the plaintiff to discontinue further proceedings in the criminal charge. The Court at Pondicherry sanctioned the agreement as a compromise by civil redress, and suspended further proceedings in accordance with the law in force in the settlement. *Held* that the contract was enforceable, the facts of the case not showing the compromise to be in its nature prejudicial as being in contravention of public policy under the Government of British India, or injurious to the good order and interests of society in regard to the administration of public justice. The English Common Law rule, that contracts for the compounding or suppression of criminal charges for offences of a public nature are illegal and void

## CONTRACT ACT (IX OF 1872)—continued.

## ILLEGAL CONTRACTS—continued.

has no application to a contract for compounding the prosecution of criminal proceedings for an offence against the municipal law of a foreign country. The rule of international law, that the law of the place of a contract governs its validity, is subject to the qualification that every State may refuse to enforce a contract when it is for the fraudulent evasion of its law, or is injurious to its public institutions or interests. *SUBRAYA PILLAI v. SUBBAYA MUDALI*

[4 Mad., 14

65. — *Compounding charge of wrongful restraint—Offence legally compoundable—Suit to recover consideration.*—Where A was criminally prosecuted by B for wrongful restraint, and he came to terms with B to pay him for the withdrawal of the complaint, or to deposit money or property with C to be paid over to B on the disposal of the case according to B's petition of withdrawal, and the Magistrate, instead of allowing the withdrawal of the charge, punished A criminally.—*Held* that A could sue for the recovery of the money or property, as the charge was not one out of which it would have been illegal for A to withdraw, with the consent of the Magistrate, the offence charged consisting of an act for which B might have sued for damages in the Civil Court. *MATHOORA NATH BHOOMIK v. KENARAM KURMOKAR*

[7 W. R., 33

66. — *Transfer of property as compensation for criminal charge—Illegal pressure.*—Certain parties convicted of a criminal offence, in order to avoid apprehension, entered into a compromise with complainant, who agreed to accept a sum of money as costs and as compensation for the disgrace he had suffered. They accordingly transferred to him some property in lieu of cash. *Held* that the transfer was not made under illegal pressure, and they could not sue to set it aside. Though the offence was one in which a compromise could not legally be admitted, the error of the Magistrate in admitting it, the parties acting in good faith, ought not to affect the position of the parties. *NUBEE BUKSH v. HINGON*

[8 W. R., 412

67. — *Contract based on condonation of criminal offence—Onus of proof.*—In a suit to enforce a contract, should the defendant plead that the contract was based upon the condonation of a criminal complaint against the plaintiff, which might have been of a nature not condonable by law, and that the contract was therefore void, it would be for him to show what was the nature of the offence complained of. *KUMALA NATH SEIN v. BEHARIE KANT ROY*

[11 W. R., 314

68. — *Money paid to condone offence—Causing death accidentally.*—Where, to suppress a criminal prosecution for having accidentally caused the death of his wife, plaintiff voluntarily paid money to defendant, knowing the defendant to be the nearest relative of the deceased who could take a part in the prosecution, the contract was held to be void, as against morality and public policy, and

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—continued.**

plaintiff was not entitled to sue for the money so paid. **JETOO MAHATO v. MONURAM MAHATO**  
[17 W. R., 84]

69. ———— *Agreement to withdraw charge of breach of criminal trust—Unlawful agreement—Void consideration—Public policy.*—  
The plaintiff sued the defendant for possession of

the unlawful agreement, and gave the plaintiff a decree. *Held* that the decree was correct, as there was no evidence to show either that the plaintiff knew of the agreement to suppress the criminal prosecution or that any money had been paid in pursuance of such unlawful agreement. **RAJKRISHNO MOITTO v. KOYLASH CHUNDER BHUTTACHARY**  
[I. L. R., 8 Calc., 24]

He must not, however, by stifling a prosecution obtain a guarantee from third parties. **KRISHNAJI TULSIDAS v. HURJIYAN MULJI**  
[I. L. R., 11 Bom., 588]

**(d) ILLEGAL CESSSES.**

71. ———— *Cess not authorized.*—  
*Beng. Reg. VII of 1822, s. 9, cl. 1.*—A claim for a cess or collection not avowed and sanctioned at the time of settlement nor taken into account in fixing the Government jumma is illegal under cl. 1, s. 9, Reg. VII of 1822, and consequently inadmissible. **HUSHMUT ALI v. SEETA RAM** 1 Agra, 333

72. ———— *Cess not authorized.*—  
*Beng. Reg. VII of 1822, s. 9, cl. 1.*—*Held* that a suit substantially brought to prove a right to collect cesses not authorized under the provisions of cl. 1, s. 9, Reg. VII of 1822, being for an illegal object, was not maintainable. **KHYRAT ALI v. MAHOMED YAKUB KHAN** 2 Agra, 207

**CONTRACT ACT (IX OF 1872)—continued.****ILLEGAL CONTRACTS—concluded.**

73. ———— *Contract relating to the collection of an annual of an*  
*ANT GROSE*  
[3 B. L. R., A. C., 44: 11 W. R., 395]

the consideration for the lease. **MAHOMED FAYEZ CHOWDHURY v. JAMOO GAZER**  
[I. L. R., 8 Calc., 730]

be treated as an illegal cess, for the law favours such arrangements and provides for their being enforced. **SERAJGUNGE JUTE COMPANY v. SORABDEE AROOND**  
[25 W. R., 253]

But see **ONJOON SAROO v. ANUND SINGH**  
[10 W. R., 257]

[7 W. R., 453]

77. ———— *Collection by tahildar*

under Act X of 1859, s. 24. **NOBIN CHUNDER ROY v. GOORA GOBIND SURNAN** 14 W. R., 447

**SINGH v. DESO BUNDEH SAHA** 9 C. L. R., 279

s. 23. **GOSWAMI SUREE PURUSH OTAMJI MAHARAJ v. ROBB** I. L. R., 8 Bom., 393

**CONTRACT ACT (IX OF 1872)—continued.****s. 24.**

See BENGAL TENANCY ACT, s. 29.

[I. L. R., 24 Cal., 895]

See HINDU LAW—CONTRACT—HUSBAND AND WIFE . . . 4 C. W. N., 488

See SONTHAL PERGUNNAS SETTLEMENT REGULATION, s. 6.

[I. L. R., 26 Cal., 238]

**s. 25.**

See CASES UNDER CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

See LIMITATION ACT, 1877, s. 19 (1871, s. 20)—ACKNOWLEDGMENT OF DEBTS.

[I. L. R., 1 Bom., 590]

I. L. R., 2 Bom., 230

I. L. R., 6 Bom., 683

I. L. R., 8 Bom., 405

I. L. R., 11 Bom., 580

I. L. R., 23 Mad., 94

See POWER OF ATTORNEY.

[11 C. L. R., 581]

See STAMP ACT, 1879, SCH. I, CL. I.

[I. L. R., 8 Bom., 194]

See VENDOR AND PURCHASER—CONSIDERATION . . . I. L. R., 22 Bom., 176

1. ———— *Consideration—Void agreement.*—While certain hundis were running, the acceptor gave the holder, the drawer having become bankrupt, a mortgage of certain immoveable property as security for the payment of the hundis in the event of their dishonour when they became due. *Held*, in a suit on the mortgage-deed, the hundis having been dishonoured, that there was no consideration, within the meaning of that term in Act IX of 1872 for the agreement of mortgage, and the same was void under s. 25 of that Act. *MANNA LAL v. BANK OF BENGAL* [I. L. R., 1 All., 309]

2. ———— *Consideration—Vakil and client—Promise of additional sum in case of success in suit.*—An agreement executed by a client to his vakil after the latter had accepted a vakalutnama to act for the former in a certain suit, whereby the client bound himself to pay to the vakil, in the event of his conducting the suit to a successful termination, a certain sum in addition to the vakil's full fees held *nudum pactum*, and a suit founded upon it dismissed as unsustainable. *RAMCHANDRA CHINTAMAN v. KALU RAJUTA* . I. L. R., 2 Bom., 362  
*NUTHOO LALL v. BUDREE PERSHAD* [3 Agra, 236]

*FULLER v. EISHOON KOOR* . . . 3 N. W., 25

3. ———— *Consideration—Inam chithi—Vakalutnama—Act I of 1846, s. 7—Nudum pactum.*—Where the acceptance of a vakalutnama by a pleader and the execution of an inam chithi (agreement) by his client, intended as a remuneration for the professional services of the pleader, were contemporaneous, and the vakalutnama was not filed by the pleader until after the execution of the

**CONTRACT ACT (IX OF 1872)—continued.**

inam chithi,—*Held* that the acceptance of the vakalutnama and the execution of the inam chithi constituted one transaction, and that the agreement was not illegal under Act I of 1846, s. 7. *SHIVARAM HARI v. ARJUN* . . . I. L. R., 5 Bom., 258

4. ———— *Consideration—Void agreement—Immoral consideration—Past cohabitation.*—Past cohabitation would not be an immoral consideration, if consideration it can properly be called, for a promise to pay a woman an allowance. Such a promise, however, is to be regarded as an undertaking by the promisor to compensate the promisee for past services voluntarily rendered to him, for which no consideration, as defined in the Contract Act, would be necessary. *DHIRAJ KUAR v. BIKRAMAJIT SINGH* . . . I. L. R., 3 All., 737

5. ———— *Consideration—Post-nuptial contracts—Contract partly legal and partly illegal.*—The defendant, a Mahomedan husband, executed a kabinnama in favour of his wife, by which he agreed, among other things, that he would maintain her and make over to her whatever money he should earn; that he would never exercise any violence upon her; that he would not take her away from home; that it should not be within his power to marry or make any nika without her permission; that he would do nothing without her permission, and, if he did, she should be at liberty to divorce him, and realize from him the amount of dinmohur forthwith, and the nika would then be null and void. The plaintiff sued her husband upon this document, which was registered, to recover from him all his earnings amounting to Rs65, after deducting Rs4, which she admitted having received from him. The lower Appellate Court held, reversing the decision of the Munsif, that the agreement had been made subsequently to the marriage, and was, though registered, void for want of consideration. *Held* on appeal that the agreement, being registered, came within s. 25 of the Contract Act, and was not void on the ground that there was no consideration. Although some parts of the agreement might be illegal as being contrary to public policy, and therefore void, yet those which were legal could be enforced. (*See Davlat Singh v. Pandu*, I. L. R., 9 Bom., 17.) The Court treated the suit as one to enforce that part only of the contract which was legal, and considered the plaintiff entitled to recover a fair sum for her maintenance. *POONOO BIBEE v. FYZE BUKSH*

[15 B. L. R., Ap., 5: 23 W. R., 63]

6. ———— *Consideration—Agreement to postpone execution proceedings—Suit on agreement when execution is barred.*—In execution of a decree, dated the 28th May 1843, under which certain persons were jointly liable, the 10th February 1881 was fixed for the sale of the debtors' property, which was then under attachment, but on that day all the debtors except one, K, arranged with the decreeholders that the money should be paid by them in Bysack following, i.e., by the 12th May 1881; that in the meantime the execution proceedings should be struck off, the attachment still subsisting; and that, if

## CONTRACT ACT (IX OF 1872)—continued.

had been taken out, basing their suit upon the

[13 C. L. R., 178

taken, in execution of the decree. Held that, such

and allowing the decree-holder to proceed against the property transferred by it. The law relating to voluntary alienations explained. *NASIR HUSAIN v. MATA PRASAD*

I. L. R., 3 All., 891

tion for the agreement within the meaning of s. 2 (d) of Act IX of 1872, and the agreement did not fall within cl. (2), s. 25 of that Act, and was void for want of consideration. *DURGA PRASAD v. BALDEO*

I. L. R., 3 All., 321

9. ———— *Promise to pay—Balancing accounts—Account stated.*—The Gujarati words

## CONTRACT ACT (IX OF 1872)—continued.

"bali deva," which are of common use in balancing accounts, import no more than the English words "balance due," from which an unwritten contract may be inferred, but which do not of themselves amount to a promise to pay within the sense of Act IX of 1872, s. 25, cl. 3. *RANCHODAS NATHUBHAI v. JETCHAND KRUSALCHAND*

[I. L. R., 8 Bom., 405

revival of an original promise or as evidence of a new contract. If it is to be used as evidence of a new contract furnishing a basis for a new cause of action, it must contain a promise in writing duly signed as required by the Contract Act IX of 1872, s. 25, cl. 3, a bare statement of an account not being such a promise. *RAMJI v. DHARMA*

[I. L. R., 8 Bom., 683

11. ———— *Consideration—Judgment-debt—Debt barred by limitation.*—A judgment-debt is a debt within the contemplation of s. 25, cl. 3, of the Contract Act IX of 1872. *SHREPATRAY v. GOTIND NARAYAN*

I. L. R., 14 Bom., 390

12. ———— *Promise to pay a debt barred by limitation—Judgment-debt.*—The holder

objection to the decree-holder's demand in future he

**CONTRACT ACT (IX OF 1872)—continued.**

of s. 25 (3) of Act IX of 1872 includes a "judgment-debt," and such petition was a promise to pay a debt barred by limitation within the meaning of that law, and a suit founded on such petition to recover the balance of the money due under the decree was maintainable. *BILLINGS v. UNCOVERED SERVICE BANK*. I. L. R., 3 All., 781

13. ———— *Promise to pay barred debt—Document containing requisites of s. 25.*—A document sufficiently complies with s. 25 of the Contract Act when it is signed by the person to be charged, and refers to the debt in such a way as to identify it, and contains a promise to pay wholly or in part the debt referred to therein, or expresses an intention to pay which can be construed to be a "promise." To create a "promise" within the meaning of the section, it is not necessary that there should be an accepted proposal reduced to writing, a written proposal, accepted before action, becoming by the definition clause a promise when accepted. The words of the section show that it is the debt, and not a sum of money in consideration of the barred debt that the promisor should refer to. In defence to a suit for rent, a tenant pleaded that a portion of the claim was barred by limitation. Plaintiff relied on a letter which had been signed by defendant, after the disputed portion had become barred, and in which the defendant, after referring to the periods in respect of which the arrears of rent were due, said, "I shall send by the end of Vysakha month." Held that the document contained the ingredients required by s. 25, cl. (3), of the Contract Act, and that the claim was not barred by limitation. *APPA RAO v. SURYAPPA RAO*

[I. L. R., 23 Mad., 94]

14. ———— *Acknowledgment of barred debt—Kistbundi, Suit on—Limitation Act, XIV of 1859, s. 4.*—A obtained a decree in 1858 against B, but did not apply for execution till 1864, when B, although objecting that the decree was barred, presented to the Court, under arrangement with A, a petition acknowledging a certain sum to be due, and executed a kistbundi agreeing to pay the debt by monthly instalments. B paid several instalments, but did not do so on one occasion, until execution was taken out against her. On her death shortly afterwards, execution was taken out against her representatives. The representatives objected that the decree was barred, and that the kistbundi could not be substituted for the decree. The objection was, on appeal to the High Court, allowed. A then brought a suit on the kistbundi. Held that, at the time the kistbundi was entered into, the decree was, under the limitation law then in force, capable of being executed, and that there was, therefore, valid consideration for the kistbundi. Held, also, that even had there been no valid consideration for the kistbundi, yet the principle laid down in s. 25, cl. 3, of Act IX of 1872, and which prevailed before the passing of that Act, would have saved the kistbundi from becoming void for want of consideration. *HEERA LALL MOOKHOPADHYA v. DHUNPUT SINGH*

[I. L. R., 4 Cal., 500  
3 C. L. R., 554]

**CONTRACT ACT (IX OF 1872)—continued.**

15. ———— *Power of Collector, as Agent to Court of Wards—Promise to pay a time-barred debt—Madras Regulation V of 1894, s. 17.*—A Collector has no authority to bind a ward of the Court of Wards by a promise under the Contract Act, s. 25, cl. 3, to pay a debt which is barred by limitation. *SURYANARAYANA v. NARENDRA THATRAZ*. I. L. R., 19 Mad., 255

16. ———— *Renunciation by a co-parcener of his rights by registered document—Suit for partition.*—The plaintiff, a member of an undivided Hindu family, having by a registered document renounced all right to the family property in favour of the remaining co-parceners, who were to manage the estate in future, pay all debts, and maintain the plaintiff in the family, sued to recover his share of the family property. Held that the plaintiff was still a co-parcener, and was not estopped by the document from bringing the suit. *APPA PILLAI v. RANGA PILLAI*. I. L. R., 6 Mad., 71

17. ———— *Bond—Coercion—Consideration.*—A person, while under arrest in execution of a decree which had been made against him by a Court having no jurisdiction to make it, gave the holder of such decree a bond for the amount of such decree plus a small sum paid for him for the stamping and preparation of such bond, in order that he might be released from such arrest. Held that such bond was given under duress, and that it was executed without consideration, the small sum paid by the holder of such decree for preparing and stamping the bond not being in any legitimate sense of the phrase "consideration" for such bond, and therefore such bond was void. *BANDA ALI v. BANSPAT SINGH*  
[I. L. R., 4 All., 352]

18. ———— and s. 19—*Voidable contract—Misrepresentation—Suit to recover money advanced under contract.*—J having represented to C that there were good roads, metalled to within six or seven miles of the place where he wanted C to forward a certain engine and boiler, and a fair kucha road the remainder, C, relying on his statement, agreed to forward the same to the place of destination for a certain sum, part of which C received on different occasions, and duly forwarded to the place the engine, but, on passage across an iron suspension bridge on the road being refused to the boiler by the officer in charge of the bridge on account of its weight, C threw up the contract. J, having conveyed the boiler across the nala spanned by the bridge and finally to the place of destination, sued to recover from C the money expended by him in so doing, alleging breach of contract. It was held that the suit was rightly dismissed on the ground that the agreement was voidable by C under the provisions of s. 19 of Act IX of 1872. It was also held that the plaintiff could not recover in the suit any portion of the moneys advanced to the defendant. *JOHNSON v. CROWE*. 6 N. W., 350

**CONTRACT ACT (IX OF 1872)—continued.**

some service, and the promisor undertakes to compensate him for it, are covered by s. 25 of the Contract Act (IX of 1872); in them the promise does not need a consideration to support it. **SINDHA SHRI GANPATISINGJI HIMATISINGJI v. ABRAHAM**

(I. L. R., 20 Bom., 755)

20. — *Consideration for agreement—Agreement to put estate under management of Court of Wards.*—H D and S D, two brothers, constituted a joint Hindu family owning considerable landed property. H D having incurred heavy personal debts, the two brothers in 1879 united in applying to have their property taken over by the Court of Wards. This was done; and, on the 17th of June 1889, while such property was still under the management of the Court of Wards, the two brothers entered into an agreement whereby H D remained as manager of the property with an allowance of Rs 12,000 per annum for his support, but ceded to his brother absolutely and unconditionally all his proprietary interest in the family property, and all power to make the family property liable in any way for the payment of his debts. On the 6th of October 1889 the Court of Wards released the

objected to the attachment, and his objection was allowed. B D appealed, and on this appeal it was

refrained on cessation of the Court of Ward's management from suing his brother for an account; and even if this were not so, the agreement would be good either under s. 25, cl. (2), or under s. 70 of Act IX of 1872. **BITHAL DAS v. SHANKAR DAT DUBE**

(I. L. R., 17 All., 264)

1. — s. 27.—*Contract in restraint of trade—Consideration—Exclusive right to convey passengers*—In the case of covenants in restraint of trade, the deed of covenant must show a good consideration. The Courts will not enter into the question of the adequacy of the consideration. A covenant giving a person the exclusive right to convey

**CONTRACT ACT (IX OF 1872)—continued.**

passengers to and fro on the road from Ootacamund and Metapollum is not a contract in general restraint of trade, and therefore is one which the law will enforce. **AUCHTALOONY v. BELL**

4 Mad., 77

2. — *Contract in restraint of trade*—In a suit for (so-called) damages, on the ground that defendants, after executing an agreement by which they stipulated to sell fish every day in plaintiff's bazar, and to pay a fee per diem, and

suit could be maintained, being an action upon a contract, in which there was nothing illegal.

**MADRUR CHUNDER ROY v. LUKHER JELANER**

(9 W. R., 212)

3. — *Contract in restraint of*

the Charter of 1862. The Stat. 21 Geo. III,

was void under s. 27 of the Contract Act. The words "not inconsistent with the provisions of this Act," in s. 1 of the Contract Act, apply to "any usage or custom of trade" or "any incident of any contract." **MADRUR CHUNDER PORAMANICK v. RAJCOOMAR DOSS**

(14 B. L. R., 78; 22 W. R., 370)

4. — *Contract in restraint of trade—Damages—Covenant—Breach of covenant.*

by certain notice being given,—and covenanted that

**CONTRACT ACT (IX OF 1872)—continued.**

on the expiry of the five years, or sooner determination of the service, they would not carry on within 800 miles from Madras any business carried on by the firm; and also covenanted that on such expiry, or sooner determination, they would, whenever requested by the firm so to do, return to England. In pursuance of the agreement, *D* and *E* went to Madras, and entered into the service of the firm. After it had continued for about 2½ years, the service was determined by notice from the firm. *D* and *E* then, in violation of their said covenants, refused to return to England, though requested to do so by the firm, and proceeded to set up and carry on, on their own account, business of the same kind as that carried on by the firm. *Held*, in a suit by the firm against *D* and *E* for damages for breaches of the said covenants, and for a perpetual injunction restraining *D* and *E* from carrying on in Madras, or within 800 miles from Madras, any business carried on by the firm, that, treating the covenant in restraint of trade as one entered into in England, it could not, even if valid by the law of England, be enforced in India, inasmuch as its object was to contravene the law of India (s. 27 of Act IX of 1872). *Held*, further, that that covenant would have been void by the law of England because the limit of the restriction was unreasonable, and, as no narrower limit had been mentioned in the agreement, this was not a case where the covenant could have been enforced within a narrower and reasonable limit. *Held*, also, that the covenant to return to England, except so far as it operated improperly in restraint of trade, was a covenant the breach of which did not in any way cause damage to the firm, and therefore such breach did not entitle them to any damages. *OAKES v. JACKSON* . . . I. L. R., 1 Mad., 134

5. — *Contract in restraint of trade—Public policy.*—In a suit upon an agreement binding defendants to remain subject to the orders of plaintiff, the head of their caste, not to carry on their trade with the assistance of any other persons than their own caste, and imposing penalties for non-performance, — *Held* that it would be contrary to public policy to give effect to such an agreement. *VAITHILINGA v. SAMINADA* . . . I. L. R., 2 Mad., 44

6. — *Contract in restraint of trade.*—*Held* that a stipulation in a contract prohibiting any sales of goods to others during a particular period, of a similar description to those bought under the contract, is not a stipulation in restraint of trade under s. 27 of Act IX of 1872. *CARLISLE NEPHEWS & Co. v. RICKNATH BUCKTEAR MULL*

[I. L. R., 8 Calc., 809]

7. — *Contract in restraint of trade.*—A contract under which a person is partially restrained from competing, after the term of his engagement is over, with his former employer, is bad under s. 27 of the Contract Act. *Quare*—As to the effect of an agreement of service by which a person binds himself, during the term of his agreement, not directly or indirectly, to compete with his employer. *BRAHMAPUTRA TEA COMPANY v. SCARTH*

[I. L. R., 11 Calc., 545]

**CONTRACT ACT (IX OF 1872)—continued.**

8. — *Contract in restraint of trade—Contract void for uncertainty.*—Plaintiff, who was a broker, agreed to give up an admitted claim to brokerage on 2,000 corahs previously disposed of, in consideration of defendant, who was a commission agent for different kinds of goods, employing him to sell a like quantity of other corahs and all his other goods for the future, employing plaintiff alone as his broker for the sale of his goods. It was also agreed that, if defendant did not sell the second batch of corahs through plaintiff, the brokerage on the whole would be payable by defendant. *Held* that the agreement was not void either as being in restraint of trade or for uncertainty. *BUSKIN v. RAMKISSEN SEAL* . . . 23 W. R., 146

9. — *Contract in restraint of trade—Construction of contract.*—A contract under which goods were purchased at a certain rate for the Cuttack market, containing a stipulation that, if the goods went to Madras, a higher rate should be paid for them, is not one in restraint of trade; and where the purchaser sold the goods to a person in Calcutta, who in turn resold to another, who took them to Madras,—*Held* that the original purchasers were, under the terms of the contract, liable to pay at the enhanced rate. *PREM SOOK v. DHURUM CHAND* . . . I. L. R., 17 Calc., 320

10. — *Partial restraint of trade.*—S. 27 of the Contract Act does away with the distinction observed in the English cases between partial and total restraint of trade, and makes all contracts falling within its terms void unless they fall within its exceptions. The section was intended to prevent a partial as well as a total restraint of trade. *A* and *B*, two ghat serangs, entered into a contract with *X* and five others who carried on the business of dubashes at Chittagong for the purpose of carrying on their respective businesses in unanimity and not injuring one another's trade. The contract, which was to last for three years, provided, *inter alia*, that *A* and *B* were to act as ghat serangs only and do no service to ships in any other capacity; that *X* and the other dubashes were to give *A* five vessels secured by them every year for him to act as ghat serang; and that *A* was only to act as ghat serang to the said five ships, and, with the exception of ships for which he had previously acted as ghat serang, he should not act as ghat serang or do any other services for ships belonging to any one else. The contract also contained provisions as to the apportionment of the five ships so to be given to *A* amongst the various dubashes, and amongst such, an agreement by *X* to give *A* the third ship he should secure. It also contained a provision for the payment of Rs. 1,000 as damages by any one breaking the contract to the person who should suffer by the breach. In a suit by *A* against *X* alleging a breach of the contract by the latter in not giving him the third ship as agreed, and claiming Rs. 1,000 by way of damages, *X* pleaded that the contract was void under s. 27 of the Contract Act as being in restraint of trade. *Held* that the contention was sound, and that the suit must be dismissed.

## CONTRACT ACT (IX OF 1872)—continued.

partial restraint on his power to carry on the business of a ghat serang, and whether or not (even had the latter stipulation not been illegal) the contract would have been void under the provisions of s. 24 of the Act

v. ABDUL ALI . . . I. L. R., 19 Calo., 765

## 11. ——— Contract in restraint of

should be sold to the firm for a fixed price. The

RAMIAH . . . I. L. R., 13 Mad., 472

SADAGOPA RAMAIAH v. MACKENZIE  
[I. L. R., 15 Mad., 79]

12. ——— Contract in restraint of trade.—The defendant obtained a license to sell salt in the salt factory at Krishnapatnam, and he executed an agreement by which he was to manufacture salt in the said factory as long as the excise system should be in force, and deliver the same to the plaintiffs for sale, and the plaintiffs were to give him a fixed price for it. Held that the agreement, so far as it restrained the sale of salt to others than the plaintiffs, was bad. RAGAVAYYA v. SUBBAYYA . . . I. L. R., 13 Mad., 475

13. ——— Agreement to share profits of trade—Restraint of trade.—Four persons, each of whom owned a ginning factory, entered into an agreement, which (*inter alia*) provided that they should charge a uniform rate of Rs 4-8-0 per palla for ginning cotton; that of this sum, Rs 2-8-0 should be treated as the actual cost of ginning, and that the remaining Rs 2 should be carried to a common fund to be divided each year between the parties; the agreement in proportion to the number of ginning machines which each of them possessed. The agreement was to be in force for four years. The other parties had carried out the agreement, but the defendant, although he had carried the Rs 2 to a separate account, refused to pay the plaintiff his

CONTRACT ACT (IX OF 1872)—continued.  
share of the amount. He also refused to pay the other two parties their shares. The accounts had

to divide the profits. That was a lawful agreement

in question was, as a fact, in restraint of trade, and, further, to accurately quote the words of s. 27 of the Contract Act, I am not satisfied that it was an agreement by which any one was restrained from exercising a lawful trade." HARBHAI MANERIAL v. SHANAPALI ISARJI . . . I. L. R., 22 Bom., 861

must be drawn up." At the end of a year a disagreement took place, and A ceased to act as B's assistant and began to practise in Zambiar on his own account. B sued for an injunction to restrain

See CALLANJHI HARBIVAN v. NARSI TRIGUM.  
Per CANDY, J. . . I. L. R., 18 Bom., 702 (708)

1. ——— s. 28, except. 1.—Agreement to refer to arbitration, Revocation of—Common Law Procedure Act of 1854 (17 & 18 Vic. c. 125)—9 & 10 Will. III. c. 15—3 & 4 Will. IV. c. 42—Specific performance of agreement to refer—Suit

be final. The contract contained no provision for making the submission to arbitration a rule of Court, and 3 & 4 Wm. IV. c. 42, s. 4. Matter to appoint arbitrators

**CONTRACT ACT (IX OF 1872)—continued.**  
ss. 42, 43, and 44.

See DEBTOR AND CREDITOR.

[I. L. R., 20 Mad., 481

s. 43.

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING.

[I. L. R., 6 Bom., 700

I. L. R., 21 Mad., 257

1. ———— *Suit against joint contractors—Res judicata.*—A suit in which a decree has been obtained against one of the several joint makers of a promissory note is a bar to a subsequent suit against the others. The effect of s. 43 of the Contract Act is not to create a joint and several liability in such a case. That section merely prohibits the defendant in such a suit pleading in abatement, and thus places the liability arising from the breach of a joint contract and the liability arising from a tort on the same footing. The rule laid down in the case of *King v. Hoare*, 13 M. and W., 494, and *Brinsmead v. Harrison*, L. R., 7 C. P., 547, is one of principle, not merely of procedure. *Hemendro Coomarr Mullick v. Rajendro Lall Moonshree*

[I. L. R., 3 Calc., 353; 1 C. L. R., 488

See LAKSHMISHANKAR DEVSHANKAR v. VISHNURAM . . . I. L. R., 24 Bom., 77

2. ———— *Decree against member of joint family for trading debt—Suit to declare son's property liable for father's debt.*—V and his three infant sons constituted an undivided trading Hindu family in 1875 when part of the family property was sold to pay a trading debt of V. In February 1877, V, at the request of his wife, as compensation to his sons for the loss of their interests in the property sold, *bona fide* assigned to his sons his share in a house, No. 9, A Street. In October and November 1877, M and S each obtained decrees against V for *bona fide* trading debts and issued execution against the house No. 9, A Street. The mother of the infant sons intervened and the attachment was raised, and M and S were referred to a regular suit to establish their claims. In January 1878 V was declared insolvent. M and S respectively sued to have it declared that the house No. 9, A Street, was liable to be attached and sold in satisfaction of their decrees against V. Held, reversing the decree of KERNAN, J., that the plaintiffs, by obtaining decrees against V, had exhausted their remedy, and that a second suit against the sons of V was not maintainable. *Hemendro Coomarr Mullick v. Rajendro Lall Moonshree*, I. L. R., 3 Calc., 353, approved. *GURUSAMI CHETTI v. SAMURTI CHINNA MANNAR CHETTI. GURUSAMI CHETTI v. SADASIYA CHETTI* . . . I. L. R., 5 Mad., 37

And see CHACKALINGA MUDALI v. SUBBARAYA MUDALI . . . I. L. R., 5 Mad., 133

3. ———— *Liabilities of joint contractors.*—Where five brothers had made themselves jointly liable for a sum of money under a bond, and mortgaged a certain mouzah as security for the debt; and the mortgagee, having subsequently, taken a separate bond from each of two of the brothers for

**CONTRACT ACT (IX OF 1872)—continued.**

one-fifth of the whole amount, now sought to recover the remaining three-fifths of the said amount from the remaining three brothers; but the latter contended that the claim, being jointly held against all five, could not be broken up.—Held that any one of the five might be sued for the whole amount, and that the plaintiff was entitled to recover the three-fifths from the three brothers. *MAHTAB SINGH v. SADHOORAM BHUGT* . . . 25 W. R., 419

4. ———— *Joint contract—Right of promisee to sue any or all of the joint promisors—Right of joint promisors to be joined as defendants—Decree against some only of several joint promisors—Effects of such decree—Civil Procedure Code, s. 29.*—The effect of s. 43 of the Contract Act, 1872, being to exclude the right of a joint contractor to be sued along with his co-contractors, the rule laid down in the cases of *King v. Hoare*, 13 M. and W., 494, and *Kendall v. Hamilton*, L. R., 4 A. C., 504, is no longer applicable to cases arising in India, at all events in the mofussil, since the passing of that Act, and a judgment obtained against some only of the joint contractors and remaining unsatisfied is no bar to a second suit on the contract against the other joint contractors. In *re Hodgson*, L. R., 31 Ch. D., 177, *Hammond v. Schofield*, L. R. (1891), 1 Q. B., 453, *Nathoo Lall Choudhry v. Showkee Lall*, 10 B. L. R., 200, *Hemendro Coomarr Mullick v. Rajendro Lall Moonshree*, I. L. R., 3 Calc., 353, *Gurusami Chetti v. Samurti Chinna Mannar Chetti*, I. L. R., 5 Mad., 37, *Lukmidas Khimji v. Purshotam Haridas*, I. L. R., 6 Bom., 700, *Rahmubhoy Hubibbhoy v. Turner*, I. L. R., 14 Bom., 408, *Chockalinga Mudali v. Subbaraya Mudali*, I. L. R., 5 Mad., 133, *Narayana Chetti v. Lakshmana Chetti*, I. L. R., 21 Mad., 256, *Sitanath Koer v. Land Mortgage Bank of India*, I. L. R., 9 Calc., 888, *Nobin Chandra Roy v. Magantara Dassya Roy*, I. L. R., 10 Calc., 923, *Lutchmiput Singh v. Land Mortgage Bank of India*, I. L. R., 9 Calc., 469 note, *Radha Pershad Singh v. Ramkhalawan Singh*, I. L. R., 23 Calc., 503, *Bhukandas Vijbhukandas v. Lallubhai Kashidas*, I. L. R., 17 Bom., 562, *Laksmishankar Devshankar v. Vishnuram*, I. L. R., 24 Bom., 77, *Dharam Singh v. Angan Lal*, I. L. R., 21 All., 501, *Motilal Becharadass v. Ghellabhai Hariram*, I. L. R., 17 Bom., 6, *Brinsmead v. Harrison*, L. R., 7 C. P., 547, *Wilson, Sons & Co. v. Balcarres Brook Steamship Co.*, L. R. (1893), 1 Q. B., 422, *Robinson v. Geisel*, L. R. (1894), 2 Q. B., 685, *Balmakund v. Sangri*, L. R., 19 All., 379, *Priestley v. Fernie*, 2 H. & C., 977, *Bir Bhaddar Sewak Pande v. Sarju Prasad*, I. L. R., 9 All., 681, *Bhawani Pershad v. Kalla*, I. L. R., 17 All., 537, *Dhunpat Singh v. Sham Soonder Mitter*, I. L. R., 5 Calc., 291, referred to. The plaintiff sued B and M, alleged to be the managing members of a joint Hindu family, for sale upon four mortgages executed by them in respect of property owned by the joint family, and obtained a decree in 1894. He brought the present suit against defendants 1 to 15, the other members of the same family (said to be the brother, brother's sons and cousins of B and M, claiming enforcement of the same mortgages against the defendants by

**CONTRACT ACT (IX OF 1872)—continued.**

was not barred. **MUHAMMAD ASKARI v. RADHE RAM SINGH** . I. L. R., 22 All., 307

— s. 44.

See **EXECUTION OF DECREE—JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER.**  
[8 C. L. R., 212]

of all claims upon him as an individual and as a partner in the late firm of *B. S. & Co.*, and we hereby undertake to immediately withdraw the suit against him and others." Held that although,

well as to the performance of contracts, and that alone was released. **KIBIZE CHUNDER MITTER v. STRUTHGERS**

[I. L. R., 4 Cal., 336; 3 C. L. R., 546]

— s. 45.

See **CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.**

[I. L. R., 17 Mad., 108]

See **DEBTOR AND CREDITOR.**

[I. L. R., 20 Mad., 461]

See **PARTIES—PARTIES TO SUITS—PARTNERSHIPS, SUITS CONCERNING.**

[I. L. R., 9 All., 486]

I. L. R., 18 Cal., 86

I. L. R., 17 Bom., 6

I. L. R., 21 Bom., 412

I. L. R., 20 All., 365

See **PARTNERSHIP.**

[I. L. R., 9 All., 486]

See **RIGHT OF SUIT—JOINT RIGHT.**

[I. L. R., 7 All., 313]

— s. 49.

See **CONTRACT—CONSTRUCTION OF CONTRACTS** . I. L. R., 24 Cal., 8

[I. L. R., 23 I. A., 119]

— s. 51.

See **RIGHT OF SUIT—CONTRACTS AND AGREEMENTS** I. L. R., 19 Bom., 546

tract the terms of which as to payment were cash

**CONTRACT ACT (IX OF 1872)—continued.**

delivered. The plaintiffs declined to accept these terms, and the defendants then cancelled the contract.

of the contract within the meaning of s. 55. **SOOLTAN CHUND v. SCHILLER**

[I. L. R., 4 Cal., 252; 3 C. L. R., 287]

**NATH v. BECK**

2 N. W., 60

bodd. **NARAIN SINGH v. MADHO PARSHAD**

[7 N. W., 153]

— s. 55—*Sale of goods—Delivery at certain date—Rescission of contract—Vendor's*

time, the vendee tendered the price of the remaining goods and demanded delivery, when the vendors stated that they had rescinded the contract. In an action for damages for non-delivery,—Held that

**CONTRACT ACT (IX OF 1872)—continued.**

time was of the essence of the contract, and that under s. 55 of the Contract Act, the vendors were entitled to rescind. **BALISO Doss v. HOWE**

[I. L. R., 8 Cal., 84; 8 C. L. R., 582

s. 58.

**See DAMAGES—MEASURES AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT** . I. L. R., 17 Cal., 482

1. — **Breach of contract—Impossibility to perform a portion arising after execution.**—A contract was entered into between the plaintiff and the defendant, by which the plaintiff agreed to cultivate indigo for the defendant, for a specified number of years, in certain specified lands, situated in different villages, with respect to portion of which lands the plaintiff was a sub-tenant only. Subsequently, during the continuance of the contract, the plaintiff lost possession of these lands, through his immediate landlord having failed to pay the rent, and having been in consequence ejected therefrom by the owner. In a suit by him, under the above circumstances, to have so much of the contract as related to those lands cancelled, on the ground that it had become impossible of performance through no neglect on his part. **Held** that such a case came within the provisions of cl. 2, s. 56 of Act IX of 1872 (Contract Act), and that the mere fact that the plaintiff could have paid up the debt due by his immediate landlord and so retained possession of the land was not sufficient to constitute such an omission or neglect on his part as to take it out of the provisions of that section. **INDER PERSHAD SINGH v. CAMPBELL**

[I. L. R., 7 Cal., 474; 8 C. L. R., 501

2. — **Contract to carry passengers in ship—Passengers infected with disease—Arrangement for non-performance of contract—Implied term in contract—Performance became illegal—Penal Code (XLF of 1860), s. 268.**—By a contract made with the plaintiffs the defendants agreed to carry from Bombay to Jeddah, in their steamer *Mobile*, 500 pilgrims who were about to arrive in Bombay from Singapore in the plaintiffs' ship the *Stars*. The defendants were to be paid at the rate of Rs 6 per head, and the ship *Mobile* was to receive the pilgrims on the 3rd May 1888. The *Stars* arrived in Bombay on the 1st May with about 600 pilgrims on board, and on the 2nd May the plaintiffs gave notice to the defendants that 500 of them were ready to go on board the *Mobile* on the next day in accordance with the contract. The defendants refused to receive the pilgrims on board the *Mobile* on the ground that they had come to Bombay in the *Stars*, and that during the voyage of that ship to Bombay there had been an outbreak of small-pox on board; that the 500 pilgrims had been in close contact with those who had been suffering from the disease, and that on the 3rd May fresh cases were occurring among the pilgrims brought from Singapore. They pleaded that under these circumstances they were not bound to ship and carry the 500 pilgrims, contending (1) that it was an implied term in the contract that the 500 pilgrims should be free from small-pox or other dangerous disease, and (2)

**CONTRACT ACT (IX OF 1872)—continued.**

that the performance of the contract had under the circumstances become unlawful (s. 268 of the Penal Code and s. 56 of the Contract Act). **Held** that the defendants were bound to carry out the contract. In the absence of proof, that a term providing that the pilgrims should be free from small-pox was to be implied by the usage of the pilgrim-carrying trade, there could be no reason for implying it. The possibility that some of the 500 pilgrims might have the germs of the disease in them owing to their exposure to infection, might make carrying them more expensive and onerous, but it was a contingency which from the very nature of the trade must have been known to the defendants, and if they wished to provide against it, they should have done so by express terms. **Held**, also, that the performance of the contract had not become unlawful. The risk of disease was not greater than would necessarily be incurred in every crowded emigrant ship. But, even if special precautions were desirable under the circumstances, it was for the defendants, who had entered into an absolute agreement, to have taken them. **BOMBAY AND PERSIA STEAM NAVIGATION CO. v. RERATINGO COMPANY**

[I. L. R., 14 Bom., 147

s. 60.

**See APPROPRIATION OF PAYMENTS.**

[W. R., 1884, Act X, 15

I. L. R., 13 Cal., 184

I. L. R., 28 Cal., 39

2 C. W. N., 633

s. 62.

**See RIGHT OF SUIT—CONTRACTS OR AGREEMENTS.**

[I. L. R., 16 Bom., 441

1. — **Substitution of new contract for old one.**—The mere fact of one party alleging that a new contract has been substituted for an old one does not of itself put an end to the old contract even as against the party so alleging, unless the allegation is proved to be true. **BORSHAN BIBER v. HERRAR KRISTO NATH** . I. L. R., 8 Cal., 928

2. — **and s. 63—Novation—Contract, Novation of—Satisfaction of contract.**—The plaintiff sued to recover the sum of Rs 1,173 due on a bond. It was found as a fact that after the due date of the bond an arrangement was made between the plaintiff and the defendant by which the plaintiff agreed to accept in satisfaction of what was due to him at the time of the arrangement Rs 400 in cash and a fresh bond for Rs 701, payable by instalments; and it was further found that the plaintiff never intended or agreed to accept the naked promise of the defendant to pay the Rs 400 and to give the bond for Rs 701. The defendant did not pay the Rs 400 or give the bond, but pleaded that there had been a novation of the original contract by reason of the subsequent agreement, and that the suit, being based on the original contract, could not be maintained, and he relied on the provisions of ss. 62 and 63 of the Contract Act in support of his contention. **Held** that neither section had any bearing on the case, and that upon the breach by the defendant of the terms which he had made, and upon the non-performance by him of

## CONTRACT ACT (IX OF 1872)—continued.

MONOHUR KOTAL v. THAKUR DAS NASKAR  
[I. L. R., 15 Calc., 319]

2. Mortgage—Power of sale  
Suit to set aside sale under power of sale—

which was to pay the mortgage-debt on the 28th

s. 64.

See GUARDIANS—DUTIES AND POWERS OF  
GUARDIANS. I. L. R., 22 Mad., 289

See MINOR—LIABILITY OF MINOR ON, AND  
RIGHT TO ENFORCE, CONTRACTS.

[I. C. W. N., 463]

2 C. W. N., 330

Affirmed on appeal in BROHMO DUTT v. DHARMO  
DAS GHOSH. I. L. R., 28 Calc., 331  
[3 C. W. N., 463]

## CONTRACT ACT (IX OF 1872)—continued.

2. "Person"—Party—Contract Act (IX of 1872), s. 11.—The words "person" and "party" in s. 64 of the Contract Act are interchangeable, and mean such a person as is referred to in s. 11 of that Act, i.e., a person competent to contract. BROHMO DUTT v. DHARMO DAS GHOSH

[I. L. R., 28 Calc., 331  
3 C. W. N., 463]

s. 65.

See ACT XL OF 1858, s. 18.

[I. L. R., 9 All., 340]

See CONTRACT—CONSTRUCTION OF CONTRACTS. I. L. R., 9 Mad., 441

See CONTRACT—WAAGERING CONTRACTS.  
[I. L. R., 9 Bom., 358]

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.

[I. L. R., 3 Mad., 215]

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS. I. L. R., 9 All., 340

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET. I. L. R., 23 Bom., 15

See SETTLEMENT—CONSTRUCTION.  
[I. L. R., 17 Bom., 407]

whatever who has obtained any advantage under a void agreement. GIBRAJ BAKSH v. HAMID ALI  
[I. L. R., 9 All., 340]

2. Retention by debtor of debt as part of consideration for another contract.—

In contemplation of a sale of land by the debtor to the creditor, the debtor should part with the money. Had retained in payment of his land, the date of the decree giving the date of the failure of an existing consideration within the meaning of art. 97 of the Limitation Act 1877. The matter might

s. 63.

See MINOR—LIABILITY OF MINOR ON, AND  
RIGHT TO ENFORCE, CONTRACTS.

[I. L. R., 21 Calc., 673]

[I. L. R., 11 All., 47]

## CONTRACT ACT (IX OF 1872)—continued.

See MINOR—REPRESENTATION OF MINOR  
IN SUITS . I. L. R., 7 Calc., 140

s. 69.

See CHARTER PARTY.

[I. L. R., 7 Bom., 51

1. ———— *Payment for which another person is liable.*—S. 69 of Act IX of 1872 was intended to include cases not only of personal liability, but all liabilities to payment for which owners of land are indirectly liable, when such liabilities are imposed upon lands held by them. That section must be held to include such a case as a sub-lessee paying rent to a superior landlord, for which the intermediate lessee is liable under a covenant. **MOTHOORANATH CHUTTOPADHYA v. KRISTOKUMAR GHOSE**

[I. L. R., 4 Calc., 369

2. ———— *Money paid under compulsion of law—Voluntary payment.*—A mortgagee of two separate properties became by purchase the owner of the equity of redemption of one of them, and of this property the value was so proportioned to his payments that the mortgage-debt was in effect satisfied. This mortgagee, however, obtained a decree and order in execution for the sale of the other property, on which his mortgage was the second. Of the latter property, the plaintiffs, who also represented the first mortgagee, had become purchasers, and they filed objections to the sale. These were disallowed, and they thereupon paid into Court money sufficient to satisfy the decree in order to prevent the sale. *Held* that this was not a voluntary payment, nor a payment of money equitably due; but one made under compulsion of law, i.e., under pressure of the execution-proceedings. And *held* that this might be recovered in a suit for a money-decree, the remedy not being confined to the execution-proceedings. **DULICHAND v. RAMKISHEN SINGH**

[I. L. R., 7 Calc., 648

See MOHESH CHUNDER BANERJEE v. RAM PURSONO CHOWDHRY . I. L. R., 4 Calc., 539

3. ———— *Reimbursement of person paying money due by another in payment of which he is interested—Purchase of mortgaged property.*—M and R conveyed certain property to S by a deed of sale, in which the vendors asserted themselves to be in possession of the property, and no mention was made of the property being mortgaged. There was nothing to show that the purchaser purchased a mere equity of redemption, nor that he was aware of the mortgage. Before S obtained possession of the property, the mortgagee sued to enforce his lien and obtained a decree and attached the property in execution, and it was advertised for sale. S satisfied the decree, which was equal in amount to the purchase-money, and brought a suit to obtain possession of the property. The Court of first instance decreed the claim conditionally on the payment of the purchase-money to the defendants, but the lower Appellate Court reversed the decree, being of opinion that the plaintiff was entitled to an unconditional decree, and its decree was affirmed in special appeal. **MAZHA ALI v. MAHOMED SAHIB KHAN**

. 7 N. W., 338

## CONTRACT ACT (IX OF 1872)—continued.

4. ———— *Revenue Sale Law (Act XI of 1859), s. 9—Payment of revenue.*—Where two co-sharers in a undivided estate took from a third co-sharer a farming lease of her interest in a portion of the said estate, on the stipulation that they should meet the Government demand on the said co-sharer, and take credit for the amount in the rent reserved; and the two farmers leased out the same share in a dur-ijara lease to a fourth person, who, on the failure of the said farmers to meet the Government demand, paid it in himself to save the estate, and then brought a suit against the third co-sharer to recover the amount; and the Munsif decided that the suit could only lie against the two farmers, but the Judge ruled that the suit could only lie against the third co-sharer as proprietor;—it was found by the High Court that, as the third co-sharer's share was not separate, and the whole estate was liable to sale for default, the two farmers were generally liable as proprietors with the third co-sharer, and, having recovered the rent for the share, might have been made liable for the revenue, even if the suit had been brought, as supposed by the Judge, under s. 9, Act XI of 1859, but—*Held* that, as the suit had not been brought under any particular section of the law, s. 69 of the Contract Law applied to the suit as well as s. 9, Act XI of 1859, and that the money paid by the dur-ijaradar was recoverable from the two farmers who had realized the rent and were responsible, both under their contract and as co-proprietors, for the revenue. **TARINI alias SAWAH MONKE DEBIA v. SREENATH MOOKERJI** . 25 W. R., 385

5. ———— *Hindu Law—Liability of undivided brother of deceased Hindu to defray expenses of his niece's marriage—Improper refusal—Performance by widow—Maintainability of suit brought by widow—"Person who is interested in the payment of money."*—The defendant having improperly refused to perform the marriage ceremony of his niece, the daughter of his undivided brother (deceased), the widow of the latter herself performed the ceremony, borrowing money for the purpose, and sued her late husband's said brother (the defendant) to recover the amount expended on the marriage. On its being contended that defendant was under no obligation to provide for the expenses of his brother's daughter's marriage,—*Held* that defendant was liable, the marriage having been properly performed. *Held*, further, that the suit was maintainable, though it had been brought by the mother of the bride, and not by the bride herself. *Semble*—That the mother was, within the meaning of s. 69 of the Indian Contract Act, interested in making the payment which had given rise to the action. It was not necessary for her to prove that she had been compelled to make it, or that she had made it at the defendant's request. **VAIKUNTAM AMMANGAR v. KALLAPIRAN AYYANGAR**

[I. L. R., 23 Mad., 512

ss. 69 and 70.

See SALE FOR ARRARS OF REVENUE—  
DEPOSIT TO STAY SALE.

[I. L. R., 11 Mad., 452

# CONTRACT ACT (IX OF 1872)—continued.

See SMALL CAUSE COURT, MOFFESSIL—  
JURISDICTION—CONTRACT.

[I. L. R., 4 All., 194, 152  
I. L. R., 15 Calc., 652  
I. L. R., 12 Mad., 349]

See SPECIAL APPEAL—SMALL CAUSE  
COURT SUITS—CONTRACT.

[I. L. R., 15 Calc., 652  
I. L. R., 12 Mad., 349]

See VOLUNTARY PAYMENT.

[I. L. R., 23 Calc., 28  
I. L. R., 25 Calc., 305  
I. L. R., 26 Calc., 828  
1 C. W. N., 458  
2 C. W. N., 150]

1. ————— *Illegal collection of cess—  
Bom. Act III of 1869, s. 8—Suit to recover cess  
fraudulently levied.*—The plaintiffs sued to recover  
back from the defendant the amount levied by him  
as local cess on certain wanda lands belonging to the

of 1869, s. 8. The defendant contended that, in

the plaintiffs' lands fraudulently and with the inten-  
tion of thereby making evidence of title to their

DESAI HIMATSING v. BHAVABHAI

[I. L. R., 4 Bom., 643]

ment was introduced into the village under Bombay

# CONTRACT ACT (IX OF 1872)—continued.

accordingly, granted the village to him at the  
summary settlement of two annas in the rupee of the  
full assessment. No notice was served upon the  
defendant under the Act, nor did the plaintiff inform  
the defendant of the notice which the plaintiff had

[I. L. R., 8 Bom., 244]

3. ————— *Suit for contribution—  
Payment by one person where both are liable.—  
Quare.*—Whether a suit for contribution, where  
both plaintiff and defendants were liable for the  
money paid by the plaintiff, falls within the scope of  
either s. 69 or s. 70 of the Contract Act, which  
seems rather to contemplate persons who, not  
being themselves bound to pay the money or to do  
the act, do it under circumstances which give them a  
right to recover from the person who has allowed the  
payment to be made and has benefited by it.  
PUTTER ALI v. GUNGANATH ROY

[I. L. R., 8 Calc., 113; 10 C. L. R., 20]

that A was entitled, under s. 70 of the Contract  
Act, 1872, to recover such amount, B having enjoyed  
the benefit of the payment, and the same not having  
been intended to be gratuitous. *Seemle.*—That the  
case came within the provisions of s. 69 of the  
Contract Act and of the principle laid down in  
*Dulichand v. Ramkishan Singh*, I. L. R., 7 Calc.,  
648. AJUDHIA PRASAD v. BAKAR SAJJAD

[I. L. R., 5 All., 400]

5. ————— *Vendor and purchaser—  
Arrears of Government revenue.*—On the date of

**CONTRACT ACT (IX OF 1872)—continued.**

the purchase of a revenue-paying estate there were arrears of revenue due. The instrument of sale was silent as to the party liable to pay such arrears. The purchaser was compelled to pay such arrears. *Held* that the purchaser could not recover the money so paid from the vendor. **DOST MUHAMMAD v. SAJJAD AHMAD**. I. L. R., 6 All., 67

**6. ———— Meaning of "lawfully"—**

*Mortgage—Decree enforcing hypothecation—Satisfaction of decree by person not subject to legal obligation thereunder—Suit for contribution brought by such person against judgment-debtor—Gratuitous payment.*—The widow of D, a separated Hindu, hypothecated certain immovable property which had belonged to her husband. The immediate reversioners to D's estate were his nephew S and the three sons of his brother O. After the widow's death, the mortgagee put his bond in suit, impleading as defendants S, two of S's four sons, and the three sons of O. Only the three last-mentioned persons resisted the suit, and the mortgagee obtained a decree directing the sale of the mortgaged property in satisfaction of his claim. From the operation of this decree S was wholly exempted, and his sons were made liable only to pay their own costs. Before any sale in execution of the decree could take place, the sons of S paid the amount of the decree into Court, thus saving the property from sale. They subsequently sued the sons of O for contribution in respect of this payment. It was found that, at the time when the payment was made, S was a member of a joint Hindu family with the defendants, and that his sons, the plaintiffs, had, at that time, no interest in the property by transfer from him. *Held* that at the time of the payment the plaintiffs could not properly be regarded as in the position of co-mortgagors with the defendants, so as to have an equitable lien upon the property they had saved from sale; that it was not a case of a payment which the defendants were bound to make in which the plaintiffs were "interested" within the meaning of s. 69 of the Contract Act; and that therefore the fiction of an implied request by the defendants to the plaintiff to make the payment could not be imported into the case, and the plaintiffs were not entitled to contribution. *Held*, also, that there was no such relationship between the parties as would create or justify the inference of any right in the plaintiffs to look to the defendants for compensation so as to make s. 70 of the Contract Act applicable; and that, if the plaintiffs as mere volunteers chose to pay the money not for the defendants, but for themselves, they could not claim the benefits of that section. The principle of the decision in *Pancham Singh v. Ali Ahmed*, I. L. R., 4 All., 58, has been recognized and provided for in the Transfer of Property Act. By the use of the word "lawfully" in s. 70 of the Contract Act, the Legislature had in contemplation cases in which a person held such a relation to another as either directly to create or reasonably to justify the inference that by some act done for another person, the person doing the act was entitled to look for compensation to the person for whom it was done. **Ram Tulul Singh v. Bissessar Lal Sahoo**, L. R., 2 I. A., 131, referred to. **CHEDI LAL v. BHAGWAN DAS**. I. L. R., 11 All., 234

**CONTRACT ACT (IX OF 1872)—continued.**

**7. ———— Payment of Government revenue by person wrongfully in possession of land.**—B, who was in wrongful possession of land which by right belonged to K, collected rents and paid the Government revenue. K eventually established her title to the property, obtained possession, and recovered the rents from the tenants, and B was obliged to refund the same. Subsequently B sued K to recover the sum which he had paid on account of revenue. *Held* that the claim did not fall within the provisions of ss. 69 and 70 of the Contract Act, and the fact that the plaintiff had been a loser by his wrongful act, or that the defendant had been benefited by the payment he made, would give him no right of action against her. **Tiluk Chand v. Soudamini Dasi**, I. L. R., 4 Calc., 566, referred to. **BINDA KUAR v. BHONDA DAS**

[I. L. R., 7 All., 660]

**8. ———— Voluntary payment—Landlord and tenant—Government revenue, Payment of, by patnidar—Defaulting proprietor, Liability of, to recoup patnidar who pays Government revenue for him, when a separate account has been opened—Revenue Sale Law (Act XI of 1859), ss. 9, 10, 11, 13, 14, and 54.**—A patnidar who had made certain payments on account of Government revenue due by his superior landlords who had defaulted, although a separate account had been opened for the payment of such Government revenue, brought a suit to recover the amount so paid. In such suit it was contended that the payments were merely voluntary, and that the plaintiff could not recover them. *Held* that the plaintiff was "interested" in making the payments, and was therefore entitled to recover under s. 69 of the Contract Act. *Held*, further, that s. 70 of the Contract Act applied to the case, inasmuch as the word "does" in that section includes payments of money, and also that the plaintiff was entitled to recover under s. 9 of the revenue sale law, as he believed in good faith that his interest would be endangered by a sale taking place. The liability of a landlord under s. 9 of the revenue sale law to recoup a person paying Government revenue for him does not depend upon the question of whether the money was originally deposited or not, but accrues upon its being credited in payment of the arrears. **SMITH v. DINONATH MOOKERJEE**

[I. L. R., 12 Calc., 213]

**s. 70.**

*See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRACT.*

[I. L. R., 3 All., 66  
I. L. R., 4 All., 134, 152  
I. L. R., 15 Calc., 652]

*Repairs by Government to a tank in which zamindar is interested—Suit against zamindars for share of cost.*—The Government repaired a certain tank from which were irrigated lands in the zamindari of the defendants, and also raiyatwari villages held under Government which had been severed from the zamindari. It was found that the defendants knew that the repairs which were necessary for the preservation of the tank were

**CONTRACT ACT (IX OF 1872)—continued.**

being carried out, and did not wish to execute them themselves except as contractors, and that they had enjoyed the benefit of the work done, and further that Government had carried out the repairs not intending to do them gratuitously for the defendants. It was not found that there was any request, either express or implied, on the part of the defendants to the Government to execute the repairs. In a suit

by the plaintiff and defendants, respectively.  
**DAMODARA MUDALIAR v. SECRETARY OF STATE FOR INDIA** . . . . . **I L. R., 18 Mad., 88**

— s. 72.

See **SMALL CAUSE COURT, MOFFUSIL—JURISDICTION—DAMAGES.**

**[I L. R., 2 All., 671]**

1. ———— *Liability of person to*

fraud. In paying the money the treasury officer neglected no reasonable precaution, nor was he in any way guilty of carelessness. *Held* that the defendant was bound to repay the money received by him, and that he could not defend himself by the

2. ———— *Arrears of revenue—Vol-*

March 1876. *Held* that the payment was not a voluntary payment, and that the plaintiffs were entitled to recover. **NOBIN KRISHNA BOSE v. MON MOHUN BOSE** . . . . . **I L. R., 7 Calc., 573; 9 C. L. R., 182**

**CONTRACT ACT (IX OF 1872)—continued.**

But see **TILUCK CHAND v. SOUDAMINI DAS**  
**[I L. R., 4 Calc., 566; 3 C. L. R., 456]**

3. ———— *Payment of debt errone-*

**[3 N. W., 136]**

4. ———— *Money paid under mistake—Fraud inducing a mistake.*—A, a gumastah of B's deceased husband, represented to B that he had her husband's will in his possession, containing a

5. ———— *Voluntary payment—Money paid, but not due, and paid under compulsion.*—In execution of a decree, the plaintiff purchased certain property. Subsequently the defendant, in execution of another decree against the former owner of the property, proceeded to execute his decree against the

**[I L. R., 15 Calc., 650]**

— s. 73.

See **DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.**  
**[I L. R., 12 Bom., 242]**

**CONTRACT ACT (IX OF 1872)—continued.**

the purchase of a revenue-paying estate there were arrears of revenue due. The instrument of sale was silent as to the party liable to pay such arrears. The purchaser was compelled to pay such arrears. *Held* that the purchaser could not recover the money so paid from the vendor. **DOST MUHAMMED v. SAJJAD AHMAD** . . . **I. L. R., 6 All., 67**

**6. ———— Meaning of "lawfully"—**

*Mortgage—Decree enforcing hypothecation—Satisfaction of decree by person not subject to legal obligation thereunder—Suit for contribution brought by such person against judgment-debtor—Gratuitous payment.*—The widow of *D*, a separated Hindu, hypothecated certain immoveable property which had belonged to her husband. The immediate reversioners to *D*'s estate were his nephew *S* and the three sons of his brother *O*. After the widow's death, the mortgagee put his bond in suit, impleading as defendants *S*, two of *S*'s four sons, and the three sons of *O*. Only the three last-mentioned persons resisted the suit, and the mortgagee obtained a decree directing the sale of the mortgaged property in satisfaction of his claim. From the operation of this decree *S* was wholly exempted, and his sons were made liable only to pay their own costs. Before any sale in execution of the decree could take place, the sons of *S* paid the amount of the decree into Court, thus saving the property from sale. They subsequently sued the sons of *O* for contribution in respect of this payment. It was found that, at the time when the payment was made, *S* was a member of a joint Hindu family with the defendants, and that his sons, the plaintiffs, had, at that time, no interest in the property by transfer from him. *Held* that at the time of the payment the plaintiffs could not properly be regarded as in the position of co-mortgagors with the defendants, so as to have an equitable lien upon the property they had saved from sale; that it was not a case of a payment which the defendants were bound to make in which the plaintiffs were "interested" within the meaning of s. 69 of the Contract Act; and that therefore the fiction of an implied request by the defendants to the plaintiff to make the payment could not be imported into the case, and the plaintiffs were not entitled to contribution. *Held*, also, that there was no such relationship between the parties as would create or justify the inference of any right in the plaintiffs to look to the defendants for compensation so as to make s. 70 of the Contract Act applicable; and that, if the plaintiffs as mere volunteers chose to pay the money not for the defendants, but for themselves, they could not claim the benefits of that section. The principle of the decision in *Pancham Singh v. Ali Ahmed*, **I. L. R., 4 All., 58**, has been recognized and provided for in the Transfer of Property Act. By the use of the word "lawfully" in s. 70 of the Contract Act, the Legislature had in contemplation cases in which a person held such a relation to another as either directly to create or reasonably to justify the inference that by some act done for another person, the person doing the act was entitled to look for compensation to the person for whom it was done. *Ram Tuhul Singh v. Bissessar Lal Sahoo*, **L. R., 2 I. A., 131**, referred to. **CHEDI LAL v. BHAGWAN DAS** . . . **I. L. R., 11 All., 234**

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**[I. L. R., 7 All., 660]**

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**[I. L. R., 12 Calc., 213]****s. 70.**

*See* **SMALL CAUSE COURT, MORUSSIL—JURISDICTION—CONTRACT.**

**[I. L. R., 3 All., 66  
I. L. R., 4 All., 134, 152  
I. L. R., 15 Calc., 652]**

*Repairs by Government to a tank in which zamindar is interested—Suit against zamindars for share of cost.*—The Government repaired a certain tank from which were irrigated lands in the zamindari of the defendants, and also raiyatwari villages held under Government which had been severed from the zamindari. It was found that the defendants knew that the repairs which were necessary for the preservation of the tank were

**CONTRACT ACT (IX OF 1872)—continued.**

being carried out, and did not wish to execute them themselves except as contractors, and that they had enjoyed the benefit of the work done, and further that Government had carried out the repairs not intending to do them gratuitously for the defendants. It was not found that there was any request, either

INDIA

a. 72.

See SMALL CAUSE COURT, MOFUSSIL—  
JURISDICTION—DAMAGES.

(I. L. R., 2 All., 671)

1. ———— *Liability of person to whom money is paid by mistake—Principal and agent.*—A treasury officer, under the imposition of a

who was  
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his liability. SHUGAN CHAND v. GOVERNMENT,  
NORTH-WESTERN PROVINCES. I. L. R., 1 All., 79

2. ———— *Arrears of revenue—Vol-*

**CONTRACT ACT (IX OF 1872)—continued.**

But see TILUCK CHAND v. SOUDAMINI DASI

(I. L. R., 4 Calc., 586; 3 C. L. R., 456)

ment by mistake as to give him a right of suit.  
NILEKUNTH SAHAR v. HUSOOMAN PERSHAD

(3 N. W., 136)

4. —

—*Fraud*

B's dec.

had her husband

ment, and could be recovered back, and that the  
Court could not apportion the amount (if any) that  
might be claimable by B for work done under the  
agreement. RUPARAI v. PARBHURAM KIRPAPPA  
KAR 8 Bom. A. C., 103

5. ———— *Voluntary payment—Money*

paid, but not due, and paid under compulsion—  
In execution of a decree, the plaintiff purchased certain  
property. Subsequently the defendant, in execution  
of another decree against the former owner of the prop-  
erty, proceeded to execute his decree against the  
same property. The plaintiff thereupon preferred  
a claim, which was disallowed, as he had not the  
obtained, and consequently could not produce the  
sale certificate. In order to prevent the sale, he  
paid the amount of the defendant's decree, and there-  
after and subsequently instituted a suit against the de-  
fendant to recover the amount so paid, and to  
prevent the sale. The defendant maintained that the  
amount was paid voluntarily and could not be re-  
covered back. Held, following *Joshi v. Govind*  
*Kishen Singh*, I. L. R., 51 Cal., 100, that it was not a voluntary payment, and  
that the plaintiff was entitled to a decree. *Moore v. Choudhrai*  
*Moore v. Choudhrai*, I. L. R., 65 Cal., 100. *Moore v. Choudhrai*  
*Arden v. Ram Prasad*, I. L. R., 10 Cal., 100.  
JUDGE NARAYAN KISHOR

a. 72.

See *DAWSON v. DEAN*  
at *DAWSON v. DEAN*  
I. L. R., 10 Cal., 100.

**CONTRACT ACT (IX OF 1872)—continued.**

*See* INTEREST—MISCELLANEOUS CASES—  
ARREARS OF RENT.

[I. L. R., 18 All., 240

*See* INTEREST—OMISSION TO STIPULATE  
FOR, OR STIPULATED TIME HAS EXPIRED.

[I. L. R., 20 Mad., 481

*See* LIMITATION ACT, 1877, ART. 116.

[I. L. R., 3 Mad., 76

I. L. R., 12 Cal., 357

s. 73 and ss. 77, 83, 84, and 107—  
*Re-sale, Notice of—Right of unpaid vendors—Nominal damages.*—The defendant purchased from the plaintiffs a cargo of Watson's Hartley steam coal at Rs 21 per ton, to arrive by ship *Grecian*, but on its arrival the defendant, on being called upon to do so, refused to take delivery, on the ground that the usual certificate that the coal was what it was stated to be did not accompany the cargo. The plaintiffs thereupon gave notice to the defendant that, unless delivery were taken, the coal would be sold on his account and at his risk; and on the defendant repeating his refusal to take delivery, the plaintiffs caused the coal to be sold, and it was purchased in the name of *M & Co.*, for Rs 13 per ton. In a suit, which was stated in the plaint to be for the loss sustained by the plaintiffs on the re-sale, the Court found that the plaintiffs themselves were the real purchasers, and that the sale had taken place without proper notice, and under the circumstances was invalid. *Held*, both in the lower Court and on appeal, that the plaintiffs had, by the way in which they had dealt with the coal, rendered themselves accountable to the defendant in respect thereof, and that, notwithstanding the defendant had committed a breach of the contract in refusing to take delivery of the coal, the plaintiffs were bound to give an account of the coal and prove that they had sustained a loss on the re-sale, and on their omission to do so they were not entitled to recover any damages. *Held* on appeal *per* MARKBY, J., that the plaintiffs were not entitled to put aside the sale as invalid and treat the case as one for damages for breach of contract. Under the circumstances, they were not entitled to even nominal damages. The mere shipment on board the *Grecian* did not pass the property in the coal to the defendant under s. 77 of Act IX of 1872. *Per* PONTIFEX, J.—Whether, by virtue of the contract and the subsequent appropriation and shipment, the property in the coal passed or did not pass to the defendant within the meaning of s. 84 or s. 83 of Act IX of 1872; even if the sale were invalid, the plaintiffs were not entitled, considering their conduct in dealing with the coal, and the concealment of their interest in the purchase, and in the absence of satisfactory evidence of what ultimately became of the coal, to recover any damages. *BUCHANAN v. AYDALL* . . . 15 B. L. R., 276

s. 74.

*See* ADMINISTRATION BOND.

[I. L. R., 10 All., 29

*See* CONTRACT—ALTERATION OF CONTRACT  
—ALTERATION BY COURT.

[I. L. R., 1 Mad., 349

**CONTRACT ACT (IX OF 1872)—continued.**

*See* DAMAGES—MEASURE AND ASSESSMENT  
OF DAMAGES—BREACH OF CONTRACT.

[20 W. R., 481

I. L. R., 5 All., 238

I. L. R., 12 Bom., 242

I. L. R., 22 Mad., 453

3 C. W. N., 43

*See* CASES UNDER INTEREST—STIPULA-  
TIONS AMOUNTING OR NOT TO PENALTIES.

*See* MADRAS DISTRICT MUNICIPALITIES  
ACT, s. 261 . I. L. R., 16 Mad., 474

Penalty—Suit by a joint proprietor for arrears of rent—*Bengal Tenancy Act (VIII of 1885), s. 29 (b)*—*Kabuliat executed prior to—Covenant for a higher rate—Enhancement of rent—Bengal Rent Act (VIII of 1869), s. 5.*—In a *kabuliat* executed in 1881, it was stipulated that upon the expiry of the term of seven years fixed therein, a fresh lease should be executed; that should the defendant cultivate the lands without executing a fresh *kabuliat*, he would pay rent at the rate of Rs 4 a bigha (a rate much higher than that fixed for the term). No fresh *kabuliat* was executed on expiry of the term, and the plaintiff, a part proprietor, collecting rent separately, brought this suit for arrears of rent at the new rate of Rs 4. The defendant objected, *inter alia*, that the plaintiff, being a part proprietor, was not entitled to sue for enhanced rent, and that the stipulation for the higher rate was a mere threat, and not intended to be carried out. The first Court gave a decree at an enhanced rate, or an addition of two annas in the rupee, in terms of s. 29 (b) of the *Bengal Tenancy Act*. On appeal, the Subordinate Judge dismissed the whole suit, on the ground that the suit being one for enhanced rent, and the plaintiff a part proprietor, the suit did not lie. *Held* that, the *kabuliat* having been executed before the *Bengal Tenancy Act* was passed, the present case did not come within the operation of that Act, and the plaintiff, although a part proprietor, could bring this suit. *Rani Chunder Chackrabutty v. Giridhar Dutt, I. L. R., 19 Cal., 755*, followed. *Held* by PRINSEP and GHOSE, JJ. (RAMPINI, J., dissenting)—That the additional rent was intended to be enforceable only on default to execute a fresh *kabuliat*, and the so-called agreement to pay at the enhanced rate of Rs 4 was in the nature of a penalty. *Held* by RAMPINI, J.—The plea that the rate of Rs 4 was a penalty was not taken by the defendant in his written statement, and, in any case, the stipulation did not come within the purview of s. 74 of the *Indian Contract Act*, and the suit was not for compensation for breach of contract, but for rent at a rate which the defendant has agreed to pay from a certain time. *Held*, also, that s. 29 (d) of the *Bengal Tenancy Act* has no retrospective effect, and does not apply to the present *kabuliat*, which was executed before the passing of that Act. That s. 5 of *Bengal Act VIII of 1869* did not debar an agreement by an occupancy raiyat to pay whatever rate he pleased. *Banke Behari v. Sundar Lal, I. L. R., 15 All., 232*, referred to. *TEJENDRO NARAIN SINGH v. BAKAI SINGH* . . . I. L. R., 22 Cal., 658

## CONTRACT ACT (IX OF 1872)—continued.

money is not a contract of sale, but money that came honestly into the hands of B, the order of the Magistrate was right. *EXPRESS v. JOHNSON & MOORE*. I.L.R. 3 Cal. 379

2. *Generalised currency note*—Goods.—A Government currency note is not "goods" within the meaning of the Contract Act. *IN THE MATTER OF MICHELL*. I.C.L.R. 339

## CONTRACT ACT (IX OF 1872)—continued.

RIGHT OF THE DEFENDANT TO REJECT THE GOODS IF THE PLAINTIFF HAS A DEFECTIVE TITLE.—If the plaintiff has a defective title, the defendant is not bound to accept the goods, but he may, if he chooses, do so. *THE PRINCE OF WALES v. THE PRINCE OF WALES*. I.L.R. 13 Cal. 1

— 2. 90.

See *ATTACHMENT—SCHEDULES OF ATTACHMENT—JUDICIAL SALE*.

[I.L.R. 8 All. 634]

— 2. 91.

See *RIGHT OF SALE—CONTRACTS OF SALE*.

[I.L.R. 13 Cal. 1]

— *Sed for damages for non-delivery*—Obligation to deliver.—It is a suit for damages on account of failure to deliver goods (where) sold, where the contract was to deliver by weight, the weight being taken in the seller's own presence. *Held* that, as plaintiff did not apply for a delivery, the seller's obligation, where not under the Contract Act, s. 92, bound to deliver the goods. *KARIM SINGH v. GUNAR CHAND SINGH*.

[54 W.R. 113]

— 2. 92.

See *CONTRACT—CONSTRUCTION OF CONTRACTS*.

I.L.R. 24 Cal. 8

I.L.R. 23 L.A. 123

— 2. 103.

See *VENUE AND PURCHASER—JUDICIAL RIGHTS AND LIABILITIES*.

[I.L.R. 14 Bom. 57]

— 2. 107.

See *CONTRACT—Breach of Contract*.

[I.L.R. 24 Cal. 124, 177]

I.L.R. 19 All. 535

I.L.R. 23 Mad. 18

I.L.R. 25 Cal. 503

2 C.W.N. 283

See *DAMAGES—MEASURE AND ALIENATION OF DAMAGES—Breach of Contract*.

[I.L.R. 24 Cal. 124, 177]

I.L.R. 19 All. 535

I.L.R. 25 Cal. 503

2 C.W.N. 283

I.L.R. 23 Mad. 18

— 2. 108.

See *DELIVERY—Contract*.

2. *NOBHO KARNATH PONDAR*. I.L.R. 4 Cal. 801

2. *Sale of goods by description*—Purchaser's right to reject—Whether goods according to contract or not, how relevant—Delivery of part of the goods—Suit for price of goods rejected—Contract Act, s. 92.—B & A agreed to buy from M R five bales of chrome orange twine, "or any part thereof that may be in a merchantable condition as City of Cambridge, or other vessel or vessels" with specific marks and numbers, each bale containing 500 lbs., at so much per lb., to be paid for on or before delivery. B & A took delivery of, and paid for, only one bale, but rejected the others. M R brought a suit for the price of the four bales rejected. *Held* that the property in the goods did not pass to the defendant by the terms of the

## CONTRACT ACT (IX OF 1872)—continued.

1. ———— excep. 1—*Possession of goods by person other than owner—Title conveyed by vendor to vendee.*—The plaintiff let to D a piano on hire on the following terms:—"At R30 per month; if duly paid for and kept three years, shall then become the property of hirer." These terms were embodied in a voucher which was signed by D. The monthly hire was not regularly paid, and the plaintiffs sued for and obtained a decree for a portion of the hire up to May 1873. Subsequently in that month, D sold the piano to the defendant, who obtained delivery of it in June. In a suit by the plaintiff in trover for conversion of the piano, the Judge found that the defendant acted in good faith. Held that the possession acquired by D was not possession by consent of the owner within the meaning of s. 108 of Act IX of 1872, excep. 1, and that he did not, by sale to the defendant, transfer the ownership in the piano to him. Excep. 1 of s. 108 does not apply where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose. *GREENWOOD v. HOLQUETTE*. 12 B. L. R., 42; 20 W. R., 467

2. ———— *Possession with consent of owner—Bailment—Bailee—Sale by bailee of goods bailed—Title of vendee.*—The general rule laid down by s. 108 of the Contract Act that no seller can give to a buyer a better title than he has himself is qualified by excep. 1 to that section. But the possession contemplated by that exception does not extend to every case of detention of chattels with the owner's consent. The exception has particular relation to the cases of persons allowed by owners to have the *indicia* of property, or possession under such circumstances as may naturally induce others to regard them as owners, and constituting some degree of negligence or defect of precaution imputable to the true owners. Where, however, the detention of a chattel is allowed for a particular limited purpose, there is not a possession such as is required by the exception. In the case of a gratuitous bailment of a chattel, the possession remains constructively with the owner. S left with C a buffalo and a calf, to be taken care of during his absence from home. C sold the animals to M. S sued to recover them. Held that the bailment by S to C was a gratuitous one, or else a mere custody by C for S; that S was, therefore, at the time of sale in constructive possession of the animals, and C could not transfer to M an ownership that he had not himself. *SHANKAR MURLIDHAR v. MOHANLAL JADURAM*

[I. L. R., 11 Bom., 704

s. 124.

See VOLUNTARY PAYMENT.

[I. L. R., 14 Bom., 299

ss. 126-147.

See DEKKAN AGRICULTURISTS RELIEF ACT,  
s. 72 . I. L. R., 5 Bom., 647

s. 127.

See PRINCIPAL AND SURETY—RIGHTS AND  
LIABILITIES OF SURETY.

[I. L. R., 1 All., 487

## CONTRACT ACT (IX OF 1872)—continued.

s. 128.

See PRINCIPAL AND SURETY—RIGHTS AND  
LIABILITIES OF SURETY.

[4 C. L. R., 145

See SURETY—LIABILITY OF SURETY.

[I. L. R., 19 Bom., 697

s. 130.

See APPEAL TO PRIVY COUNCIL—STAY  
OF EXECUTION PENDING APPEAL.

[I. L. R., 19 Mad., 140

See MINOR—CASES UNDER BOMBAY MINORS  
ACT (XX OF 1864).

[I. L. R., 19 Bom., 245

s. 131.

See GUARANTEE.

[I. L. R., 10 All., 531

See HINDU LAW—DEBTS.

[I. L. R., 11 Mad., 373

ss. 132, 139.

See BILL OF EXCHANGE.

[I. L. R., 3 Calc., 174

ss. 133-143.

See CASES UNDER PRINCIPAL AND SURETY.

ss. 141-142.

See VOLUNTARY PAYMENT.

[I. L. R., 14 Bom., 299

s. 142.

See GUARANTEE . I. L. R., 6 Mad., 408

ss. 148-161.

See CASES UNDER CARRIERS.

See CASES UNDER RAILWAY COMPANY.

ss. 150, 151, 152.

See ONUS OF PROOF—BAILMENTS.

[I. L. R., 9 All., 398

s. 151.

See BILL OF LADING.

[I. L. R., 10 Calc., 489

ss. 151, 152.

See HOTEL-KEEPER AND GUEST.

[I. L. R., 22 All., 164

s. 170.

See BAILMENT . I. L. R., 6 All., 139

See LIEN . I. L. R., 8 Calc., 312

s. 171.

See ATTORNEY AND CLIENT.

[I. L. R., 6 Calc., 1

See BANKERS . I. L. R., 19 Mad., 234

See LIEN . I. L. R., 8 Calc., 312

[I. L. R., 13 Bom., 314

s. 178.

See LIEN . I. L. R., 18 Calc., 573

[I. L. R., 18 I. A., 78

**CONTRACT ACT (IX OF 1872)—continued.**

1. ———— *Custody of servant—Possession—Pledge of goods.*—A servant, entrusted by his mistress with the custody of goods, pawned

See **GREENWOOD v. HOLQUETTE**

[12 B. L. R., 42]

defended the suit. Held that the plaintiff was entitled to recover the jewellery from K under s. 178 of the Contract Act, G having obtained it from the plaintiff by an offence or fraud within the meaning of that section. **KARTICK CHURN SETHY v. GOPALKISTO PAUL**

[I. L. R., 3 Cal., 264]

3. ———— *Pledge—Husband and wife—Possession required for valid pledge.*—The

the knowledge and consent of the plaintiff, had charge of the jewel-case containing the ornaments in question, which, however, belonged exclusively to the plaintiff. Without the knowledge or consent of the plaintiff, his wife pledged these ornaments with the defendant as security for the repayment of certain promissory notes passed by her in favour of the defendant. After her death, the defendant claimed payment of the promissory notes from the plaintiff. The plaintiff refused to pay, and sued the

**CONTRACT ACT (IX OF 1872)—continued.**

s. 192.

See **PRINCIPAL AND AGENT—LIABILITY OF AGENTS.** . . . 11 C. L. R., 547

ss. 201, 218.

See **LIMITATION ACT, 1877, ART. 89.**

[I. L. R., 12 All., 541]

See **PRINCIPAL AND AGENT—LIABILITY OF AGENTS.** . . . I. L. R., 13 All., 541

[I. L. R., 23 Cal., 715]

s. 202.

See **PRINCIPAL AND AGENT—COMMISSION AGENTS.** . . . I. L. R., 20 Mad., 97

ss. 202, 203.

See **PRINCIPAL AND AGENT—REVOCATION.**

[I. L. R., 5 Bom., 253]

I. L. R., 24 Bom., 403

ss. 215, 218.

See **PRINCIPAL AND AGENT—COMMISSION AGENTS.** . . . I. L. R., 16 Mad., 238

ss. 217, 221.

See **LIEN.** . . . I. L. R., 13 Bom., 302

s. 230.

See **CHARTER PARTY.**

[I. L. R., 7 Bom., 51]

See **PRINCIPAL AND AGENT—LIABILITY OF AGENTS.** . . . I. L. R., 5 Cal., 71

[I. L. R., 5 Bom., 584]

I. L. R., 17 Cal., 449

I. L. R., 23 Bom., 754

s. 231.

See **CONTRACT—CONSTRUCTION OF CONTRACTS.** . . . I. L. R., 24 Cal., 8

[I. L. R., 23 I. A., 119]

ss. 231, 232, 233, 234.

See **PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL.** . . . I. L. R., 4 Bom., 417

[I. L. R., 9 All., 681]

I. L. R., 23 Mad., 587

s. 235.

See **CHARTER PARTY.**

[I. L. R., 7 Bom., 51]

See **RIGHT OF SUIT—MISREPRESENTATION.**

[I. L. R., 24 Bom., 166]

s. 237.

See **PRINCIPAL AND AGENT—AUTHORITY OF AGENTS.** . . . 23 W. R., 158

ss. 239, 240.

See **PARTNERSHIP—WHAT CONSTITUTES PARTNERSHIP.** . . . I. L. R., 4 All., 74

s. 247.

See **HINDU LAW—JOINT FAMILY—DEEDS AND JOINT FAMILY BUSINESS.**

[I. L. R., 3 Cal., 222]

**CONTRACT ACT (IX OF 1872)—continued.**

u. 240.

See **PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS** . 9 C. L. R., 21

u. 253.

See **PARTNERSHIP—DISSOLUTION OF PARTNERSHIP** . 26 W. R., 40  
(I. L. R., 10 Calc., 689)See **PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS** I. L. R., 20 Calc., 281

u. 264.

See **PARTNERSHIP—DISSOLUTION OF PARTNERSHIP** . I. L. R., 8 Calc., 678  
(I. L. R., 9 Mad., 243)

u. 265.

See **COURT FEES ACT, s. 7, cl. 4.**  
(I. L. R., 8 Bom., 143  
I. L. R., 7 Bom., 125  
13 C. L. R., 180)See **COURT FEES ACT, SCH. I, CL. 1.**  
(I. L. R., 7 Bom., 535)See **JURISDICTION OF CIVIL COURT—PARTNERSHIP** . I. L. R., 7 All., 227See **PARTNERSHIP—DISSOLUTION OF PARTNERSHIP** . I. L. R., 10 Calc., 689See **PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS** I. L. R., 22 Calc., 692See **RES JUDICATA—MATTERS IN ISSUE.**  
(I. L. R., 22 Calc., 692)See **VALUATION OF SUIT—SUITS.**  
(I. L. R., 23 Calc., 692)**1. Jurisdiction of District**

**Court—Suit for dissolution of partnership and for account.**—The suit was brought for a dissolution of partnership between plaintiff and first defendant, and for an account as between them. It was alleged in the plaint that plaintiff and first defendant entered into partnership in 1864 to work a jungle in the North Arcot District which had been leased to plaintiff for three years; that fourth defendant was subsequently admitted a partner, and that the contract was carried on under the style of *R T & Co.*; that in March 1867, fourth defendant took up a contract in Madras and another general partnership was established, of which plaintiff and first defendant were members; that the funds of the first firm became incorporated in the second firm, which was styled *K T & K*, and that this firm undertook several contracts in Madras and Chingleput; and finally, that the cause of action was the refusal of first defendant to account, and accrued in North Arcot District, where all the defendants resided permanently. The District Judge dismissed the suit on the ground that, under s. 265 of the Contract Act, he had no jurisdiction. *Held* on appeal that the District Court of North Arcot had jurisdiction, as the defendants were resident within the district; that the provision in the Contract Act is permissive, and does not prohibit a suit elsewhere than at the place where the partnership was carried on if a sufficient ground of jurisdiction

**CONTRACT ACT (IX OF 1872)—continued.**exists. **JAYALI RAMASAMI v. SATHANBAKAM THEERUVENQADASAMI** . I. L. R., 1 Mad., 340**2. Jurisdiction of District**

**Court—Suit for adjustment of accounts of a partnership.**—S. 265 of the Contract Act, while it enables a partner, after the termination of a partnership, to apply to the District Court to wind up the business, does not take away the ordinary right of suit in any Civil Court having jurisdiction to have the accounts of the partnership taken. **LECHMAN LALL v. RAM LALL** . I. L. R., 8 Calc., 251; 8 C. L. R., 115

**3. Jurisdiction of District**

**Court—Partnership, Winding up.—The Bombay Civil Courts Act, No. XIV of 1869—Power of District Judge to refer to Assistant Judge a case falling under s. 265 of Contract Act.**—A previous dissolution of partnership is necessary in order to give jurisdiction to the District Court under s. 265 of the Contract Act. Accordingly, where a suit was instituted in the District Court of Ahmedabad by some members of a partnership (which, however, was not dissolved at the date of the suit) for the winding up of the business of a ginning factory and for distributing among the shareholders any surplus that might remain, after providing for the payment of its debts, under s. 265 of Act IX of 1872, and the Assistant Judge, to whom it was referred for trial by the District Judge, directed the dissolution of the partnership and the winding up of its business, the High Court on appeal reversed the decree of the Assistant Judge, and returned the plaint to the plaintiffs for its presentation to the proper Court. *Quere*—Whether the District Judge had power, under the Bombay Civil Courts Act XIV of 1869, to refer to the Assistant Judge a case falling under s. 265 of Act IX of 1872. **SORABJI FARDUNJI v. DULABHIBHAI HARGOVANDAS** I. L. R., 5 Bom., 65

**4. Jurisdiction of District**

**Court—Winding up partnership—Subordinate Court—Bengal Civil Courts Act (VI of 1871), s. 11.**—The Court of a Subordinate Judge is inferior to the Court of a District Judge within the meaning of s. 11 of the Civil Courts Act. The word "may" in s. 265 of the Contract Act has a somewhat similar force to the words "it shall be lawful" in a statute, which merely make that legal and possible which there would otherwise be no right or authority to do. And the words "may apply" in the section create a new jurisdiction, which must be exercised strictly in accordance with the statute which creates it, that is to say, the jurisdiction created by the section must be exercised exclusively by a Court not inferior to the Court of a District Judge, within the local limits of whose jurisdiction the place or principal place of business of the firm, which it is sought to wind up, is situated. It was the intention of the Legislature, in enacting s. 265 of the Contract Act, to create a new jurisdiction to be exercised exclusively by the Court of the District Judge; and in the absence of a contract to the contrary, the members of a partnership, or their representatives, cannot obtain the relief mentioned in the section except by resorting to that Court. The presumption that the existing jurisdiction of a Court is not intended to be taken away

## CONTRACT ACT (IX OF 1872)—continued.

LICK v. RUSSICK LALL MULLICK. PROSAD DOSS  
MULLICK v. KEDAR NATH MULLICK

[I. L. R., 7 Calc., 157; 8 C. L. R., 329

5. ————— Jurisdiction of District

[I. L. R., 4 All., 437

7. ————— Jurisdiction of District  
Court—Suit for profits of a ship—Co-owners in a  
ship—Partnership—Contract Act (IX of 1871),  
s. 239, illus. (e)—Jurisdiction of District Judge.

—The fact that several persons are co-owners of a  
ship does not make them partners, and it is not  
necessary that a suit by one co-owner against the  
managing owner or ship's husband, for his share

BUX MALOOM

[I. L. R., 8 Calc., 1011; 10 C. L. R., 608

of the Contract Act. RAMAYYA v. CHANDRA  
SEKHA I. L. R., 5 Mad., 256

9. ————— Jurisdiction of District  
Court—Suit for dissolution of partnership—

## CONTRACT ACT (IX OF 1872)—continued.

of the Code of Civil Procedure, and an award was  
given declaring the plaintiff entitled to recover a

of the Munaf. Prosad Doss Mullick v. Russick  
Lall Mullick, I. L. R., 7 Calc., 157, and Ram  
Chunder Shaha v. Manick Chunder Bankya,  
I. L. R., 7 Calc., 425, dissented from. KALIAN DAS  
v. GANGA SAHAI I. L. R., 5 All., 500

jurisdiction assigned to the District Court by

plated in s. 265 of the Contract Act. Where in a



**CONTRIBUTION, SUIT FOR—continued.**

1 CO-SHARERS, LIABILITY OF—*continued*  
equivalent to the interest he held in it. *USAODA*  
*PERSHAD ACHARYA v. SHUBROOCHANDER DEBIA*

[11 W. R., 453]

4. ——— Suit for revenue paid by  
lumberdar for co-sharers.—Until the share-  
holders formally take steps to set aside as lumberdar

*PERSHAD v. SALIG RAM* . . . 6 N. W., 278

5. ——— Costs of suit for possession  
of accreted lands against zamindars—*Pro-*  
*portionate liability*—B, having obtained a decree  
against T and other zamindars of pergunnah My-  
mensingh for possession of certain accreted lands as

*DEBANT* . . . 20 W. R., 209

6. ——— Sums expended in maintain-  
ing common property—*Consent of co-sharers*.  
—A co-owner is liable to contribute to the payment  
of all sums necessarily expended by another co-owner

[3 N. W., 248]

7. ——— Repair of common water-  
course by one co-owner.—Where a water-course

[25 W. R., 170]

8. ——— Rent-suit against recorded

**CONTRIBUTION, SUIT FOR—continued.**

1. CO-SHARERS, LIABILITY OF—*concluded.*

(whose name is not recorded and who is not a party to  
the suit for rent) sold away his interest before the  
date of the suit, he having been a co-owner at the  
time the liability arose, would not relieve him of the  
liability, although he may not have derived any ad-  
vantage from the payment made. *GOBINDO CHUN-*  
*DER CHUCKERBUTTY v. BASANT KUMAR CHUCKER-*  
*BUTTY* . . . 3 C. W. N., 384

**2. VOLUNTARY PAYMENTS.**

his descendants to support the idols, nor can any suit  
for contribution be against any of them for payments  
made for the expenses of the idols. *SHAM LALL*  
*SER v. HURO SOONDUREX GUPTA*

[5 W. R., 39; 1 Ind. Jur., N. S., 36]

10. ——— Payment of debt by one of

ing guarantor had previously applied to, or proceeded  
against, the principal, with a view to recover the  
debt from him. *NURU NARAIN DOSS v. BABJO*  
*MONUX DOSS* . . . W. R., 1864, 70

*PITAMPAR CHUCKERBUTTY v. BAYEUBATH PA-*  
*LEET* . . . 15 W. R., 52

due on a farming lease in a zamindari which had been

**CONTRIBUTION, SUIT FOR—continued.****2. VOLUNTARY PAYMENTS—continued.**

purchased by the plaintiff. *Held* the payment was a voluntary one, and the suit therefore would not lie. **KRISHNA KISHORE PODDAR v. KAILAS CHANDRA MOOKERJEE** . . . **3 B. L. R., 641, note**  
**S. C. KRISHNA KISHORE PODDAR v. KAYASH CHITUR-  
 MOOKERJEE** . . . **12 W. R., 128**

**13. ——— Payment by judgment-creditor on cross-decree by one only of his judgment-debtors—Payment for arrears of rent.**—A decree-holder for arrears of rent against three persons jointly placed certain sums of money in Court to the credit of one of them, *viz.*, the plaintiff, who, in her capacity of guardian of her son, had a cross-decree against him, and afterwards he withdrew these sums in execution of the joint decree. Thereupon the plaintiff sued the other two joint debtors for contribution, as she had repaid to her minor son the sum of money so taken away. *Held* that the payment by the plaintiff to her minor son was a voluntary payment, and was not therefore such a payment as entitled her to sue her joint debtors for contribution. **RAJLAKSHI DEBI v. TARANMOH CHOWDHURAI**

[**2 B. L. R., A. C., 281; 11 W. R., 218**

**14. ——— Suit for fees of Ameen deputed to make partition—Payment by one proprietor.**—A suit for contribution for the fees of an Ameen who was deputed to make a batwara will lie against another proprietor of the estate who joined with the plaintiff in applying for the batwara, and is not affected by the fact that the batwara was, for certain reasons, not carried out. The Collector having called upon the proprietors to pay the fees of the Ameen, the plaintiff's payment of the whole amount was not a voluntary payment, as the Collector could have sold the whole estate to realize the fees. Such suit is governed by Act XI of 1838. **GREENSH CHUNDER LAMOONY v. ASUDOOISSA BUBER** . . . **8 W. R., 333**

**15. ——— Payment of costs by one of representatives of judgment-debtor—Joint liability for costs.**—Notwithstanding an order of the Privy Council that a certain sum should be paid to a judgment-debtor out of money deposited by the judgment-debtor in their treasury, the former took out execution against the property of the latter, who, having died in the meantime, was represented by plaintiffs and defendants. Certain property belonging to the deceased having been attached and advertised for sale, plaintiffs paid the costs due under the Privy Council decree, and then sued for contribution. *Held* that defendants were liable for the sum paid in excess of plaintiff's share. **ABRUDOOILLAH v. MEAH KHAN** . . . **14 W. R., 105**

**16. ——— Payment to stay sale—Suit for refund on ground of previous satisfaction of decree.**—A was in possession of certain lands in lieu of dower. B put up to sale, in execution of a decree against C (A's husband) C's rights and interest in these lands. A under protest deposited in Court the amount claimed in order to stop the sale, and consented that it should be paid over to B until

**CONTRIBUTION, SUIT FOR—continued.****2. VOLUNTARY PAYMENTS—continued.**

the rights of the parties could be settled in a regular suit. A then sued B for a refund of the money on the ground that at the time of B's attaching the property his decree against C had been already satisfied. The Zilla Court gave a decree for A upon the merits. The High Court, on appeal, held that the payment into Court was a voluntary payment, and therefore A had no right of action against B. *Held* (reversing the decision of the High Court) that the payment was not a voluntary payment. **FATIMA KHATUN v. MAHOMMED JAN CHOWDHURY**  
**[1 B. L. R., P. C., 21; 10 W. R., P. C., 29**  
**12 Moore's I. A., 65**

**17. ——— Payment by lessee of Government revenue on default of malik.**—When a sub-lessee (kutkinadar holding from a zur-i-peshgeedar) pays the Government revenue on the default of the malik, who sells the estate to escape liability, the obligation to repay the same is a personal liability on the part of the malik which could be enforced in a suit for contribution, and cannot be enforced against the estate. **JNUO BHUG-  
 UTH v. TARA HOOR HOSSEIN** . **W. R., 1864, 132**

**18. ——— Payment by dar-patnidar to stay sale—Liability of co-sharers in zamindari.**—*Held* that plaintiff, who held partly as zamindar and partly as dar-patnidar, was entitled to look to his co-sharers in the zamindari for contribution of Government revenue paid by him to save the entire estate from sale, and that the fact of his being a sharer in the dar-patni could not bind him to recover his over-payments from the patnidars. **RADHA MADHUB DUTT v. RAM RUMJUN CHEEKERDUTTY**  
**[7 W. R., 461]**

**19. ——— Payment of revenue to save estate from sale—Suit against co-sharers.**—Where a village was in arrears through the deficiency of a former lumberdar, and the plaintiff, having purchased at auction the share of the lumberdar, and not his right and liabilities, had to pay the revenue to save the estate,—*Held* that the plaintiff had a right to call upon his co-sharers to contribute their quota of Government revenue, the co-sharers' remedy being against the defaulting lumberdar. **FUZUL ALI v. JUMNA DOSS** . . . **1 Agra, 229**

**20. ——— Payment to prevent foreclosure—Evidence of defendants' shares.**—In a suit by one of several shareholders in certain mortgaged property to recover contribution on account of payment made by plaintiff to save the property from being foreclosed, not the sudden jummas assessed on the villages to which the claim related, but the zamindar's collections, would be the better evidence of the relative values of the villages and the proportion payable by the defendants. **KHATOON KOONWAR v. HURDOOT NABAIN SINGH**  
**[20 W. R., 163]**

**21. ——— Payment of revenue to stay sale—Liability of mortgagees of co-sharer in possession.**—The interests of a Hindu widow (R. D.) in certain estates having been mortgaged, the mortgagees in due course foreclosed the mortgage, and

**CONTRIBUTION, SUIT FOR—continued.****2. VOLUNTARY PAYMENTS—continued.**

obtained a decree for possession. IntermEDIATELY, *R D* committed default in the payment of the Government revenue, and her share was paid in by her co-sharers, who brought a suit against *R D* to recover the amount, and obtained a decree. This decree

which she omitted to make. *Held* that a suit for contribution is not founded upon implied promise or request, but that the obligation to pay rests on a different ground, viz, that in *equitas jure* the law requires equality. *GUNGA GOBIND MUNDUL v. ASHROOTOSH DUBE* . . . 21 W. R., 256

property which had been pledged by them as security. He then brought part of it to sale, exempting the share of *P* (which he purchased without notice to the other tenants) and realized his dues, *J* pay-

her share. If, therefore, *D* wished to retain that share, he was bound to make good *P*'s default. *JETRAM DUTT v. DOORGA DASS CHATTERJEE* [22 W. R., 430

*CHUNDER GHOSE* . . . 5 W. R., 112

etc, for which they obtained a sanad in 1864 under Bombay Act VII of 1863. The defendants were the

**CONTRIBUTION, SUIT FOR—continued.****2. VOLUNTARY PAYMENTS—concluded.**

the plaintiffs without the defendants' consent was

perfecting their title. *JESINGHMAK v. HATAJI* [I. L. R., 4 Bom., 79

*KAMALUDIN HUSEN KHAN v. PARTAP MOTA* [I. L. R., 6 Bom., 244

the quit-rent to the ancestors of the plaintiff, and after them, to the plaintiff himself. In 1869 the

Government, accordingly, granted the village to him at the summary settlement of two annas in the rupee of the full assessment. No notice was served upon the defendant under the Act, nor did the plaintiff inform the defendant of the notice which the plaintiff had received in respect of the village. The certificate issued by the Collector to the plaintiff,

directly under Government or as a tenant of the plaintiff. *KAMALUDIN HUSEN KHAN v. PARTAP MOTA* . . . I. L. R., 6 Bom., 244

**3. PAYMENT OF JOINT DEBT BY ONE DEBTOR.**

26. ——— Mortgaged property purchased by various persons—*Payment to save*

CONTRIBUTION, SUIT FOR—*continued.*3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued.*

sued the mortgagor and the plaintiff for the mortgage-money, claiming to recover it by the sale of the portion of such estate purchased by the plaintiff. Having obtained a decree, the mortgagee caused a portion of such portion to be sold in the execution of the decree. In order to save the remainder of such portion from sale in the execution of the decree, the plaintiff satisfied the judgment-debt. The plaintiff then sued the defendants for contribution. *Held* that, assuming that the mortgagee, by not including the defendants in his suit upon the mortgage-bond, had put it out of his power to proceed at law by another suit on the basis of the same bond against the properties in the possession of the defendants as purchasers, it did not follow that the plaintiff's equitable right to recover a fair contribution from the defendants on the ground of his having paid the whole debt due to the mortgagee was thereby invalidated. *JAGAT NARAIN v. QUTUB HUSAIN*

[I. L. R., 2 All., 807]

27. ———— Sale of property subject to mortgage in execution of money-decrees against mortgagors.—*Subsequent suit by mortgagee to recover his mortgage-debt by sale of part of mortgaged property only—Payment of mortgage-debt by holder of part of mortgaged property—Right on such payment to sue for contribution from other holders of the mortgaged property.*—The owner of a portion of property comprised in a mortgage, who, in order to save his share from sale, has satisfied a decree obtained by the mortgagee on the mortgage against him, can exact contribution from the owner of another portion of the mortgaged property who was not a defendant in the mortgagee's suit. *Jagat Narain v. Qutub Husain, I. L. R., 2 All., 807*, followed. *CHAGANDAS MAGANDAS v. GANSING.* . . . I. L. R., 20 Bom., 615

28. ———— Joint mortgage.—*Purchase of share in mortgage at sale in execution.*—*T* and *D* in May 1867 jointly mortgaged their respective two biswas shares of a certain village. In August 1877, the mortgagee sued to recover the mortgage-money by the sale of the mortgaged property, and obtained a decree. Before this decree was executed, *L* obtained a decree against *D*, in execution of which his two biswas share was put up for sale on the 20th June 1878, and was purchased by *A*. Subsequently the mortgagee applied for execution of his decree, and *D*'s two biswas share were attached and advertised for sale in execution thereof. In order to save such share from sale, *A*, on the 29th June 1878, satisfied the mortgagee's decree. He then sued *P*, *D*'s co-mortgagor, to recover half the amount he had so paid, by the sale of *P*'s two biswas. *Held* that, inasmuch as, when *A* discharged the whole amount of the mortgage-debt, he not only became entitled to a contribution of half such amount from *P*, but, having acquired the rights of the mortgagee, was competent to assert a lien on *P*'s two biswas share, *A* was entitled to a decree as claimed. *PANOHAM SINGH v. ALI AHMAD.* . . . I. L. R., 4 All., 58

CONTRIBUTION, SUIT FOR—*continued.*3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued.*

29. ———— Mortgage debt.—*Apportionment of decree according to share of purchased property—Payment of money for which other person is liable.*—In execution of a decree, the right, title, and interest in two parcels of property of a judgment-debtor, who had, previous to the attachment, executed a single mortgage thereof to *A*, were sold; and *B* and *C* respectively purchased them at different prices. *A* sued the mortgagor and the purchasers *B* and *C* for enforcing his lien on the two parcels of property. The suit was dismissed by the first Court, but on appeal the order was "Appeal decreed." *A* entered into a compromise with *B*, and entered satisfaction of a moiety of the decree. He afterwards issued execution of the other moiety against *C*, and compelled him to pay. *C* now sued *B* for recovery of the proportion of the amount paid by him to *A*, but which, according to the valuation of the respective properties, should have fallen into the share of *B*. *Held* that the debt due upon the mortgage-bond was a general burden upon the two properties, for which no portion of those two properties was more liable than the other. *Held* also that, as between the plaintiff and defendant, the liability was not joint, but several, in proportion to the respective values of the properties, and that the plaintiff, having been compelled to pay money for which the property of the defendant was legally liable, was entitled to recover the amount from the defendant. *BHAIRAB CHANDRA MADAK v. NADYAR CHAND PAL*

[3 B. L. R., A. C., 357]

*S. C. BHYRUB CHUNDER MUDDUCK v. NUDDIAR CHAND PAL* . . . 12 W. R., 291

30. ———— Sale of mortgaged property to different persons.—*Undertaking by one to discharge liabilities.*—*A* and *B*, respectively, at different dates, purchased portions of a property on which there was a mortgage. On the mortgagee obtaining a decree against the property, *B* paid off the entire debt, and brought a suit against *A* for contribution. *Held* that he was entitled to recover, notwithstanding in the deed of sale to *B* there was an undertaking by *B* that he would discharge all the liabilities of the mortgagor, including the mortgage on the property. *MOTHOORANATH CHUTTOPADHYA v. KRISTOKUMAR GHOSH.* . . . I. L. R., 4 Calc., 369

31. ———— Release granted to one debtor.—*Payment of more than proper share of debt.*—Any debtor paying more than his share is entitled to sue his co-debtors for contribution, whether a release has been granted or not. *SAHO CHURN LALL v. RAM SURUN SAHO* . . . 18 W. R., 49

32. ———— Joint bond.—*Payment by one debtor on bond.*—*A* and *B* jointly executed a bond in favour of *C*. When the bond fell due, *A* alone executed a second bond for a larger amount in favour of *C*, covering the amount of the debt under the former bond, together with a further advance to him (*A*). At the same time, *C* cancelled the former bond. *Held* that thereupon *A* could maintain his suit

**CONTRIBUTION, SUIT FOR—continued.****3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—continued.**

against B for contribution. **TRIAKHNATH ROY v. KASHINATH ROY** . . . . . 3 B. L. R., 633  
[14 W. R., 458]

33. ——— Decree against one of several joint debtors—*Cause of action.*—The mere existence of a decree against one of several joint debtors does not afford ground for a suit for contribution against the other debtors. **RAM PERSHAD SINGH v. NARAYAN SINGH**

[11 B. L. R., 76  
19 W. R., 24]

**SERAJOOB HIR v. ROY LUCHKEP SINGH**  
[30 W. R., 242]

34. ——— Payment of joint decree by one of Hindu co-partners.—A decree having been passed against the plaintiff and defendant, undivided Hindu brothers, jointly for a family debt, and the decree-holder having levied the sum decreed from the plaintiff, a suit was brought by him in a Small Cause Court for contribution against the defendant. *Held* that the suit would not lie under the circumstances of the case. **CHELLAPILLA RAO PARTULU v. BALARAMA KRISHNAMA PARTULU**

[1 L. R., 8 Mad., 424]

35. ——— Purchase of decree by one

**HAZRA** . . . . . B. L. R., Sup. Vol., 938

**S. C. DEGUMBURE DABE v. ESHAN CHUNDER SEIN, SUROOP CHUNDER HAZRA v. TROYLUCKONATH ROY** . . . . . 9 W. R., 230

**DIGAMBURE DEBIA v. ESHAN CHUNDER SEIN**  
[15 W. R., 372]

**ORHOY CHURN ROY CHOWDHRY v. NOSH CHUNDER ROY CHOWDHRY** . . . . . 23 W. R., 65

**DIGAMBURE DEBIA v. SHARODA PERSHAD ROY**  
[5 W. R., Mia., 46]

**KHOSLA v. NUND LALL** . . . . . 6 N. W., 1

36. ——— *Execution of decree against another.*—One of nine judgment-debtors paid the whole of the debt, and then applied to execute the decree against one of the others. *Held* that he was entitled to receive only one-ninth of the debt from him. **KISHEN KAMHAK CHOWDHRY v. MOHITA CHUNDER ROY**

[Marsh., 339; 3 Hay, 450]

37. ——— Suit for contribution against joint judgment-debtor—*Right of suit*—*Remedy by separate suit and not in execution of decree.*—*Civil Procedure Code, s. 244.*—S. 244 of the Code of Civil Procedure does not apply to a suit

**CONTRIBUTION, SUIT FOR—continued.****3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—continued.**

brought by one of two joint judgment-debtors who has been compelled to satisfy the decree in full against the other joint judgment-debtor for contribution. **RAM SARAN PANDY v. JANKI PANDY**

[1 L. R., 18 All., 106]

38. ——— Execution against one of

certain proceeding in the execution case not having been *bona fide*. *Held* that the question raised by the defendants was necessarily considered in the

**DAB** . . . . . W. R., 1864, 303

**ROGHONATH DOSS v. ALLADEN PATTUCK**  
[8 W. R., 301]

40. ——— *Small Cause suit*

tion to inquire into the circumstances of the previous suit. **Supat Singh v. Iqbal Tewari** 1 L. R., 5 Cal., 720, followed. **THANGAMMAL v. THYANMUTHU** . . . . . 1 L. R., 10 Mad., 518

others for contribution. **SUPANACHARI v. CHAKKARA PATTAN** . . . . . 1 Mad., 411

42. ——— Judgment-debtors under summary order of inferior Court for execution of decree—*Effect of payment under order.*—

**CONTRIBUTION, SUIT FOR—continued.****3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—continued.**

A summary order of an inferior Court for the execution of a decree may be conclusive as between the decree-holder who obtained it and those against whom it was made, but is not necessarily so against the latter as between themselves only. Such an order has not necessarily the same effect, so far as contribution is concerned, as if it were the original decree in the suit. *NUND COOHAN SINGH v. GANGA PERSHAD* [3 W. R., 207]

**43. ——— Payment of debt by one debtor—Partition of property among debtors.**—Where there had been disputes respecting family property and an agreement was entered into by which the parties made a division of the property and agreed to pay a debt in equal shares, and one of the parties had been made under a decree to pay the whole debt.—*Held* that he had a clear right to recover from the others their proportion of the debt unless they could show some answer to his claim. *DOMAN SINGH v. KASHERAM*. 5 W. R., P. C., 39 [1 Moore's L. A., 388]

**44. ——— Joint liability for a debt paid by one debtor in suit for debt—Costs.**—If one of several persons jointly liable for a debt is sued, and is compelled to satisfy the debt and the costs of the suit, he can only call on the others to contribute in respect of the debt, and not in respect of the costs. *PENJAB v. PERUM SINGH* [6 N. W., 192]

**45. ——— Payment to stay sale for arrears of rent—Liability of person in use and occupation.**—The land of a jote jama belonging to plaintiff and one P having been attached in satisfaction of a joint decree for arrears of rent, plaintiff deposited the entire amount of the decree. He then sued M, who had obtained D's share of the jote, for contribution, on the ground that M was in use and occupation. *Held* that the case against M was not met by the plea that he was not a party to the suit in which the decree was obtained. *GUDADHUR CHOWDARY v. SHAMA CHURN MITTER*. 16 W. R., 8

**46. ——— Costs payable jointly and severally—Intervenor.**—In a suit for possession an intervenor claimed the lands in dispute upon a title distinct from that of plaintiff; whereupon the intervenor was made a defendant, and a decree was ultimately passed in plaintiff's favour, with costs payable jointly and severally by all the defendants. The original defendants having been obliged to pay the whole amount of these costs in execution, they brought a suit for contribution against the legal representatives of the intervenor. *Held* that, in the absence of any contract or agreement, there was no equity between the parties to justify a suit for contribution. *KRISTO CHUNDER CHATTERJEE v. WISE* [14 W. R., 70]

**47. ——— Joint decree for costs against defendants having separate defences—Right of suit.**—In a suit against one defendant for possession of certain property, which was claimed as his by the original defendant, certain third persons

**CONTRIBUTION, SUIT FOR—continued.****3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—concluded.**

got themselves added to the array of parties as defendants and put in a defence in opposition to and exclusive of that of the first defendants. The plaintiff in that suit obtained a decree, the claims of both sets of defendants being found to be unsupported, and the decree gave costs jointly against all the defendants. The decree having been executed for costs against the first defendant, he sued the other defendants for contribution. *Held* that the suit would not lie. *KRISTO CHUNDER CHATTERJEE v. WISE*, 14 W. R., 70, *Sreeputty Roy v. Loharam Roy*, B. L. R., Sup. Vol., 657: 7 W. R., 381, *Abdul Wahid Khan v. Shaluka Bibi*, I. L. R., 21 Calc., 196, and *Sput Singh v. Imrit Tewari*, I. L. R., 5 Calc., 720, referred to. *FAKIR v. TABADDUS HUSAIN*

[I. L. R., 19 All., 462]

**48. ——— Separate suits where joint debtors are sued for debt paid by one—Ascertainment of shares.**—Ordinarily claims for contribution should be brought in separate suits against the individual contributors, but there may be cases where, by reason of special difficulty in the ascertainment of the shares, convenience may suggest a departure from the ordinary rule of separate suits. In those cases the ascertainment of the shares should form a portion of the relief sought for. *RUPAPUT RAI v. MAHOMED ABI KHAN*. 5 N. W., 215

**4. JOINT WRONG-DOERS.**

**49. ——— Liability of wrong-doers as amongst themselves.**—One tortfeasor cannot recover contribution against another. *SURPANA CHARI v. CHAKKARA PATTAN*. 1 Mad., 411

**50. ——— Costs of suit rendered necessary by wrong-doers.**—The plaintiff and defendants jointly opposed and prevented the amin of a zamindar from measuring certain lands. The zamindar thereupon brought a suit against them to have his right to measure declared, and obtained a joint decree with costs. In execution of the decree for costs, the property of the plaintiff was attached, and he solely paid the whole amount due for costs. The plaintiff now sued the defendants for contribution. *Held* that such a suit would lie. *RUTTEE SIRDAR v. SAJOO PORAMANICK* [11 B. L. R., 345: 20 W. R., 235]

**51. ——— Wrong-doers with intention—Bona fide exercise of right.**—The question as to whether as between persons against whom a joint decree has been passed there is any right of contribution at all, depends upon the question whether the defendants in the former suit were wrong-doers in the sense that they knew, or ought to have known, that they were doing an illegal or wrongful act. In that case no suit for contribution will lie. If the defendants in the former suit were not guilty of wrong in that sense, but acted under a bona fide claim of right, and had reason to suppose that they had a right to do what they did, then they may have a right of contribution *inter se*; and

CONTRIBUTION, SUIT FOR—*continued.*4. JOINT WRONG-DOERS—*continued.*

in such case the Court should enquire what share they each took in the transaction; because, according

the suit. *SUPUT SINGH v. IMRIT TEWARI*

[I. L. R., 5 Cal., 720: 9 C. L. R., 63

53. ——— Unintentional wrong-doer—*Ignorance of illegal act.*—An objection to the attachment and sale of certain immovable property, raised by one who claimed to have purchased the

to the suit (i) *R.*, one of his co-defendants in the previous suit, personally and as heir of *A* who was another of these co-defendants, (ii) *N* and (iii) *S*, these two being sued in the character of heirs of *A*. Held that, inasmuch as the rule preventing one wrong-doer from claiming contribution against another was confined to cases where the person seeking

*Singh v. Imrit Tewari*, I. L. R., 5 Cal., 720, referred to. *KISHNA RAM v. RAHMAT SEWAK SINGH*  
[I. L. R., 9 All., 221

CONTRIBUTION, SUIT FOR—*continued.*4. JOINT WRONG-DOERS—*continued.*

*ATYAN v. RANGARANI ATYAN*

[I. L. R., 17 Mad., 78

54. ——— Coats of suit in which false defence is set up.—Where a decree for costs against

[I. L. R., 7 Mad., 89

55. ——— Decree for costs—*Evidence to*

mination of the question whether *G*, *S*, and *A* were wrong-doers, and were as such held liable for the costs of the former suit. *GOSIND CHANDER NUNDY v. SRIGOBIND CHOWDHURY*. I. L. R., 24 Cal., 330  
[I. C. W. N., 179

*HARE SINGH* . . . . . 4 N. W., 116

57. ——— Payment of decree by one of several joint wrong-doers—*Cause of action*—*Breach of covenant*—*Damages for breach*

**CONTRIBUTION, SUIT FOR—concluded.****4. JOINT WRONG-DOERS—concluded.**

*of contract—Breach of contract.*—In a suit for damages against *A* and others for breach of a covenant not to open a ferry at a particular place, a decree was obtained against all the defendants. The amount of this decree was levied by execution from *A* alone, who thereupon brought a suit for contribution against his co-defendants in the former suit. Both the lower Courts dismissed the suit on the ground that the plaintiff and the defendants had been joint wrong-doers, and that no suit for contribution would lie as between them. On second appeal to the High Court,—*Held* that the rule of law relied on by the Courts below had no application to the circumstances of the present case, and that the plaintiff was entitled to maintain his action. **BJOJENDRO KUMAR ROY CHOWDREY v. RASH BEHARY ROY CHOWDREY** [I. L. R., 13 Cal., 300

**58. ——— Payment to secure property**

*—Mesne profits.*—In a claim for contribution arising out of a former suit in which a District Judge had given a decree against the present plaintiff and defendant, and in the execution of which the Munsif had allowed mesne profits to the plaintiff, although the Judge's decision, which entered fully into other details, had omitted to award mesne profits,—*Held* that, as the Judge's decision had made no mention of mesne profits, the present plaintiff was not entitled to recover as contribution the sum which, in order to secure his property against the joint decree, he had paid on behalf of the defendant. **BUNWAREE LALL SAHOO v. SUDHIST LALL** . . . 25 W. R., 269

**5. INTEREST.****59. ——— Discretion of Court—Act**

*XXXII of 1839.*—In suits for contribution it is in the discretion of the Court to allow or refuse interest on the amount claimed, whether there has been a written demand for it or not, inasmuch as Act XXXII of 1839 does not apply to such suits. **BISTOO CHUNDER BANERJEE v. NIRMORE MONEE DABEE**

[10 B. L. R., 352; 19 W. R., 98

**LULLEET BISWAS v. PROSONNOMOYEE DOSSEE**

[10 B. L. R., 353 note

**CONTRIBUTORY.**

*See COMPANY—WINDING UP—GENERAL CASES.* . . . I. L. R., 5 Bom., 223

[I. L. R., 11 Bom., 241

**——— Liability of—**

*See CASES UNDER COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHARE-HOLDERS.*

**CONVERSION.**

*See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.*

[I. L. R., 4 Calc., 116

*See HUNDI* . . . I. L. R., 18 Bom., 516

*See PLEDGOR AND PLEDGEE.*

[I. L. R., 19 Calc., 322

**CONVERSION—concluded.**

**1. ——— Stolen notes.**—Two notes are stolen from *A*, which *B* (not a *bond fide* holder for valuable consideration) tenders to *C* in payment for certain articles. *C*, not knowing *B*, refuses, to deal with him, whereupon *B* brings *D*, who is known to *C*, and the purchase is made by him. *Held* that the part which *D* performed in the transaction amounted to a "conversion of the notes to his own use," and that he is liable to *A*. **KISSORMOHUN ROY v. RAJNARAIN SEN** . . . I Hyde, 263

**2. ——— Appropriation of goods as to which there is dispute—Delivery to party without title.**—*K* received into his godown certain goods belonging to the plaintiff and in charge of his servant, concerning which there was a dispute between the plaintiff's agent and *B*, of which circumstances *K* was aware; and he advanced money to *B* on the security of such goods, which were subsequently delivered to *B* and sold by him with the acknowledgment of *K*, and, notwithstanding the plaintiff's servant objected to it, delivered them to the purchaser. *Held* that *K* was liable for damages at the instance of the plaintiff in an action for conversion of the goods. **ANUNT DASS v. KELLY**

[1 N. W., Part 7, p. 107; Ed. 1873, 194

**3. ——— Trespass on land—Conversion of moveables lying on land—Civil Procedure Code, s. 43.**—Defendants having forcibly taken possession of plaintiff's land upon which was (1) standing timber and (2) logs of timber lying stored on the ground, plaintiff had, in a prior suit, recovered possession and damages. Subsequently to the institution of such prior suit defendants (1) cut and removed certain standing trees, and (2) removed the logs which lay stored on the ground. Upon plaintiff bringing a second suit to recover damages on both grounds, objection was raised as to the logs, that a claim for their value might have been included in the former suit, since their conversion was effected when the plaintiff was dispossessed of the land upon which they lay, and that, under s. 43, no claim could now be made in respect of them. *Held* that a trespass on a piece of land is by itself no proof of any conversion of moveables lying upon the land at the time that the trespass takes place; that, notwithstanding plaintiff's eviction from the land, possession of the timber lying stored upon it should be presumed to have continued in him in the absence of proof of any act on the part of the defendant with special reference to such timber and showing unequivocally that the plaintiff was entirely deprived of the use of them; and that conversion of the logs was not effected by the trespass, but only by their removal subsequently to the institution of the previous suit. **MOXI v. AVUTHRAMAN**

[I. L. R., 22 Mad., 197

**CONVERTS.**

*See BIGAMY*

. . . 3 Mad., Ap., 7

[I. L. R., 4 Bom., 330

I. L. R., 10 Mad., 11

I. L. R., 18 Calc., 264

*See DIVORCE ACT, s. 2.*

[I. L. R., 14 Mad., 382

I. L. R., 18 Calc., 262

## CONVERTS—continued.

See FALSE EVIDENCE—GENERAL CASES.

[4 Mad., 185]

See HINDU LAW—CUSTOM—ADOPTION.

[I. L. R., 17 Cal., 518]

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGES.

[I. L. R., 10 Cal., 284]

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—OUTCASTES

2 Agra, 311

[I. L. R., 8 Mad., 169]

I. L. R., 11 All., 100

See HINDU LAW—MARRIAGE—DISSOLUTION OF MARRIAGE.

[I. L. R., 8 Mad., 169]

I. L. R., 18 Cal., 284

See MARRIAGE . . . 10 B. L. R., 125

[18 W. R., 249]

See SALSETTE LAW, APPLICABLE IN.

[I. L. R., 19 Bom., 680]

See SUCCESSION ACT, s. 331.

[I. L. R., 19 Bom., 783]

## 1. — Hindu convert to Christianity

—Law governing converts—Hindu law.—Upon the conversion of a Hindu to Christianity, the Hindu law ceases to have any continuing obligatory force upon the convert. He may renounce the old law by which

trammels of Hindu law, but it does not of necessity

positive law, may, by his course of conduct after his conversion, have shown by what law he intended to be governed as to these matters. ABRAHAM v. ABRAHAM

[I. W. R., F. C., 1: 9 Moore's I. A., 195]

## 2. — Law governing

tered their rule of succession, the members of the family born before the Succession Act came into operation could not be deprived of the rights acquired by them under Hindu law. PONNUSAMI NADAN v. DORASAMI AYYAN . . . I. L. R., 3 Mad., 209

## 3. — Marriage, Vali-

## CONVERTS—continued.

of A K to such portion of his estate as the law assigned to her as his widow. Held, also, that under s. 35 of the Indian Succession Act, 1865, the father of A K was entitled to the whole of the estate. ADMINISTRATOR GENERAL OF MADRAS v. ANANDACHARI . . . I. L. R., 9 Mad., 400

## 4. — Survivorship

ship. TELLIS v. SALDANHA

[I. L. R., 10 Mad., 69]

## 5. — Native Christians

—Change of religion—Law applicable to converts

—Succession—Inheritance.—Where, in consequence

of the conversion of a person from one form of religion to another, the question arises as to the law to be applied to such person, that question is to be determined not by ascertaining the law which was applicable to such person prior to the conversion, but

[I. L. R., 23 Bom., 539]

## 6. — Hindus becoming Mahome-

**CONVERTS—continued.**

7. ————— A Hindu embracing the Mahomedan religion is bound by the Mahomedan law of inheritance. *SOJAN v. ROOP RAI*  
[2 Agra, 61]

*LALLA OUDH BEHAREE LALL v. MEWA KOONWAR*  
[3 Agra, 82]

8. ————— Converts from Hindu to Mahomedan religion—*Custom as to inheritance.*—The general presumption arising from the intimate connection between law and religion in the Mahomedan faith is that the Mahomedan law governs converts from the Hindu religion to Mahomedanism. But a well-established custom in the case of such converts to follow their old Hindu law of inheritance would override that general presumption, and a usage establishing a special rule of inheritance as regards a special kind of property would be given the force of law, even though it be at variance with both Hindu and Mahomedan laws. *MAHOMED SIDICK v. HAJI AHMED. ABDULLAH HAJI ABDUSATAR v. HAJI AHMED*  
I. L. R., 10 Bom., 1

9. ————— *Suni Borah Mahomedans—Conversion, Effect of—Hindu converts to Mahomedanism, Custom and usage of—Inheritance among such converts—Native Christians—Law applied to Native Christians prior to Indian Succession Act (X of 1865)—Burden of proof.*—The Suni Borah Mahomedan community of the Dhandhuka Taluka in Gujarat are governed by the Hindu law in matters of succession and inheritance. *Held*, therefore, that in this community a widow is entitled to succeed to her husband's estate to the exclusion of a daughter or a step-daughter. As to the law governing Hindu converts to Mahomedanism, the following principles may now be regarded as settled:—(1) Mahomedan law generally governs converts to that faith from Hinduism; but (2) a well-established custom of such converts following the Hindu law of inheritance would override the general presumption. (3) This custom should be confined strictly to cases of succession and inheritance. (4) If any particular custom of succession be alleged which is at variance with the general law applicable to these communities, the burden of proof lies on the party alleging such special custom. If evidence is given as to the general prevalence of Hindu rules of succession in a Mahomedan community in preference to the rules of Mahomedan law, the burden of proof is discharged, and it then rests with the party disputing the particular Hindu usage in the question to show that it is excluded from the sphere of the proved general usage of the community. Among Native Christians, certain classes strictly retain the old Hindu usages, others retain these usages in a modified form, and others again wholly abandon them. Before the Indian Succession Act (X of 1865), the Christian convert could elect to attach himself to any one of these particular classes, and he would be governed by the usage of the class to which he so attached himself. *Abraham v. Abraham*, 9 Moo. I. A., 195. These same principles are applied to the case of Hindu converts to Mahomedanism, such as Khojas and Cutchi Memons. *BAI BAIJI v. BAI SANTOK*  
I. L. R., 20 Bom., 53

**CONVERTS—concluded.**

10. ————— *Molesalam Girasias—Hindu converts to Mahomedanism—Retention of Hindu law and usages—Hindu law—Inheritance.*—The Hindu law of inheritance and succession applies to Molesalam Girasias who were originally Rajput Hindus, but were subsequently converted to Mahomedanism. *FATESANGJI JASVAT-SANGJI v. KUVAR HARISANGJI FATESANGJI*  
[I. L. R., 20 Bom., 181]

11. ————— *Forfeiture of property—Omission to take property forfeited, Effect of.—Quere*—Whether, when a person becomes a convert and his property is under Hindu law forfeited to his son, the mere omission by the son to enter upon the property vested in him by the forfeiture, or otherwise assert his right to it, would re-vest it in the convert and make it descendible to his heirs. *LALLA OUDH BEHAREE LALL v. MEWA KOONWAR* . 3 Agra, 82

**CONVEYANCE.**

*See REGISTRAR OF HIGH COURT.*

[I. L. R., 18 Calc., 330]

*See STAMP ACT, 1869, s. 3, ART. 11.*

[10 Bom., 354  
8 Mad., 112]

*See STAMP ACT, 1869, SCH. I, ART. 15.*

[16 W. R., 208  
I. L. R., 1 Mad., 133]

*See STAMP ACT, 1869, SCH. I, ART. 21.*

[I. L. R., 13 Calc., 43  
I. L. R., 20 Bom., 432  
I. L. R., 23 Calc., 283  
I. L. R., 20 Mad., 27]

*See STAMP ACT, 1879, s. 3, ART. 9.*

[I. L. R., 7 Mad., 350  
I. L. R., 7 Calc., 21  
I. L. R., 21 Mad., 422]

*See STAMP ACT, 1879, s. 21.*

[I. L. R., 15 Bom., 675]

————— *Return of, by Purchaser.*

*See VENDOR AND PURCHASER—COMPLETION OF TRANSFER* . I. L. R., 2 Bom., 547

**CONVICTION.**

————— *for several offences.*

*See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.*

————— *Previous—*

*See CRIMINAL PROCEDURE CODE, s. 403.*  
[I. L. R., 23 Calc., 174]

*See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.*

————— *Setting aside, for error in law.*

*See CASES UNDER ACCOMPLICE.*

————— *Validity of—*

*See EXCISE ACT, 1871.*  
[I. L. R., 1 All., 630, 635, 638]

## CONVICTION—continued.

[7 W. R., Cr., 5

QUEEN v. POORNO CHUNDER DOSS

[8 W. R., Cr., 59

[10 C. L. R., 621

3. ——— Conviction on evidence taken in absence of accused.—*Illegal conviction.*—A conviction based upon evidence taken in the absence of the accused is illegal. ANONYMOUS

[3 Mad., Ap., 34

QUEEN v. RAJCOOMAR SINGH 8 W. R., Cr., 17

QUEEN v. LALLA CHOWDERY 2 N. W., 49

QUEEN v. RAMNATH 7 W. R., Cr., 45

QUEEN v. HOSSEIN ALI CHOWDERY

[8 W. R., Cr., 74

4. ——— Conviction on statement of complainant.—A conviction on the statement of a complainant is lawful. KULUM MUNDUL v. BHUWANI PRASAD 23 W. R., Cr., 32

5. ——— Conviction on plea of guilty

[10 W. R., Cr., 43

8. ——— Conviction of deaf and dumb person without attempt to make him understand the charge.—*Illegal conviction.*—A deaf and dumb prisoner was convicted of an offence. Upon the trial, no attempt was made to communicate with the prisoner respecting the charge against him. The High Court quashed the conviction. ANONYMOUS

[8 Mad., Ap., 7

7. ——— Conviction for one offence under Penal Code and Act I of 1871.—*Illegal conviction.*—A conviction under the Penal Code and also under a special law as the Cattle Trespass Act (I of 1871), in respect of one and the same offence, is illegal. QUEEN v. HOSSEIN ALI 5 N. W., 49

8. ——— Conviction under both ss. 471 and 474 of Penal Code.—*Illegal conviction.*

9. ——— Conviction without jurisdic-

## CONVICTION—continued.

the Portuguese possession of Goa, but no order giving

[4 Bom., Cr., 5

murder was convicted of abetment of it, the Court annulled the conviction and sentence, and ordered him to be re-tried on the latter charge. REG. v. CHAND NUN 11 Bom., 240

See REG. v. RAMASWAMY JIVASTRAY

[12 Bom., 1

went as a witness before the Magistrate, the two witnesses could not stand side by side. The proceedings before the Magistrate were accordingly quashed. IN THE MATTER OF THE PETITION OF PETERA LEE AND

[24 W. R., 11

13. ——— Alternative sentences. Doubt as to what sentence should be passed in case of a person charged with two offences charged but who is found guilty of one offence only. The sentence is illegal. QUEEN v. LEE AND

[2 N. W., 11

14. ——— Conviction of one offence and acquittal on others where several are proved.—*Illegal conviction.*

**CONVICTION**—*continued.*

When more than one offence is proved, it is not proper to convict only of one and to acquit of the others, although the offences may be cognate. *REG. v. MURAR TRIKAM* . . . 5 Bom., Cr., 3

15. ——— **Conviction on evidence taken before another Magistrate**—*Illegal conviction.*—When a prisoner is convicted by one Magistrate upon evidence previously recorded before another, the defect cannot be cured by the evidence being again recorded, and the conviction confirmed. *QUEEN v. POORNO CHUNDER DOSS*

[8 W. R., Cr., 59

And see *QUEEN v. GOPI NOSHYO*

[21 W. R., Cr., 47

16. ——— **Power to quash conviction.**—A lower Court has no power to quash its own conviction, though illegal. *IN RE GUNOWREE BHOOGA*

[6 W. R., Cr., 70

17. ——— **Valid conviction in case improperly originated.**—*Per MACLEAN, J.*—The High Court may, without reference to the local Government, set aside a conviction on a trial improperly originated. *IN THE MATTER OF THE PETITION OF NOBIN CHUNDRAN BANIKYIA. EMPRESS v. NOBIN CHUNDRAN BANIKYIA*

[I. L. R., 8 Cal., 560 : 10 C. L. R., 369

18. ——— **Ground for setting aside conviction.**—*Police Act V of 1861, s. 29—Offence under Penal Code.*—That the facts proved would also constitute an offence under a section of the Penal Code seems to be no reason for quashing a conviction under the special law, Act V of 1861. *QUEEN v. KASSIMUDDIN* . . . 8 W. R., Cr., 55

19. ——— **Subsequent evidence.**—A valid conviction arrived at by a Magistrate who had jurisdiction in the matter cannot be set aside simply because, subsequent to the trial and conviction, fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted. *QUEEN v. RAMDOYAL MAHARA* . . . 21 W. R., Cr., 47

20. ——— **Conviction under sanction obtained after trial.**—*Want of jurisdiction.*—A conviction having been set aside as arrived at without jurisdiction, no sanction to the prosecution having been obtained from the Court against which the offence was committed, formal sanction was obtained, the accused re-arrested, and, without being called upon to plead, ordered to undergo the sentence previously passed. *Held* that the whole of these proceedings were illegal. *IN THE MATTER OF THE PETITION OF EDOO KHANSAMAH*

[24 W. R., Cr., 64

21. ——— **Irregular proceedings of Magistrate.**—*Illegal conviction under Stamp Act.*—Conviction and sentence for an offence under the Stamp Act (XXXVI of 1860, s. 26) reversed on reference by the Sessions Judge, as the proceedings of the Magistrate who tried the case were highly irregular. *REG. v. DEVSANVAT BIKSHI SHIVRAM SANVAT*

[3 Bom., Cr., 34

**CONVICTION**—*concluded.*

22. ——— **Irregular proceedings by Magistrate.**—A conviction and sentence for criminal breach of trust as a public servant reversed, owing to irregularities in the preliminary enquiries and irregular procedure as to the examination of the prisoner in the Court of Session. *REG. v. DIAZ* . . . 3 Bom., Cr., 51

23. ——— **Dispute between civil suitors.**—*Improper prosecution.*—*Illegal conviction.*—As a general rule, one of two parties to an impending suit ought not to put the Criminal Law in motion as against the other in matters connected with the suit; or if he does so, the hearing of the criminal case ought to be postponed until the suit is concluded. But, although that is a good ground for questioning the propriety of a prosecution, it is not a ground for questioning the legality of a conviction. *QUEEN v. ACHEET LALL* . . . 17 W. R., Cr., 46

24. ——— **Irregularity in criminal proceedings.**—*Prejudging defence.*—Upon the single charge of wrongful confinement preferred under s. 342 of the Penal Code, before a Joint Magistrate, the prisoners raised a defence justifying the confinement on the ground that the persons confined had been caught by them under circumstances which led to the belief that they had committed house-breaking by night with intent to commit theft. Enquiry having been made, the Magistrate committed the prisoner not only for wrongful confinement, but, disbelieving the defence, for fabricating false evidence and for bringing a false charge. The prisoners were tried by the Sessions Judge and found guilty on all three charges at one and the same time. *Held* that the conviction on the last two charges was illegal, as by adding the additional charges the Magistrate had really prejudged the defence to the first charge. Where the Court, without having first heard the evidence for the prosecution, examines the witnesses for the defence, he commits an irregularity, but if the prisoners are not materially prejudiced thereby, the conviction will not be set aside. *IN THE MATTER OF TURIBULLAH* . . . 4 C. L. R., 338

**COOCH BEHAR.**

— Court of the Dewan Ahilkar  
of—

See *CIVIL PROCEDURE CODE*, 1882, s. 229.

[4 B. L. R., A. C., 134  
13 W. R., 154

**CO-PARCENERS.**

See *HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.*

[1 Mad., 412  
I. L. R., 3 Bom., 151  
I. L. R., 4 Bom., 37  
I. L. R., 3 Mad., 145  
I. L. R., 7 Mad., 458  
I. L. R., 18 Cal., 151  
I. L. R., 17 I. A., 128

See *CASES UNDER HINDU LAW—JOINT FAMILY.*

**CO-PARCENERS—concluded.**

See HINDU LAW—WILL—POWER OF DISPOSITION—GENERALLY.

[I. L. R., 5 Bom., 48  
8 Mad., 6, 13 note

See CASES UNDER MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHAREES.

Consent of—

See PARTITION—MODE OF EFFECTING PARTITION . I. L. R., 3 Calc., 514  
[5 W. R., 208

**CO-PRISONER.**

Evidence of—

See CASES UNDER CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY.

**COPIES OF DOCUMENTS.**

See COURT FEES ACT, 1870, SCH. I, ART. 8.  
[I. L. R., 11 Bom., 528

See CASES UNDER EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—COPIES OF DOCUMENTS, ETC.

See STAMP ACT, 1862, s. 14.  
[4 Mad., Ap., 58

See STAMP ACT, 1879, SCH. I, ART. 22.  
[I. L. R., 15 Bom., 687  
I. L. R., 19 All., 233

**COPY OF COPY OF DOCUMENT.**

15 W. R., 102  
6 W. R., 80  
5 Bom., A. C., 48

**COPY OF DECREE OR JUDGMENT.**

Deduction of time necessary for obtaining—

See CASES UNDER LIMITATION ACT, 1877, s. 12 (1871, s. 13).

Necessity for—

See LIMITATION ACT, 1877, ART. 177.  
[I. L. R., 1 All., 644  
I. L. R., 15 Mad., 169  
I. L. R., 19 Bom., 301

See MADRAS RENT RECOVERY ACT, s. 69.  
[8 Mad., 44  
I. L. R., 20 Mad., 476

See REVIEW—FORM OF, AND PROCEDURE ON APPLICATION.

[I. L. R., 17 All., 213

**COPYRIGHT.**

2. Annotated edition

obtained the assistance of Pundits who re-cast and

printed and published an edition of the same work, the text of which was identical with that of the plaintiff's work, which moreover contained the same additional passages, and the same foot-notes, at the same places, with many slight differences. Held that the plaintiff's work was such a new arrangement of old matter as to be an original work and entitled to protection, and that, as the defendants had not gone to independent sources for their material, but had pirated the plaintiff's work, they must be re-

section. GANGAVISHNU SHRIKISONDAS v. MOHESHYA HARAJI REGISTRAR . I. L. R., 13 Bom., 358

3. Translation—Act

[I. L. R., 14 Bom., 588

4. Translations—Jurisdiction—Cause of action—Stat 5 & 6 Vic., c. 45—Act XX of 1847, s. 8—Order for books

Todhunter's Mensuration, Barnard Smith's Algebra,

infringement of the said copyright and for an injunction, etc. It appeared that in June 1884 the plaintiff's agent, who was then in India, instructed the Bombay firm of S to order copies of the said translations from the defendant. A letter was

## COPYRIGHT—continued.

accordingly sent by *S* to the defendant at Delhi requesting him to send the books to Bombay by value-payable post, which the defendant did, and he received payment for them from the post office at Delhi. The defendant pleaded (*inter alia*) that the High Court of Bombay had no jurisdiction, and he denied that he had infringed the plaintiffs' copyright. *Held* that no part of the plaintiffs' cause of action arose in Bombay, and that the High Court of Bombay had no jurisdiction. The act of *S* in paying for and receiving the goods formed no part of the defendant's offence, which was completed when he posted the books at Delhi. The English Copyright Act (Stat. 5 & 6 Vic., c. 45) extends to all parts of India. Having regard to s. 15 of that Act, it is clear that a person who infringes copyright must be sued, if he offends in India, not only within the limits of that country, but also in that part of India in which the offence has been committed. See also s. 13 of the Indian Act XX of 1847. *Held*, also, that translations are not copies, and that the defendant, by translating the books, had not infringed the plaintiffs' copyright. The plaintiffs had registered themselves as the proprietors of the copyright of the books in question both in London and in India. The defendant had not given notice of his intention to dispute the plaintiffs' copyright as required by s. 8 of Act XX of 1847. *Held* that the plaintiffs' copyright in the book had been established. *MACMILLAN v. SHAMSUL ULAMA M. ZAKA*

[*L. L. R.*, 19 Bom., 557

## COPYRIGHT—continued.

*P*, and in another poem one line. In many places there were differences of reading in the two books, and in more of punctuation. In the defendant's book some of the titles to the poems, which had been assigned thereto by *P* and not by the original authors, appeared as well as good many of *P*'s notes, some with acknowledgment and some without. With each poem the defendant gave a mass of notes, critical and explanatory, and he also prefixed to the poems of each author a biographical notice. The suit was instituted on the 27th February 1890, and the plaintiffs complained that the publication of defendant's book constituted a breach of their copyright, and prayed for the usual relief by way of injunction and damages. They contended that, although the copyright in the works of the original authors had long lapsed, they were entitled to the copyright in the "selection" made by *P*. It was contended on behalf of the defendant that there could be no copyright in such a selection; that if any existed, the defendant's book did not infringe it; that the plaintiffs' book being registered as first published in 1861 and the infringement charged being in respect of the edition of 1882, and there being no evidence to show that the same selection was contained in the latter as in the former edition, the plaintiffs were not entitled to the relief prayed for; that the author of the plaintiffs' book being *P*, in whom the copyright would *prima facie* be, and the property being registered as in the plaintiffs' firm, the registry was bad, as the assignment of the copyright to the plaintiffs was not shown; that the registration was also bad, as the entry merely contained the name and address of the plaintiffs' firm, and not the individual names and addresses of the partners of the firm; that the publication of the defendant's book having been before the date of registration, the suit would not lie; and that the suit was barred by the special limitation provided by s. 26 of the Stat. 5 & 6 Vic., c. 45. *Held* that such "a selection" could be the subject-matter of copyright, the true principle applicable to such cases being that one person is not at liberty to use or avail himself of the labour which another has been at for the purpose of producing his work, and so take away the result of the other's labour, or in other words his property. *Held*, further, that the defendant's book constituted a piracy of the plaintiffs' book, and had infringed their copyright, and that they were entitled to the relief they sought. *Held*, also, that in the absence of any evidence to the contrary, it was reasonable to assume that successive issues of a book of this kind under the same name are substantially the same book; that it was unnecessary that the registry should show an assignment of the copyright by *P* to the plaintiffs: *Weldon v. Dicks, L. R.*, 10 Ch. D., 247, followed; that the registration was not bad by reason of the names and addresses of the partners of the firm not being given: *Low v. Routledge, 33 L. J. Ch.*, 717, and *Weldon v. Dicks, L. R.*, 10 Ch. D., 247, followed; that the title to copyright is complete before registration, which is only a condition precedent to the right to sue, and that the plaintiffs had not therefore lost their right of action by reason of the defendant's book being

5. ————— *Form of registration*—"Selection" of poems, *Copyright in—Infringement of copyright by publication of copy before registration—Assignments of copyright previous to registration—Limitation of suits for infringement of copyright—Stat. 5 & 6 Vic., c. 45.*—The plaintiffs, the partners of a firm *M & Co.*, were the proprietors, registered under 5 & 6 Vic., c. 45, of the copyright of a selection of songs and poems, composed by numerous well-known authors, which was prepared by one *P*, and originally published in 1861. Since the original publication, the book ran through several editions, one of which was published in the year 1882. The book was registered under the provisions of the above statute on the 8th February 1889, the name of both the publisher and proprietor being entered in the register as *M & Co.*, the firm's address being given, and the date of the first publication was entered as the 19th July 1861. The poems contained in the book were arranged by *P*, not in chronological order of their production, but in gradation of feeling and subject, and at the end of the book were given some notes, critical and explanatory. On the 15th January 1889 the defendant published, at Calcutta, a book containing the same selection of poems and songs as was contained in *P*'s book. The arrangement, however, of the defendant's book differed from *P*'s in that the poems of each author were placed together and in order of their composition. In one of the poems the defendant printed forty lines, which were contained in the work by the original author, but which were omitted by

**COPYRIGHT—concluded.**

in this country, the suit was not barred by limitation: *Hogg v. Scott, L. R., 13 Eq., 444*, followed. *MACMILLAN v. SUTHERLAND CHUNDER DEB*  
[I. L. R., 17 Calc., 951]

c. 65; 13 & 14 Vic., c. 11, s. 1, cannot sustain an action against any person who applies such design to articles, or who sells any articles to which such design has been applied in British Burma. *BAKER v. SUTHERLAND*  
[3 B. L. R., 298; 16 W. R., 90]

**COPYRIGHT ACT (XX OF 1847).**

See LIMITATION ACT, 1877, ART 40 (1871),  
CL 11 . . . I. L. R., 3 Calc., 17  
See SMALL CAUSE COURT, MOFUSSIL—  
JURISDICTION—COPYRIGHT.  
[I. L. R., 6 Calc., 499]

1876.

See SMALL CAUSE COURT, MOFUSSIL—  
JURISDICTION—COPYRIGHT.  
[I. L. R., 6 Calc., 499]

**CORONER.**

Deputy of Coroner of Calcutta—

1.  
prisoners by the statute in force is valid, and it is necessary that the commitment be directed to the Sheriff. *IN RE TAYLOR* . . . 2 Ind. Jur., N. S., 101

**CORONER'S ACT (IV OF 1871).**

s. 25.

See PRESIDENCY MAGISTRATE.  
[I. L. R., 16 Bom., 159]

**CORONER'S INQUEST.**

See CRIMINAL PROCEDURE CODES, s. 176,  
PARA. 1 (1872, s. 135).  
[I. L. R., 3 Calc., 742]

**CORPORATION.**

Interference of Court with—

See BOMBAY DISTRICT MUNICIPAL ACT,  
1873, s. 43 . . . I. L. R., 19 Bom., 212

Principal Officer of—

See PLAINT—VERIFICATION AND SIGNA-  
TURE . . . I. L. R., 21 Calc., 60  
[I. L. R., 20 I. A., 139]

**CORPORATION—concluded.**

See WRITTEN STATEMENT.

[I. L. R., 23 Calc., 268]

of—restraining libel in resolution

See INJUNCTION—SPECIAL CASES—PUBLIC  
OFFICERS WITH STATUTORY POWERS.  
[I. L. R., 1 Bom., 132]

Suit against—

See PLAINT—FORM AND CONTENTS OF  
PLAINT—DEPENDANTS.  
[2 B. L. R., S. N., 8  
16 W. R., 534  
I. L. R., 14 Bom., 286]

Suit by—

See PLAINT—FORM AND CONTENTS OF  
PLAINT—PLAINTIFFS.  
[I. L. R., 12 Calc., 41  
I. L. R., 20 All., 197]

**CORPUS DELICTI.**

See MURDER . . . 11 W. R., Cr., 20  
[I. L. R., 3 All., 383  
I. L. R., 11 Calc., 635]

See THEFT . . . 7 Mad., Ap., 19

**CO-SHARERS.**

	Col.
1. GENERAL RIGHTS IN JOINT PROPERTY	1759
2. ENJOYMENT OF JOINT PROPERTY	1767
(a) CULTIVATION	1767
(b) ERECTION OF BUILDINGS	1771
(c) EXCLUSIVE POSSESSION OF PORTION OF JOINT PRO- PERTY	1777
(d) LEASES BY ONE CO-SHAREE	1779
3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY	1781
(a) POSSESSION	1781
(b) MISCELLANEOUS SUITS	1784
(c) EJECTMENT	1788
(d) KADULLATS	1790
(e) RENT	1792
(f) ENHANCEMENT OF RENT	1801

See COSTS—SPECIAL CASES—CO-SHARERS.

See CASES UNDER DECREE—FORM OF  
DECREE—POSSESSION.

See CASES UNDER HINDU LAW—JOINT  
FAMILY.

See CASES UNDER JURISDICTION OF REVENUE  
COURT—N.W. PROVINCES REVENUE  
AND REVENUE CASES.

See CASES UNDER MAHOMEDAN LAW—  
PRE-EMPTION—RIGHT OF PRE-EMPTION  
—CO-SHARERS.

See PARTITION—RIGHT TO PARTITION—  
GENERAL CASES 3 B. L. R., Ap., 120  
[I. L. R., 20 Calc., 379  
I. L. R., 21 Bom., 458]

( 1753 )

## DIGEST OF CASES.

## CO-SHARERS—continued.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION.  
[I. L. R., 3 Calc., 573  
17 W. R., Cr., 9, 33  
4 C. W. N., 428]

See CASES UNDER PRE-EMPTION.

See RIGHT OF SUIT—CO-SHARERS.  
[I. L. R., 18 Bom., 611]

Right of, to measurement.

See MEASUREMENT OF LAND.  
[10 B. L. R., 397, 398 note, 401 note, and 403 note  
I. L. R., 7 Calc., 69  
20 W. R., 385  
5 C. L. R., 132  
I. L. R., 10 Calc., 38]

Suit or application by one of several—

See BENGAL RENT ACT, 1869, s. 103.  
[15 B. L. R., 111]

See CASES UNDER BENGAL TENANCY ACT, s. 188.

## 1. GENERAL RIGHTS IN JOINT PROPERTY.

1. ——— Right of co-sharers—*Tenants of co-sharers*.—The right of a sharer in a joint estate is a right of common enjoyment of the lands and premises, together with the tenants of the co-sharers, in like manner as the co-sharers themselves would have it. *HULODHUR SEN v. GOONOO DAS ROY*  
[20 W. R., 128]

2. ——— Occupation by co-sharers of separate portions of estate.—The legal position of co-sharers in an estate occupying separate portions in it is that each possesses and holds, in respect of his several right, to enjoy that which is his own. If one holds a portion larger than his share, the inequality may be rectified by a partition, or if a dispute arise on a division of the annual profits, it may be adjusted in a suit for an account. *KALEE PERSHAD v. LUTAFUT HOSSEIN*  
[12 W. R., 418]

3. ——— Use of property by co-sharers or tenants-in-common.—A Court of Equity will not interfere where a tenant-in-common acts reasonably for the purpose of enjoying the property held in common in any way in which an owner can enjoy such property without injury to his coparcener, but the case is different where there has been a direct infringement of a clear and distinct right. *GOPEE KISHEN GOSSAIN v. HEM CHUNDER GOSSAIN*  
[13 W. R., 322]

4. ——— Manager of khoti tenure—*Right of manager to abandon rights without consent of co-sharers*.—In the absence of evidence of custom rendering the act of one sharer in a khotship (which act involved the sacrifice of important rights) binding upon his co-sharers, a managing khot has, without the assent of his co-sharers, no power to give up rights which belong to them as

( 1760 )

## CO-SHARERS—continued.

## 1. GENERAL RIGHTS IN JOINT PROPERTY—continued.

well as himself. *COLLECTOR OF RATHAGIRI v. VYAN-KATRAY NARAYAN SURVE*  
[8 Bom., A. C., 1]

5. ——— Sale by some co-sharers.—*Authority to sell*—Debt due by all the co-sharers.—The mere circumstance of the existence of a debt due from all the co-sharers is by no means of itself enough to confer authority on some of several co-sharers to dispose of the other share. *MAHOMED FAIZ ALI KHAN v. GUNGA RAM*  
[1 Agra, 112]

6. ——— Collection of rent in various kinds for joint tenure—*Sharer in ijmalijulkur*.—The sharer of an ijmalijulkur is not debarred from collecting his separate julkur jumma if he legally can do so, simply because it suits the purpose of another sharer to receive, in lieu of such jumma, a consolidated chitti jumma. *KASHEE NATH DHUR v. GUDADHUR PAL*  
[11 W. R., 374]

7. ——— Consent to commutation of rent—*Want of consent of all sharers*.—When a tenant applied for commutation of rent paid in kind, one of three lumberdars was held entitled to insist upon the adjudication on the amount of the rate as directed by law; and the consent of two other lumberdars to accept a lower rate of rent cannot debar this right. *ROOPA v. SAHIB SINGH*  
[1 Agra, Rev., 58]

8. ——— Rights and limitation of rights of joint owners of property—*Alteration of incidents of property*.—It is not competent for owners of property in this country, by any arrangement made in their own discretion, to alter the ordinary incidents of the property which they possess; a joint property, therefore, cannot be made impartible in perpetuity by any such arrangement, though the owners may, for sufficient consideration, bind themselves to forego their rights for a specified time and definite purpose by a contract, which could be enforced against them personally. *RADHANATH MUKERJEE v. TABRUCKNATH MUKERJEE*  
[3 C. W. N., 126]

9. ——— Separate payment of share of rent.—A co-sharer in an under-tenure cannot claim separate payment of his share of the rent without the written consent of the zamindar; and if the zamindar refuses to make a division of the property, application should be made to the Collector under s. 27, Act X of 1859. *ISSUR CHUNDER GHOSAL v. MOOKTORAM PANDA*  
[9 W. R., 606]

10. ——— Receipts of rent by co-sharers—*Accounts*—*Limitation*.—Where persons jointly interested in an estate arranged that the rents should be received by an agent, and they themselves some times collected direct from the tenants, such collection being treated as a receipt by the agent or by some one on his behalf, and not as a collection antagonistic to the rights of the other joint tenants, the law of limitation is no bar to taking the back accounts. Where one tenant-in-common receives rents and then relinquishes his interest in the estate to another, that other is not answerable to the third tenant-in-common

## CO-SHARERS—continued.

1. GENERAL RIGHTS IN JOINT PROPERTY  
—continued.

for any claim he may have against the first for having received more than his share. *KHAJURUN-NISSA v. AHMED REZA. AHMED REZA v. KHAJURUN-NISSA* . . . 8 B. L. R., 93; 18 W. R., P. C., 1

11. ———— *Right of one co-sharer to receive rent—Irregular appointment of lumberdar by Collector—Right of tenant to pay*

the lumberdar, so appointed, to collect the rents of the tenants. *Held* also that, in the absence of

*Mehal. PARRATI v. NIADAR*

[I. L. R., 18 All., 129]

12. ———— *Co-sharer acting as manager—Remuneration.*—A volunteer who acts as manager cannot claim remuneration from his co-sharers without showing a previous consent on their part to pay him. *GUNDO ANANDRAVETAL v. KRISHNARAY GOVIND* . . . 4 Bom., A. C., 55

*ABDOOL HOSSEIN v. LALL CHAND MANTON*

[I. L. R., 10 Calc., 36; 13 C. L. R., 323]

tank for the irrigation of lands held by them in common with him. In a suit brought to recover the sums so expended, it was contended that the receiver could only sue the defendants severally for their proportionate shares of the sum claimed. *Held* that the defendants were jointly and severally liable for the sum sued for. *SUNDARAM v. SANKARA*

[I. L. R., 9 Mad., 334]

15. ———— *Purchaser of rights of one of several co-sharers—Collections of rent.*—A party who purchases the rights of one of a number of co-sharers comes into all arrangements made in respect to the collections; any express consent by him is not necessary for the payment of his share of the rent to any one else. *RAM NATH SINGH v. GONDAR SINGH* . . . 10 W. R., 441

## CO-SHARERS—continued.

1. GENERAL RIGHTS IN JOINT PROPERTY  
—continued.

16. ———— *Purchaser of a share in a joint tenure—Severance of tenure by sale of*

rent, he must give the tenant due notice to that

the point interest should be considered as severable at the option of the purchaser. *ISHWAR CHUNDER DUTT v. RAM KRISHNA DASS*

[I. L. R., 5 Calc., 902; 8 C. L. R., 421]

17. ———— *Payment of ar-*

co sharer in the estate, paid the whole revenue in order to save the mehal from sale. In a suit brought against A and B for recovery of the sum paid by the plaintiff on behalf of B's share.—*Held* that the plaintiff was entitled to have the sum so paid declared to be a charge upon the share of B, which had been transferred to A, but not to a personal decree against A. *ENAYET HOSSEIN v. MUDDUN MONEE SHAHOON*

[14 B. L. R., 155; 23 W. R., 411]

See also *RAM DUTT SINGH v. HORAKH NABAIN SINGH* . . . I. L. R., 6 Calc., 549

*MOTHOORA NATH CHATTOPADHYA v. KRISTO KUMAR GHOSH* . . . I. L. R., 4 Calc., 360

and *KRISTO MOHINIE DOSSER v. KALI PROSONNO GHOSH* . . . I. L. R., 8 Calc., 402

where, however, it was not necessary to decide the point, and no decision on it was given, but the Court expressed an opinion contrary to that held in *Enayet Hossein v. Muddun Monce Shahoan*, 14 B. L. R.,

**CO-SHARERS—continued.****1. GENERAL RIGHTS IN JOINT PROPERTY**  
—continued.

155, and in *Ram Dutt Singh v. Horakh Narain Singh*, *I. L. R.*, 6 Calc., 549.

See also *HURRI MOHUN BAGCHI v. GRISH CHUNDER BANDOPADHYA*, *I C. L. R.*, 152

*DRO NUNDUN AGHA v. DESPUTTY SINGH*  
[8 C. L. R., 210 note

18. ———— *Payment of arrears of Government Revenue by one co-sharer, Effect of—Charge—Lien—Act XII of 1881 (N.-W. P. Rent Act), ss. 93, 177, 178, 181—N.-W. P. Land Revenue Act (XIX of 1873), ss. 146, 148—Jurisdiction of Civil Court—Salvage, Maritime Civil, Principle of—Act IV of 1882 (Transfer of Property Act), s. 100.*—A co-sharer in a mehal, who was also the lumberdar, paid arrears of Government revenue for the years 1882, 1883, and part of 1884, in respect of certain lands in the mehal which were the exclusive property of another co-sharer. These lands were subject to simple mortgages executed in 1873, upon which decrees were obtained in 1884, and had been sold in execution of these decrees in 1887. The co-sharer lumberdar, having obtained a decree in a Court of revenue against the mortgagors under s. 93 (g) of the N.-W. P. Rent Act (XII of 1881) for recovery of the arrears of revenue paid by him, sought to execute that decree under s. 177 of the Act by sale of the lands which had been sold in 1887; and thereupon the auction-purchaser at that sale objected under s. 178, and the objection having been overruled, brought a suit, as authorized by s. 181, in a Civil Court to establish his title to the lands and to have them protected from sale in execution of the Court of Revenue decree. This suit was decreed, and the decree, not having been appealed against, became final. Subsequently, the co-sharer lumberdar brought a suit in the Civil Court, in which he claimed a decree for enforcement of lien by sale of the land for the amount of the Court of Revenue decree, and for a declaration that the said lien, "which is on account of Government," he declared preferential to the mortgages of 1873, the decrees thereon of 1884, and the sales under those decrees of 1887. He claimed this lien not only in respect of the arrears of Government revenue paid, but also in respect of future interest. *Held* by the Full Bench (MAHMOOD, J., dissenting)—(i) That the Legislature had not given or recognized in the North-Western Provinces any such right of charge or lien in favour of a person paying Government revenue as was claimed here, or provided any means by which such a charge could be enforced, and that any such charge would be at variance with the policy and intention of the Government as disclosed in its legislative enactments. (ii) That no Civil Court had jurisdiction to entertain the suit, and no Court of revenue had jurisdiction to make a decree for sale of the immoveable property or a decree in execution of which the immoveable property could be sold to the prejudice of incumbrances to which it

**CO-SHARERS—continued.****1. GENERAL RIGHTS IN JOINT PROPERTY**  
—continued.

was subject. (iii) That it was not the intention of the Legislature that a Civil Court should have jurisdiction to invest, by declaration or otherwise, a decree of a Court of revenue with the attributes of a decree for sale such as could be passed by a Civil Court in a suit for sale under the Transfer of Property Act, 1882. (iv) That there is no general principle of equity to the effect that whoever having an interest in an estate makes a payment in order to save the estate obtains a charge on the estate; and therefore, in the absence of a statutory enactment, a co-sharer who paid the whole revenue and thus saved the estate does not, by reason of such payment, acquire a charge on the share of his defaulting co-sharer. *Kinu Ram Das v. Mozaffer Hosain Shaha*, *I. L. R.*, 14 Calc., 809, approved. (v) That the principle of Maritime Civil Salvage had no application to the case, and that no analogy could exist between the case of a salvor in Maritime Civil Salvage and the case of a co-sharer in a mehal to whom s. 146 or s. 148 of the North-Western Provinces Land Revenue Act (XIX of 1873) applied. *Leslie v. French*, *L. R.*, 23 Ch. D., 552, and *Falcke v. Scottish Imperial Insurance Company*, *L. R.*, 34 Ch. D., 34, referred to. *SETH CHITOR MAL v. SHIB LAL*

[*I. L. R.*, 14 All., 273

19. ———— *Payment of revenue by one co-sharer—Payment to stay sale.*—Where a co-sharer of a portion of a talukh is compelled to pay a quota of the Government revenue due on account of a share not his own in order to save the portion of the talukh from being sold, he is entitled to a charge upon such share for the money so paid, and such share should be charged even when it has passed subsequently into the hands of a third party. *Enayet Hossein v. Muddun Monee Shahoon*, 14 B. L. R., 155; *S. C. 22 W. R.*, 411, followed. *NOBIN CHUNDER ROY v. RUP LALL DAS*

[*I. L. R.*, 9 Calc., 377

20. ———— *Payment of arrears of revenue by one co-sharer, Effect of—Charge—Act XI of 1859, s. 9, Construction of—Lien.*—*Held* (MITTER and NORRIS, JJ., dissenting) there is no general rule of equity to the effect that whoever having an interest in an estate makes a payment in order to save the estate obtains a charge on the estate, and therefore, in the absence of a statutory enactment, a co-sharer who has paid the whole revenue and thus saved the estate does not by reason of such payment acquire a charge on the share of his defaulting co-sharer. *Enayet Hossein v. Muddun Monee Shahoon*, 14 B. L. R., 155, overruled. *Nogendro Chunder Ghose v. Kamini Dassi*, 11 Moore's I. A., 258, explained and distinguished. *Kristo Mohini Dasi v. Kaliprasono Ghose*, *I. L. R.*, 8 Calc., 402, approved. *In re Leslie*, *L. R.*, 23 Ch. D., 552, relied on. *KINU RAM DAS v. MOZAFFER HOSAIN SHAHA*. *KINU RAM DAS v. HAJJATULLA SHAHA*. *KINU RAM DAS v. KAMARUDDIN SHAHA*  
[*I. L. R.*, 14 Calc., 809

## CO-SHARERS—continued.

1. GENERAL RIGHTS IN JOINT PROPERTY  
—continued.

See KHUR LALL SHARU C. PUDMANUND  
SINGH . . . I. L. R., 15 Calc., 542

21. ————— Bengal Tenancy

fees under s. 174, Bengal Tenancy Act, had the sale set aside,—*Held* that the plaintiffs did not, by such payment, acquire a charge on the shares of their defaulting co-tenants. *Kinu Ram Das v. Mozaffer Hosain Shaha*, I. L. R., 14 Calc., 809, followed. *GOPINATH BAGDI v. ISHUR CHANDRA BAGDI* . . . I. L. R., 23 Calc., 800

22. ————— Limitation Act,  
1877, arts. 99 and 132—Suit to recover assessment

present suit belonged, and obtained a money-decree. In execution of that decree, he attached and sold certain land in which all the members of the defendants' family were interested. At the sale he purchased the land himself and was put into possession. In 1873 he began to pay the assessment upon the

the other members of the family to recover their proportionate share of the assessment for the years 1875–1878, during which period he had paid the whole assessment. He prayed for a sale of their interest in the land. Both the lower Courts held that the payment of assessment did not create a charge on the property, and that the plaintiff having

been excluded from the property and did not pay their quotas of the assessment. Under these circumstances, the payments could be regarded as salvage payments so as to make them a charge, according to equity, justice, and good conscience upon the shares of the other co-owners. *ACHUT RAMCHANDRA PAL v. HARI KANTI* . . . I. L. R., 11 Bom., 313

## CO-SHARERS—continued.

1. GENERAL RIGHTS IN JOINT PROPERTY  
—continued.

23. ————— Joint ownership

to be exercised by Courts in interfering with the enjoyment of joint estates as between co-owners.  
*LACHMESWAR SINGH v. MAYOWAR SINGH*  
[I. L. R., 23 Cal., 474]

24. —————

*Suit for Effect of purchase of a share in occupancy, not transferee to possession of a sharer landless without the consent of the co-sharers—Held—* In a suit to recover joint possession of land held in respect of his share of the property on the ground that the defendant was not by the purchase of the share of the property transferee by consent and the defendant's share of the property was not transferred to him by the purchase of the share of the property by the defendant. *Held*—The defendant was not transferee by consent and the defendant's share of the property was not transferred to him by the purchase of the share of the property by the defendant.

(L. L. II, 23 Cal., 553)

[I. L. N., 10 Calc., 82]

## 2. ENJOYMENT OF JOINT PROPERTY.

### (c) CULTIVATION.

[6 E. L. R., Ap., 45: 18 W. R., 41]

MUSNOOMAN SINGH & CROWDIE, 23 W. R., 428  
where, however, it was found consent had been given.

28. ————— Cultivation by one co-  
sharer—Right to profits—Acquiescence.—Where  
one of two co-sharers of land who are not joint culti-  
vators the land with the acquiescence of the other who  
stands by and offers no objection, the latter cannot  
claim a share of the profits, but only his proper share  
of rent. **HARISHEN MOORENIE v. PRABHU MOHUN**  
**MOORENIE** . . . . . 20 W. R. 342

[I. L. R., 15 Cal., 214

But *held* on appeal to the Privy Council (reversing the above decision) that the resistance being made by the co-sharer in occupation simply with the object of protecting himself in the profitable use of the land, in good husbandry, and not in denial of the other's title, such resistance was no ground for proceedings on the part of the other to obtain a decree for joint possession or for damages; nor would granting an injunction be the proper remedy. As the Courts in Bengal, in cases where no specific rule exists, are to act according to "justice, equity, and good conscience," so, on its being found that where land was held in common between the parties, one of them was in the act of cultivating a part of the land which was not actually used by the other, it would not have been consistent with this rule to restrain the former from proceeding with his proper cultivation; but money compensation, at a proper rate, in respect of the exclusive use by, and benefit to, the one who, though possessing in common, was carrying on cultivation for

## CO-SHARERS—continued.

2. ENJOYMENT OF JOINT PROPERTY  
—continued.

himself, not unsuitable in itself, was awarded between the parties. *Watson & Co. v. Ramchand Dutt*

[I. L. R., 18 Calc., 10

L. R., 17 I. A., 110

30. ————— Willingness to

31. ————— Lease for cultivation given by one co-sharer—*Indigo cultivation—Landlord and tenant—Joint property—Estoppel—A*

shares, he could not, as owner of one share, exercise a right which he was precluded from exercising as owner of the other share, and that the suit should have been dismissed. *Holloway v. Muddun Mohun Lall*

[I. L. R., 8 Calc., 446; 10 C. L. R., 381

32. ————— Waste lands common to all sharers—*Enjoyment and use by one co-sharer—An individual sharer cannot, without the consent,*

entitles another co-sharer to interfere and obtain restoration of the land to its former condition. *Doulat Ram v. Tara*

1 Agra, 12

*Digpal Rai v. Bhondo Rai* . 2 Agra, 341

*Terjee* . 9 W. R., 291

34. ————— Exclusive possession and cultivation of land by one co-sharer—*Restraining cultivation of indigo—Damages—Where a suit was brought to recover possession of certain lands in which plaintiff and defendant were co-sharers, and to secure damages for the exclusive possession which defendant had enjoyed for some*

## CO-SHARERS—continued.

2. ENJOYMENT OF JOINT PROPERTY  
—continued.

been enjoyed. *Held*, also, that it would be an ineffectual way of enforcing plaintiff's right in this case to allow the adverse possession of the defendant and to let plaintiff recover damages from time to time. *Lloyd v. Sooba* . 25 W. R., 313

35. ————— Means profits,

means profits with interest. *Debee Pershad Sauroo v. Gugadhu Pershad Narain Singh* [25 W. R., 374

36. ————— Cultivation of sir land on

CONTINUED TO LISTEN TO THE CASE OF THE CO-SHARER WHO HAS BECOME THE OWNER OF IT BY PARTITION. *Arhai Pandey v. Bhagwan Pandey*

[I. L. R., 3 All., 818

## CO-SHARERS—continued.

2. ENJOYMENT OF JOINT PROPERTY  
continued.

*Case of the Hindu Widows. Ram Prasad Bai v. Bura Kuan* . . . I. L. R., 4 All., 516

*Directed to be a Joint Estate v. Keshu Nath Sanyal* . . . I. L. R., 20 All., 210

38. — *Planting trees on joint land without consent.*—*Direction by one co-sharer to cultivate the land.*—Where it was stipulated in the agreement that trees could only be planted by cultivation on the common land, with the consent of the joint tenants. Held that one out of several co-proprietors (unless he was properly authorised to manage the joint estate) was not competent to give an instruction to a cultivator to plant a tree, and could not by his single consent dispense with the performance of a condition of which the other sharers had a right to call for the fulfilment. If such an instruction was given without their consent, express or implied, they have a right to have it set aside. *Chandrasekhar Haran v. Bhoosay* . . . 3 Agra, 344

## (3) Erection of Buildings.

39. — *Erection of buildings by one co-sharer.*—*Right to removal of buildings.*—*Joint B for possession of certain land on which B had erected a building, on the allegation that it belonged jointly to A and B, as well as for removal of the building from the land.* It was found, as a fact, that the land was held jointly by A and B. Held that B had no right to do anything which altered the condition of the joint property without the consent of his co-sharer, and it was rightly ordered that B should remove the building from the land. *Gunt Das Dhan v. Bhaya Gopal Das*

[1 B. L. R., A. C., 108; 10 W. R., 71

*Holloway v. Waid Ali*

[12 B. L. R., 101 note; 10 W. R., 140

40. — *Right to removal of buildings.*—The plaintiff sued for possession of a one-third share of certain land after division of the buildings erected thereon by the defendants who were her co-sharers. Held that the plaintiff was not entitled to a decree for demolition of the buildings, as she had no right to compel her co-sharers to adopt her views of the enjoyment of the property. She could only get a decree for possession of an undivided one-third share. *Bindabansi Dey v. Patit Paban Chattapadhyay* . . . 3 B. L. R., A. C., 267

41. — *Right to removal of buildings.*—Where two parties were joint owners of land, and one of them erected a wall upon the land without obtaining the consent of his co-sharer. Held that the Court would not interfere to order the demolition of the wall when there was no evidence to show that injury had been done to the co-tenant of the building by its erection. *Lala Biswanath Lal v. Rajaram*

[3 B. L. R., Ap., 67; 13 W. R., 337 note  
16 W. R., 140 note; 31 W. R., 373 note

## CO-SHARERS—continued.

2. ENJOYMENT OF JOINT PROPERTY  
—continued.

42. — *Right to removal of buildings.*—One of several co-sharers of joint undivided property has no right to erect a building on land which forms a portion of such property, so as to materially alter the condition thereof, without the consent of his co-sharers. *Sheoperead Singh v. Lala Singh*

[12 B. L. R., 189; 20 W. R., 180

43. — *Right to removal of buildings.*—In a suit in which it was sought to demolish a building which had been erected by the defendant on land belonging to himself and the plaintiff jointly. Held that, as a co-partner, the defendant was entitled to use the whole land, and if in erecting the building he took possession of more land than he would be entitled to on partition, the suit should have been for division of the lands, and not for demolition of the building. *Dwarkanath Bhookeya v. Gopnath Bhookeya*

[12 B. L. R., 189 note; 16 W. R., 10

44. — *Exclusive possession by one co-sharer.*—*Erection of scaffolding.*—*Criminal Procedure Code, 1872, s. 530, Order under.*—*Suit to recover joint possession.*—One of several co-proprietors has no right to take exclusive possession of any portion of the land of which he is one of the co-proprietors without the sanction of all of his co-proprietors; and when, after he has taken such exclusive possession, an order has been made by a Magistrate acting under a 530 of the Code of Criminal Procedure confirming the possession taken by him, such order is no answer to a suit brought by one of his co-proprietors to recover joint possession of the portion of land so wrongfully taken by him into his exclusive possession. One of several co-proprietors has no right to erect a new butkhana, or a scaffolding supporting a platform for the accommodation of musical performers, upon land of which he is only one of several co-proprietors, without the sanction of all his co-proprietors. *Rajendra Lal Gossami v. Shama Churn Lahori*

[I. L. R., 5 Calc., 188; 4 C. L. R., 417

45. — *Removal of building erected by one of several co-sharers.*—*Acquiescence.*—In a case where a permanent building has been erected by some or one of several co-sharers on the land jointly held, and another co-sharer subsequently seeks to have the building removed, the principle upon which the Court acts is that, though it has a discretion to interfere and direct the removal of the building, this is not a discretion which must necessarily be exercised in every case; and, as a rule, it will not be exercised unless the plaintiff is able to show that injury has accrued to him by reason of the erection of the building, and, perhaps further, that he took reasonable steps in time to prevent the erection. *Nocuri Lal Chuckerbutty v. Bindabun Chunder Chuckerbutty* . . . I. L. R., 8 Calc., 708

46. — *Right to removal of buildings.*—In a suit to obtain an order for the

**CO-SHARERS—continued.****2. ENJOYMENT OF JOINT PROPERTY**  
—continued.

demolition of a house erected on land, the joint property of the plaintiff and defendant, even though in strictness the defendant had no right to erect the house without the consent of his co-sharer, the Court ought to enquire whether, under all the circumstances, the ends of justice could not be satisfied by some other remedy. **MASSIM MOHAMMAD v. PANJOO GHORAMEH** 21 W. R., 373

47. ————— *Rights of other*  
Defendant having spent large sums of

receiving elsewhere land equivalent to that brought into cultivation by the defendant at his own expense. **GOKOOL KISHEN SEN v. ISSUR CHUNDER ROY** [18 W. R., 12

12 ————— *Compensation*

**BHUB SHARMA v. ————** [22 W. R., 286

————— suffered no  
High Court  
alleged acts  
**NORE GHOSE**  
**v. MADHUB CHUNDER NAG** 24 W. R., 80

50. ————— *Lessee of co-*  
*sharers—Lease by some of several co-sharers—Re-*  
*moral of buildings erected by lessee—Acquiescence.*  
A lessee of co-sharers stands in the place of a  
co-sharer, and where some of the co-sharers in an  
estate sought to get their right acknowledged, in

raised. **DOORGA LALL v. LALLA HULWANT SAROY**  
[25 W. R., 306

51. ————— *Rights of co-*  
*sharers in matters affecting common property—*  
*Sale*  
own  
that  
which endangers the

**CO-SHARERS—continued.****2. ENJOYMENT OF JOINT PROPERTY**  
—continued.

consent, to have the property restored to its original condition. **MEHDEE HOSSEIN KHAN v. AUSUD ALI** [8 N. W., 259

52. ————— *Suit for removal*  
*of buildings on joint land—Civil Procedure Code,*  
*1877 (1882), s. 80—Parties—Suit by one of several*  
*co-sharers against others affecting joint land—A*  
shareholder of an undivided piece of land sued three  
of his co-sharers, who, he alleged, had trespassed on  
the land by building thereon, for restoration of the

**HIRA LAL v. BHAIROON** I. L. R., 5 All., 602

53. ————— *Suit to restrain*  
*erection of building and alteration of land.—The*  
defendant was in possession of land under a pottah  
granted by the ijaradars of the proprietors, and  
thereon commenced to build a house and plant a  
garden. The plaintiff, who had bought the right,  
title, and interest of one of the proprietors, sued  
to restrain him. He did not allege any injury.  
Held that such suit would not lie. **SHICHAND v.**  
**NIM CHAND SHAHNE**

[5 B. L. R., Ap., 25; 13 W. R., 337

See also **NABIN CHANDRA MITTER v. MAHES**  
**CHANDRA MITTER**

[3 B. L. R., Ap., 111; 12 W. R., 69

But see **IN THE MATTER OF THAKOOR CHUNDER**  
**PARAMANICK**

[3 L. R., Sup. Vol., 595, at p. 597 note

54. ————— *Erection of*  
*buildings on joint property—Building by one co-*  
*sharer against the wish of others—Suit for injunc-*  
*tion to restrain building—Discretion of Court—*

CO-SHARERS—continued.  
2. ENJOYMENT OF JOINT PROPERTY  
—continued.

THE HONGKONG & SHANTONG JUICE FACTORY CO.  
c. HAN NABAH CHATTERJEE [I. L. R., 14 Calc., 189

[illegible]

33. *Interference with exercise of building upon joint property.* That of several joint owners of land is not entitled to erect a building upon the joint property with or the consent of the other joint owners, notwithstanding that the erection of such building may cause to direct loss to the other joint owners. *Smith v. Kemp Smith, 1 L. R. 12 All. 419, affirmed.* *Smith v. Kemp Smith, 1 L. R. 12 All. 419, affirmed.* *Smith v. Kemp Smith, 1 L. R. 12 All. 419, affirmed.*

50. ————— Suit by the co-  
partners for possession of a building erected by a  
stranger on the joint property and purchased by  
the other co-partners—*Trospassers*.—Where a  
stranger to the property built upon certain land  
jointly held by several co-partners, and some of the  
co-partners purchased from the stranger the building  
as erected, it was held that the purchasers were,  
as of the building in suit, trespassers, and that  
a suit might be maintained by the remaining co-par-  
tner to be put into joint possession of the building;  
and this though it was not shown that any special  
damage had been suffered by the plaintiff by reason  
of the building. *Paras Ram v. Sheriff, I. L. R., 9*  
*Alh., 661*, and *Najib Khan v. Motahammedin, I. L.*  
*R., 18 Alh., 115*, referred to. *Mohammad Ali Khan*  
*v. Faiz Baksh* . . . . . *I. L. R., 18 Alh., 381*  
right to injure.

57. Right to injunction to restrain building.—There is no such broad proposition as that one co-owner is entitled to an injunction restraining another co-owner from exceeding his rights, absolutely and without reference to the amount of damage to be sustained by the one side or the other from the granting or withholding of

53. Right to deal with joint property.—Exercision of task on joint property.—Discretion of Court in granting injunctive or Specific Relief Act (1st 1877), s. 35.—Before a Court will in the case of co-sharers make an order directing that a portion of the joint property be allotted to have been dealt with by one of the co-sharers without the consent of the other should be refused to its former condition (as, for instance, where a tank has been excavated), a plaintiff must show that he has sustained, by the act he complains of, some injury which materially affects his position. *Lala Harnam Lal v. Rajwara Lal*, 3 B. L. R., 1p., 67, applied in principle. *Singh v. Jute Factory Co. v. Bhai Narain Chatterjee*, 1. L. R., 14 Cal., 1087, approved. The fact that a portion of the land on which a tank had been excavated by the defendant was fit for cultivation does not constitute an injury of a substantial nature such as would justify an order of that nature. *Jor Chunder Bhatia v. Bhai Chunder Bhatia* [1. L. R., 14 Cal., 238]

50. Right to deal with joint property—Building by one co-sharer against the wish of others—Suit for demolition of building—Discretion of Court.—The mere fact of a building being erected by a joint owner of land without the permission of his co-owners, and even in spite of their protest, is not sufficient to entitle such co-owners to obtain the demolition of such building unless they can show that the building has caused such material and substantial injury as could not be remedied in a suit for partition of the joint land. *Lala Bismahar Lal v. Raja Ram, 3 B. L. R. 49, 67, Noorj Lal Chuckerbutty v. Bindas Chander Chuckerbutty, 1. L. R., 8 Cal., 768, Girhari Lal v. Vilayat Ali, W. N., All., 1886, p. 277, Wahid Ali Khan v. Ghansham Narsai, W. N., All., 1887, p. 116, and Joy Chunder Mukhi v. Bipra Churn Mukhi, 1. L. R., 14 Cal., 236, referred to. PARAS RAM v. SHERJIT [L. L. R., 9 All., 681]*

60. Excavation of tank by one co-sharer—Injury—Right of other co-sharer to have the same filled up.—Where on ijmal land one co-sharer excavates a tank and there is no proof of any injury caused thereby to the property, the other co-sharer has no right to have the tank filled up or the land restored to its former condition, but he is entitled to a declaration of title to the extent of his share. **ATARJAN BIBEK v. ASHAK**  
[4 C. W. N., 788]

6L. Party-wall—Right of Erection on the wall by one co-sharer—Right of other co-sharers to have building removed—Right of suit.—One of two tenants in common of a party-wall raised the height of the wall with a view to building a superstructure on his own tenement. The

## CO-SHARERS—continued.

## 2. ENJOYMENT OF JOINT PROPERTY

—continued.

other tenant in common, who had not consented to the alteration in the wall, but had suffered no inconvenience therefrom, now sued to enforce the removal of the newly erected portion. *Held* that the plaintiff was entitled to the relief sought. **KAYAKATTA v. NARASIMHULU**. I. L. R., 19 Mad., 38

63. — *Right to build temples on joint land.*—The plea of limitation is not applicable to a suit for declaration of title regarding immovable lands upon which a temple has been built, and an idol established, by another co-sharer. If that shareholder claim exclusive use of the temple, he must prove a possession and enjoyment different from those of a Hindu co-sharer of joint property, particularly with regard to a temple added by him to an ancestral poojah-bari. **KISSORIATH CHOWDERY v. HURRO KANT CHOWDERY** [2 W. R., 183

63. — *Right to share in temple built by one co-sharer with separate funds on joint land.*—A co-sharer was held not entitled to a share in a temple, built on common land by another co-sharer out of his separate funds, on the ground that the temple was built on common land. **KISHEN SARUP v. DEZAL**. T. N. W., 179

64. — *Land dedicated to family idol.*—Land excluded from partition of

claimed the dedicated land as an estate, and sold it to the members of the family jointly, of whom one built a house on part of it—less than one-sixth—with the consent of the others. The house and its site were not in violation of a decree against the builder. *Held* that the other members of the family were not entitled to have the house removed as the sole exception. **MALLICK v. PRATHOTHAMA** [I. L. R., 12 Mad., 287

## (c) EXCLUSIVE POSSESSION OF PORTION OF JOINT PROPERTY.

65. — *Right to exclusive possession.*—  
tion to restrain him from doing so. **BIJAKARTI v. GOPAL PANDAY** [12 B. L. R., 197; 20 W. R., 183

66. — *Coparceners' right to joint possession of the whole or any part of the joint estate without necessity for partition.*—Hindu law—Joint family.—A coparcener in the

## CO-SHARERS—continued.

## 2. ENJOYMENT OF JOINT PROPERTY

—continued.

decree for joint possession. *Held* that the undivided estate, **RAMCHANDRA KASHI PATNAI v. DAMODHAR TRIMBAK PATNAI**. I. L. R., 20 Bom., 487

67. — *Joint tenant.*—*Partition.*—A joint tenant is not entitled to have possession of any portion of a joint and undivided property without a partition. **HIRSH DEAL DOONA MOJOMBAR v. GOBIND CHUNDER PAL** [17 W. R., 887

**TARA CHOWDHURAN v. KHAJA ARINULLAH** [22 W. R., 130

possession in family property for a long period of years,—such, for instance, as would give him a right on a partition taking place to insist on having the land which he has enjoyed allotted to him,—the other co-

**ROY v. BHARUCH MEAH**, 20 W. R., 288

70. — *Liability for*

at pleasure a partition of the whole. **KHAN v. CHUDDER SINGH**, 5 N. W., 100

## CO-SHARERS—continued.

2. ENJOYMENT OF JOINT PROPERTY  
—continued.

72. ———— *Adverse use of land by co-sharer.*—Held that the defendants, as joint proprietors with the plaintiff, could not by the use of the land with the tacit assent of the plaintiff create a right contrary to his interest, nor would their use of it before they became co-proprietors operate to create any such right. *JAHANOMY DRO NARAIN SINGH v. UMMAICA PERSHAD NARAIN SINGH*

(17 W. R., 74)

73. ———— *Exclusive possession by one co-sharer—Adverse possession.*—Exclusive possession by A of property which originally had been admittedly joint does not, *per se*, amount to adverse possession as against A's co-sharers. The Court should further ascertain whether A's exclusive possession was due to his title being really a separate one from the plaintiff's, and could not be accounted for by the fact of some arrangement having been come to at a previous time between the parties. *ASUD ALI KHAN v. AKBAR ALI KHAN* . 1 C. L. R., 364

74. ———— *Possession by one co-sharer—Adverse possession.*—The circumstances of a case may show that mere occupation and enjoyment by one co-sharer does not *per se* constitute an adverse possession as against the other co-sharer. In this case the exclusive possession of one was held not to be adverse to the other. *Asud Ali Khan v. Akbar Ali Khan*, 1 C. L. R., 364, followed. *BARODA SUNDARI DEBY v. ANNODA SUNDARI DEBY*

(3 C. W. N., 774)

75. ———— *Adverse possession—Proof of intention to set up adverse possession.*—When one co-sharer sets up as against another adverse possession of land which had previously been waste, but at some former time had been occupied and then been admittedly held jointly, it is for him to show that he has held possession in such a way as to give distinct notice to his other co-sharers of his intention to set up a title adverse to them. *RAKHAI DAS BUNDOPADHYA v. INDU MONEE DEBI*

(1 C. L. R., 155)

## (d) LEASES BY ONE CO-SHARER.

76. ———— *Power to grant lease—Consent.*—One of several co-sharers in sir land cannot grant a lease of any portion of it without the consent of the others. *CHAHUZ v. NUND KISHORE*

(4 N. W., 15)

77. ———— *Effect of lease granted by one of several co-sharers.*—A pottah granted by one co-sharer in an estate is not binding on the other sharers. *GOLUCK CHUNDER CHUCKERBUTTY v. TEELUCK CHUNDER SHAH* . 2 Hay, 49

78. ———— *Powers of lumberdar to deal with co-parcenary lands—Lease of such lands for ten years at an inadequate rent.*—Held that a lumberdar has no general power to grant any lease of co-parcenary land beyond such as the circumstances of the particular year or the particular season may require. *Jagan Nath v. Hardyai*,

## CO-SHARERS—continued.

2. ENJOYMENT OF JOINT PROPERTY  
—concluded.

*W. N., 1897, p. 207, followed. BANSIDHAR v. DEE SINGH* . . . . . I. L. R., 20 All., 238

79. ———— *Effect of lease by one of several co-sharers of his own share.*—Although one co-sharer cannot give a good lease of the whole sixteen annas of property which belongs to himself and his co-sharers, yet one co-sharer may give a lease of his own share which would be binding against himself at least. *RAM DEBUL LALL v. MITTERJEET SINGH* . . . . . 17 W. R., 420

80. ———— *Lease by co-sharer of his own share—Enjoyment of share of, by lessee.*—An undivided shareholder is not prohibited by law from granting a lease of his share to a third person; all that the other co-proprietor can insist upon is that the lessee should be prevented from dealing with the subject of the lease in any way different from that in which the lessor, his co-proprietor, could deal with it. A joint shareholder or any lessee of a joint shareholder is at liberty to contract with the raiyats of the zamindari for any lawful purpose even without the consent of the other co-proprietors. *MACDONALD v. LALA SHIB DYAL SINGH PAUREY* . 21 W. R., 17

81. ———— *Long possession under lease—Acquiescence—Presumption of authority.*—Long possession under an authentic pottah from one sharer, without interference or disturbance from the others, legally warrants the inference that the grantor had authority to bind his co-sharers. *HILLS v. ANADHUN MUNDUL* . . . . . 10 W. R., 389

82. ———— *Right of ejectment.*—Where land is held jointly and there is no partition, one part-owner cannot insist on the ejectment of a person who has been holding under the other part-owner for 16 or 17 years. *BISSESSUN KURMOKER v. JUGGOBUNDU KURMOKER*

(14 W. R., 183)

83. ———— *Right of lessee of one co-sharer to hold possession without consent of others—Right of ejectment.*—In a suit by a co-sharer for ejectment of a lessee who was holding over after the expiration of his lease at the end of 1275 and after sufficient notice, the defendant pleaded a pottah from the plaintiff's shareholder under which he was entitled to remain to the end of 1282. Held that, as defendant's occupation and enjoyment of the land to the end of the year 1275 had been by virtue and under the authority of two separate leases granted by each shareholder, each co-extensive with his share only, and as that granted by the plaintiff had expired in 1275, the defendant had not had exclusive enjoyment of the property as tenant by virtue of the other lease. And though the other co-sharer had granted a new lease when the first lease expired in 1275, yet as the plaintiff refused to do so, and had ever since treated the defendant as a trespasser, the defendant had no right of occupation so far as regarded the plaintiff's share. *HAMILTON v. RUGHOO NUNDUN SINGH* . . . . . 20 W. R., 70

## CO-SHARERS—continued.

## 3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY.

## (a) POSSESSION.

[21 W. R., 38]

85. ——— Suit to recover joint property.—*Parties*.—In a suit to recover property belonging to co-sharers all the co-sharers must join  
 PARAM v. ACHAL I. L. R., 4 All., 289

BATAHER BEGUM v. KHOOSHAL 3 Agra, 221

MOOKTA KESHER DEBER v. OOMANTUTY

[14 W. R., 31; 8 B. L. R., 306 note

SUDABUNT PERSHAD SAHOO v. LOTF ALI KHAN

[14 W. R., 339

ALUM MANJEE v. ASHAD ALI 18 W. R., 138

86. ——— Suit by some of

the proper course for the rest to adopt is to make them defendants in the case. KUTTUSHERI PISHARETH KANNA PISHARODY v. VALLOTIL MANAKEL NARAYANAN SOMAYANUPAD

[I. L. R., 3 Mad., 234

87. ——— Suit for portion

co-sharers, could maintain alone a suit to recover possession of a portion of the estate. AMIR SINGH v. MOAZZUM ALI KHAN 7 N. W., 58

88. ——— Suit for posses-

UNJOOR SINGH v. PUZDOONNESSA 2 Hay, 155

89. ——— Suit for undi-

parties. PIRBUTTY CHURN DOSS v. PROTAP CRUNDER SEN 23 W. R., 275

90. ——— Liability for rent.

A suit to recover possession is not maintainable

## CO-SHARERS—continued.

## 3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.

against one's co-sharer in respect of property still joint and undivided, nor can rent be legally claimed from him except on the ground of some agreement or undertaking, express or implied. GOBIND CRUNDER GHOSH v. RAM COOMER DEY 24 W. R., 393

If in any case such a right exist, it must be established by evidence. MAYANDY TEVAN v. NARAINAYAN 4 Mad., 108

and that the suit could not be maintained in its present form. GOBARJAN v. MOSHIAZOLAH

[I. C. L. R., 537

83. ——— Suit for possession against single shareholder for portion of joint estate held separately by agreement.—A suit for possession of land will not lie against a single shareholder for a particular portion of a joint estate held separately under an existing arrangement acquiesced in by the plaintiffs and agreed to by the other co-sharers, nor can the plaintiffs let to a tenant the property in the lawful possession of such shareholder. CROWDERY NIL KANT PERSHAD SINGH v. AHLAD SINGH 5 W. R., 237

84. ——— Suit by one co-sharer to redeem more than his share.—*Subsequent severance of interest*.—*Parties*.—*Time of taking objection*.—In 1805 a two-anna share in certain property held by co-sharers was mortgaged to the defendant. The mortgage was effected by the mortgagor as manager of all the co-sharers in union. In 1843 one of the co-sharers redeemed his share of two pies in the

decree the whole of the property still unredeemed, viz., a one anna eight pies share of the original mortgage. The defendant objected that the plaintiff could only redeem his own two-pie share, which had become separated from the rest. The plaintiff denied that the estate had been divided. Held that the plaintiff's claim being to redeem all that remained of the estate in the mortgagee's possession, the suit could

## CO-SHARERS—continued.

## 3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.

not be maintained, unless all the other persons interested in the equity of redemption were before the Court either as complainants or as defendants. Without their presence, the suit could not be properly discontinued, and the excuse, that the defendant did not take objection at the right time, had, under such circumstances, no validity. As owner of a two-pie share, which by consent of all interested had become an estate wholly separated from the other parts of the original aggregate, the plaintiff would have been bound to set forth the transactions on which his right rested. *RAGHO SALVI v. BALKRISHNA SAKHA RAM* I. L. R., 9 Bom., 128

95. — Suit to recover possession of portion of tenure—*Dispossession of purchaser by mortgagee*.—Parties.—A landlord who was in receipt of a half share of the rent of a certain tenure caused that share of the rent to be sold in execution of a decree for arrears of rent. Subsequently, *A*, the purchaser, took possession. Subsequently the tenant executed a mortgage, and a decree being obtained by the mortgagee, the whole tenure was brought to sale in execution thereof and purchased by the mortgagee, who proceeded to suit *A*. In a suit by *A* to recover possession of his half share of the tenure on the footing of his purchase.—*Held* that, as it appeared that the mortgage, whose rights and interests only were thus sold, was only one of several co-sharers, in the absence of the co-sharers who were not parties to the suit, *A* was not entitled to the relief he sought. *REILY v. HEN CHUDEN GUOSU* I. L. R., 9 Calc., 722 [12 C. L. R., 398]

96. — Suit for possession after foreclosure—*Power of lumberdars to bind co-sharers in mortgage*.—The lumberdars of a mehal, in order to pay revenue due by them and the other co-sharers of the mehal, transferred the mehal by conditional sale for a term of years, possession of the mehal being delivered to the conditional vendee. The mortgage-debt not having been paid within such term, the conditional vendee applied, as against the lumberdars, for foreclosure, and the mortgage having been foreclosed sued all the co-sharers including the lumberdars for possession of the mehal, alleging that the lumberdars had acted in the matter of the conditional sale, not only for themselves, but as agents of the other co-sharers. *Held* that, inasmuch as the other co-sharers had not either expressly or by implication authorized the lumberdars to enter into the particular contract represented by the conditional sale, and as they had not ratified such contract, they were not bound by the conditional sale and foreclosure. *BHAJAN LAL v. MORI* I. L. R., 3 All., 177

97. — Suit to recover possession by setting aside sale—*Sale for arrears of revenue*.—*Splitting suits*.—Separation of claims.—*A*, *B*, *C*, *D*, and *E*, were joint lessees, without specification of shares under Government, of a certain mehal. The estate was sold for arrears of revenue. *A*, *B*, *C*, *D*, and *E* each brought a suit separately to set aside the sale. *Held* that, as the estate was

## CO-SHARERS—continued.

## 3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.

single and indivisible, and the cause of action and relief sought in each case was the same, the claim of the lessees could not be split into five distinct suits. *THE COLLECTOR OF INDIANATH BRUTTACHARJEE v. THE* 7 B. L. R., Ap., 42 [21 W. R., 89 note]

98. — *Sale for arrears of rent*.—*Suit by one co-sharer*.—Where a patni talukh, belonging to several co-sharers, each of whom collected his own share of rent from the mehal, was sold for arrears of rent, and one of the co-sharers brought a suit in the Munsif's Court to recover possession of his share by setting aside the sale, and valued his suit according to his share, making the other co-sharers defendants.—*Held* that the suit could not be maintained in that form. The cause of action was the sale of the whole estate, and the suit should have been framed and valued accordingly, and brought in a Court in which the rights of all the parties interested in setting aside the sale might have been determined in one suit. *UNNODA PERSAD ROY v. ESKINE* [12 B. L. R., F. B., 370] 21 W. R., 68

99. — Suit for possession on expiry of tenancy—*Notice to quit*.—*Co-sharers*.—*Suit by*.—*Withdrawal of one co-sharer from the suit*.—Where several co-sharers have served a joint notice to quit, upon which notice they jointly institute a suit for the recovery of the land, the fact that one of the plaintiffs withdraws from the suit will not prevent the remaining plaintiffs from obtaining a decree for possession of their shares of the land. *DWARAKA NATH RAI v. KALI CHUDEN RAI* [I. L. R., 13 Calc., 75]

## (b) MISCELLANEOUS SUITS.

100. — Suit by some co-sharers deducting share of those non-consenting—*Suit to enforce agreement relating to the whole property*.—The consent of all the sharers to a joint holding being necessary to give validity to any agreement regarding the same, certain sharers in a joint holding cannot, by the device of deducting from their claim a portion of the holding representing the share of some of their co-sharers, non-consenting parties to an agreement, sue to enforce such agreement, all the sharers having an undivided share in every biswa of the joint holding. *SUMBA v. RAM LALL* [3 N. W., 216]

101. — Suit on bond—*Liability of some co-sharers for acts of others*.—*Bond executed for payment of rent due on joint estate*.—*Patni talukh*.—Two out of certain co-sharers in a patni talukh executed a mortgage bond with the object of paying off a quota of the rent due on the estate. In a suit brought on the bond, to which all the co-sharers were defendants.—*Held* that the liability under the bond only extended to the co-sharers who actually signed the document, and to such of the other co-sharers as, by their presence at the time when the

**CO-SHARERS—continued.****3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.**

bond was executed, might impliedly be considered to have acquiesced in such execution. *MOHESH CHUNDER BANERJEE v. RAM PROSONNO CHOWDHRY*

[I. L. R., 4 Calc., 539]

102. ——— Suit by one of several

103. ——— Lumberdar, Suit by, for profits without consent or authority of co-sharers—*Suit for settlement of accounts.*—The

was not maintainable. *UDAI RAM v. GHULAM HUSAIN* . . . I. L. R., 3 All., 188

105. ——— N.-W. P. Rent Act (XII

*Pershad, 3 N. W., 49*, referred to by *TYRELL, J. Per BURKITT, J., contra*—"The suit"\*\*\*"may be considered to be a suit for profits within the meaning of the opening words of s. 93 (4) of the Rent Act, and cannot be considered to be a suit for 'a settlement of accounts' within the meaning of the concluding words of that clause." *Durga Prasad v. Dip Chand, W. N., All. (1881), 27, Kushalo v. Ram Das, W. N., All. (1889), 171, Daboo Deen v.*

**CO-SHARERS—continued.****3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.**

*Doorga Pershad, 3 N. W., 49*, referred to. *INDO v. INDO* . . . I. L. R., 18 All., 23

106. ——— *Suit for a settlement of accounts—Suit for a share in the profits of a mehal—Limitation.*—With reference to the periods of limitation prescribed by s. 94 of Act XII of 1881, a suit for a share of the profits of a mehal does

of the suit is to obtain a settlement of accounts

applies. *ROHAN v. JWALA PRASAD* [I. L. R., 16 All., 333]

107. ——— *Suit by recorded*

[I. L. R., 17 All., 423]

108. ——— *Suit for recorded share of profits—Suit for settlement of accounts—Limitation.*—Where for the purposes of a suit in which a share of profits is claimed by a recorded

Court is only asked to go into the accounts incidentally to that main object, and for the purpose of determining whether the sum claimed is due, then the suit is not a suit for settlement of accounts merely, but it is a suit for a share of profits within the first category of s. 93 (4) of the N.-W. P. Rent Act, 1881. *Rohan v. Jwala Prasad, I. L. R., 16 All., 333*, explained. *Indo v. Indo, I. L. R., 16 All., 23*, referred to. *MUHAMMAD KASIM v. GANGA PANDU* [I. L. R., 22 All., 334]

**CO-SHARERS—continued.****3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.**

**109.** ———— *Suit against lumberdar for profits—Liability of heir of lumberdar.*—The liability of a lumberdar to pay to a co-sharer the profits which the lumberdar has failed through his gross negligence to collect is a personal liability and cannot be enforced against the lumberdar's legal representative. *Gulab v. Fatch Chand, 111 W. N. (1889), 32*, referred to. *MURAD-UN-NISSA v. GULAM SAJJAD* . . . **I. L. R., 20 All., 73**

*BIR NARAIN v. GIRDHAR LAL*

[**I. L. R., 20 All., 74 note**]

**110.** ———— *Suit by one co-sharer to set aside alienation made without his consent—Alienation by tenant of co-sharer.*—Although one co-sharer cannot eject a tenant from a holding in an undivided estate in which the tenants are tenants of the whole body of co-sharers, yet a co-sharer is entitled to sue to set aside an alienation made by a tenant to a stranger without consent of the zamindars. *SODHA RAM v. GUNGA PERSHAD* . . . **2 N. W., 280**

**111.** ———— *Assignment of share by one co-sharer without consent of others—Right of assignee.*—Held in accordance with the principles laid down by the Privy Council in *Dyjnath Lull v. Ramooden Chaudhry, 21 W. R., 233; I. R., 1 I. A., 106*, viz., that one co-sharer in a joint and undivided estate cannot deal with his share so as to affect the other co-sharers, but his assignee takes subject to their rights, that the plaintiffs were not entitled to the relief they sought for, and their suit must be dismissed. *SHARAT CHUNDER BURMON v. HURGOBINDO BURMON* . . . **I. L. R., 4 Calc., 510**

**112.** ———— *Suit for cancellation of leave for forfeiture—Parties—Breach of covenant.*—Where it is optional with several joint lessors to avail themselves of a condition of re-entry upon breach of certain covenants, one or more of the lessors cannot insist upon a forfeiture without the consent of the others. *Held*, therefore, in a suit which was brought for the cancellation of a mukurari lease, and the recovery of sir possession, on the ground of forfeiture for breach of covenant, that all the co-sharers should join as plaintiffs; and that, as some of the co-sharers, who were made defendants, appeared and opposed the cancellation of the lease, the suit must be dismissed. *REASUT HOSSEIN v. CHOWAR SING* . . . **I. L. R., 7 Calc., 470**  
[**9 C. L. R., 280**]

**113.** ———— *Suits for rents collected by one co-sharer in respect of another's share—Intermeddler—Suit for recovery of rents—Intermeddler, Liability of.*—The lessee of two-thirds of a five biswas zamindari share asserted and exercised a right of collecting rents in respect not only of the two-thirds, but also of the remaining one-third. It appeared that he made these collections not as a matter of contract, but as an intermeddler and in defiance of the wishes of the holder of the one-third share. Subsequently a suit was brought against him by a purchaser of the five biswas for recovery of rents

**CO-SHARERS—continued.****3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.**

so collected, the claim extending to rents which the defendant might have collected, but neglected to collect, and which were consequently lost to the plaintiff. *Held* that the defendant, not having been under any obligation to collect the rents of the one-third share, could not be made liable for any of such rents which he had not actually collected, and that, as the collection expenses had exceeded the amount collected, the suit must be dismissed. *BALWANT SINGH v. GOKARAN PRASAD* . . . **I. L. R., 9 All., 519**

**114.** ———— *Damages, Suit for—Non-joinder of lessees as plaintiff—Parties.*—In a suit by one of two lessees against the lessor for damages for cancelling the lease, the other lessee was made a defendant. *Held* that the suit was not bad for non-joinder of the second lessee as plaintiff; nor for the reason that the plaintiff could not prosecute the suit against him or obtain any relief against him; and that he was rightly made a defendant in the suit. *Kallusheri Pishareth Kanna Pisharody v. Vallotil Manakel Narayanan Somayajipad, I. L. R., 3 Mad., 234*, followed. *VITHILINGA PADAYACHI v. VITHILINGA MUDALI*

[**I. L. R., 15 Mad., 111**]

**115.** ———— *Bengal Tenancy Act (Act VIII of 1855), s. 188—Suit for recovery of damages by some of several joint landlords.*—A suit for recovery of damages for recovery of value of trees cut down by tenant is maintainable at the instance of one of several joint landlords. *HEBIKES SINGHA v. SADHU CHARAN LOHAR* . . . **2 C. W. N., 80**

**(c) EJECTMENT.**

**116.** ———— *Ejectment of tenant taken by all the co-sharers—Stranger admitted without consent of all.*—When all the co-sharers have allowed a tenant to enter and occupy land, the tenant cannot be ejected without the consent of all. *LUTCHMAN PERSHAD v. DABEE DEEN* . . . **3 Agra, 264**

*GOUREE SUNKUR SURMAH v. TIRTHO MONER*

[**12 W. R., 452**]

*HULODHUR SEN v. GOOROO DOSS ROY*

[**20 W. R., 126**]

*DINOBUNDHOO GHOSE v. DROBO MOYEE DOSSIA*

[**24 W. R., 110**]

**117.** ———— *Suit by some co-sharers to eject tenant taken by others.*—One or more co-sharers cannot allow a stranger to occupy a portion of the mouzah without the consent of the other co-sharers, unless they are authorized to act on behalf of the other co-sharers, and the dissentient co-sharers may sue to eject him. *LUTCHMAN PERSHAD v. DABEE DEEN* . . . **3 Agra, 264**

**118.** ———— *Ejectment of person put in possession by all the co-sharers—Trespassers—Decree.*—Where a tenant has been put into possession of ijmal property with the consent of all the co-sharers, no one or more of the co-sharers can turn the tenant out without the consent of the

**CO-SHARERS—continued.****3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.**

others; but no person has a right to intrude upon

*Hulodhur Sen v. Gooroo Dass Roy, 20 W. R., 126.*  
RADHA PRASAD WASTI v. RAUF

[1 L. R., 7 Calc., 434; 9 C. L. R., 78

GRUNSHYAM SINGH v. RUNJEET SINGH

[4 W. R., Act X, 39

*Contra, MURDUN SINGH v. NURPUT SINGH*

[2 W. R., 290

and LUCHMUN SAHAJ CHOWDHRY v. SRAMI JHA

[5 W. R., Act X, 93

119. ——— Partial ejectment and joint possession.—A decree for partial ejectment and joint possession can be made in favour of a co-owner of property. *Hulodhur Sen v. Gooroo Dass Roy, 20 W. R., 126*, and *Radha Prasad Wasti v. Rauf, 1 L. R., 7 Calc., 434*, approved of. KAMAL KUMARI CHOWDHURI v. KIRAN CHANDRA ROY

[2 C. W. N., 229

120. ——— Ejectment, Suit for, of trespasser.—*Tenant of one co-sharer.*—Any one of several joint tenants of land may sue to eject a trespasser. The consent of one joint tenant to the possession of a trespasser does not make him less a trespasser with regard to other joint tenants. *TARLUX RAI v. RAMJUS RAI.* 5 N. W., 182

121. ——— Ejectment, Suit for, by some only of the co-sharers.—Some of the co-sharers are not entitled to sue for ejectment unless all the co-sharers join in the suit. Where, however, the lumberdar collects as manager for the whole community, he can sue for and obtain ejectment without joining the co-sharers as plaintiffs. *HIDAYATULLAH v. INDERJEET TEWARI*

[2 Agra, 282

122. ——— Suit for ejectment by one of two co-sharers.—*Sole manager of estate.*—Where a suit was brought by one of two co-sharers to recover land from a tenant, not only in the absence

the joint estate. *Umanna v. Purshotam, S. A. No. 379 of 1873*, followed. KRISHNANAY JAHAGIRDAR v. GOBIND TRIMBAK 12 Bom., 85

123. ——— Suit by one co-sharer as manager.—*Parties.*—*Failure of tenant to pay enhanced rent after notice.*—A co-sharer who is manager cannot, even with the consent of his co-sharers, maintain a suit by himself and in his own name to eject a tenant who has failed to comply with a notice calling on him to pay enhanced rent.

**CO-SHARERS—continued.****3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.**

BALKRISHNA SAKHARAM v. MORE KRISHNA DABHOLKAR . . . I. L. R., 21 Bom., 154

124. ——— Suit to eject trespasser.—*Suit to restrain trespass.*—If ryots are interfered with in the occupation of their land, they have a

a stranger in wrongful possession must be brought in the name of all the proprietors jointly. *MURDUN LALL v. LLOYD* 22 W. R., 74

125. ——— Suit for ejectment of tenant of a fishery.—A suit will not lie to eject a tenant of a joint fishery unless all the joint proprietors are joined as parties. *DOLI SATTI v. IKRAM ALI* [4 C. L. R., 63

126. ——— Suit by one co-sharer for ejectment of tenant on determination of tenancy.—The purchaser of a two-thirds share of a tank sued to obtain khas possession from the tenant whose sons had purchased the remaining one-third share. *Held* that, on the tenancy being shown to have been determined, the plaintiff was entitled to a decree for khas possession. *GOPI NATH CHATTERJEE v. MOHUN SUDUN DAI* 11 C. L. R., 51

or separately, the minor was entitled to eject the

of a minor, and thus creating one and the same tenancy, is not also void as against the co-sharers. *HARENDRA NARAIN SINGH CHOWDHRY v. MORAN* [1 L. R., 15 Calc., 40

(d) KAPULIATS.

*DUMBA DASSER* 10 W. R., 411

Even where there is an allegation that the plaintiff has been realizing his quota of rent separately for years. *KALEK CHURN SINGH v. SOLANO* [24 W. R., 267



## CO-SHARERS—continued.

## 3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.

[I L R., 5 Calc., 241; 6 C. L. R., 402

187.

Arrangement

estate and their tenant that he shall pay each co-sharer his proportionate share of the entire rent, each

original lease ought not to be presumed from the mere fact of a separate payment of rent to one or more of the co-sharers. **GUNI MAHOMED v. MORAN.** DOORGA PERSHAD MYTER v. JOYNAIDIN HAZRA

[I L R., 4 Calc., 98; 2 C. L. R., 371

158.

*Presumption as to separate payment of rent—Agreement for separate payment.*—It has often been decided that, from the fact of rent having been collected for some time by one of several co-sharers separately, an agreement for payment of the separate rent of a share could

KAMALOODDEEN v. ANOO MUNDUL

[I C. L. R., 584

159.

Rent paid to

maintainable. **DINOBUNDOO ROY v. OOMA CHUN CHOWDHRY** 23 W. R., 53

180.

Lease—Suit by

one  
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—A  
181  
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of rent due to S had already been paid, sued the

## CO-SHARERS—continued.

## 3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.

lessee for the recovery of his own share. The amount claimed was all that remained due on the lease. *Held* that the plaintiff was entitled, as one of the joint lessors, to sue for the balance of rent, and that his suit was therefore not barred by the terms of s. 104 of the North-Western Provinces Rent Act

[I L R., 6 All., 510

181.

*Suit by some co-sharers for proportionate amount of rent making*

rent due to them, and the two remaining sharers defendants. *Held* that the suit was properly framed **SREENATH CHUNDER CHOWDHRY v. MOHESH CHUNDER BUNDOFADHYA** 1 C. L. R., 453

182.

Claim to whole

PORTION OF IT HAS BEEN PAID BY ONE OF THE  
**DINO NATH LAKHAN v. MOHURUM MULLICK**

[7 C. L. R., 138

183.

*Suit by co-sharer making another defendant without asking him*

tiff was not bound to ask the first co-sharer to join as plaintiff, and that the suit was properly framed. **TARINI KANT LARUI v. NUND KISHORE PATRONOVIS** 12 C. L. R., 588

184.

*Suit by co-sharer making another defendant—Failure to show refusal to join as plaintiff.*—When one of several co-sharers brought a suit for arrears of rent due to all of them, and made the other co-sharers defendants in the suit, on the allegation that they

## CO-SHARERS—continued.

## 3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.

DHESHWAR ROY CHOWDHURY v. BROJO KANT ROY CHOWDHURY . . . I C. W. N., 221

165. ———— *Rent, Suit for—Parties—Right of some of several co-sharers to sue alone—Refusal to join suit as plaintiff.*—It is only when plaintiffs can show that those entitled as co-sharers to join with them have refused to join, or have otherwise acted prejudicially to the plaintiffs' interests, that they are entitled to sue alone and make their co-sharers defendants in the suit. DWARKANATH MITTER v. TARA PRASUNNA ROY

[I. L. R., 17 Calc., 180

JITANTI NATH KHAN v. GOKOOL CHUNDER CHOWDHURY . . . I. L. R., 19 Calc., 780

166. ———— *Right of some of several co-contractors to sue alone—Refusal to join in the suit as plaintiff; Effect of.*—Where two parties contract with a third party, a suit by one of them making the other a co-defendant ought not to be dismissed merely because the plaintiff has not proved that the co-defendant had refused to join as a co-plaintiff. PYARI MOHUN BOSE v. KEDARNATH ROY . . . I. L. R., 28 Calc., 409

PYARI MOHUN BOSE v. NOBIN CHUNDER ROY [3 C. W. N., 271

167. ———— *Suit for rent by one of several co-sharers—Rent suit—Landlord and tenant—Parties.*—A suit for arrears of rent cannot be brought by one of several co-sharers unless it is shown that the co-sharers are unwilling to join as plaintiffs. SHOSHEE SHEKHARESWAR ROY v. GIRIS CHANDRA LAHIRI . . . I C. W. N., 659

168. ———— *Co-sharers, Suit by one of several, for separate share of rent, or in alternative for whole rent due if more than share claimed should be found due—Parties.*—The plaintiffs, some of the co-sharers in certain lands, instituted a suit against a tenant and the remaining co-sharer P, alleging that the tenant held under a pottah granted by all the co-sharers; that rent was due from him for the period in suit; and that they had ascertained from P that he alleged that he had received his share of the rent for that period from the tenant, and that he refused to join as plaintiff in the suit. They accordingly prayed (a) for a decree for the amount of their share of the rent against the tenant; (b) if it should appear that any part of P's share of the rent remained unpaid, the requisite extra Court-fee might be received and a decree made for whole of the arrears in favour of themselves and P, and that the latter might, if he consented, be made a co-plaintiff; (c) that if it appeared that P had realized more than his share of the rent, a decree might be made against him for the excess and against the tenant for the balance. The plaintiff also asked for costs and further relief. The tenant contested the suit and submitted that it was in effect a suit for plaintiffs' share of the rent only, and could not therefore be maintained. He further pleaded that the plaintiffs and P were members of a joint Hindu family, of which P was the manager, and that, under arrangement with the latter,

## CO-SHARERS—continued.

## 3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.

he had applied the rent due under the pottah towards the liquidation of debts due under bonds in P's name, but for which the joint family were liable. The first Court dismissed the suit on the preliminary issue that it was in substance a suit for a specific share of the rent by some only of the co-sharers, and that, there being no agreement by the tenant to pay the co-sharers their respective shares of the rent separately, such a suit would not lie. *Held* (upholding the order of the lower Appellate Court) that the order of the first Court was wrong. The suit, as framed, was necessarily a suit in the alternative; and as the plaintiffs were necessarily not aware whether any portion of P's share of the rent was due or not, but believing that none was due, they could only claim their share, asking to have the plaint amended so as to include the whole rent due if it should appear that anything was due to P, and thus bring the suit within the rule that, in the absence of special agreement between a tenant and co-sharers to pay their rateable proportion of the rent, a suit by one of the co-sharers must be for the entire rent due, making his co-sharers defendants if they refuse to join as plaintiffs. The prayer of the plaint fully provided for this, and the suit should have been tried on its merits and the plaint amended if the facts proved showed that any rent remained unpaid and due to P as asked for by the plaintiffs. PERGASH LAL v. AKHOWRI BALGOBIND SAHAY

[I. L. R., 19 Calc., 735

169. ———— *Parties—Plaintiffs—Suit for adjustment of proportionate share of rent by one co-sharer—Lease, Construction of.*—A lease of certain land of which the plaintiff was a fractional co-sharer provided as follows:—"After the land in question is fully brought under cultivation, you shall pay rent without default, according to kists year after year, as per measurement and jummatandi at the said rate of Company's 10 annas 10 gundahs for the quantity of land that will be left after deducting beds of khals, pasture lands, lands unfit for cultivation, places of worship, hajats, pujai basha bris, and your remuneration for reclamation, upon measurement of all the lands by the standard rod used in the abads of the said talukh. On no account shall any larger amount be demanded." In a suit instituted when the land had been fully brought under cultivation, and after measurement, the plaintiff claimed only her own share of the rent and her co-sharers did not join her as co-plaintiffs, nor were they made defendants. *Held* that the suit was not maintainable. What the lease contemplated under the circumstances which had arisen was a final adjustment of the rent, and such an adjustment could be obtained only by a suit brought by all the co-sharers or by some of them if the others refused to join, but in that case the suit must be for the adjustment of the entire rent, and all the necessary parties must be properly before the Court. BINDU RASHMI DAS v. PEARI MOHUN BOSE . . . I. L. R., 20 Calc., 107

170. ———— *Suit by a joint proprietor for arrears of rent—Kabuliat executed*

**CO-SHARERS—concluded.****3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—concluded.**

suit upon notice issued by himself against a tenant in which he made the other co-sharers parties defendants to recover arrears of rent at an enhanced rate in proportion to his share. *Held* that such a suit was not maintainable unless it could be shown that the co-sharers had refused to join as plaintiffs. *Bidhu Bhushan Basu v. Komaraddi Mundal, I. L. R., 9 Calc., 864, distinguished. KALI CHANDRA SINGH v. RAKSHISORE BHUDDRO*

[I. L. R., 11 Calc., 615]

189.

Enhancement

by one out of a number of co-sharers when possible—*Ijmal mehal*—Practice of separate leases by

tenant has been holding under the plaintiff separately or under a joint lease from the plaintiff and his co-sharers in the mehal. *Gunt Mahomed v. Moran I. L. R., 4 Calc., 96, Jegendro Chunder Ghose v. Nobin Chander Chattopadhyay, I. L. R., 8 Calc., 353, distinguished. RASHBENARI MUKHERJEE v. SAKHI SUNDARI DASI* . I. L. R., 11 Calc., 644

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competent to one of them to claim alone for his share of the rent enhanced by the notice. *ISREE PERSHAD RAE v. TOOLSEE RAM* . . . 3 Agra, 352

180. ————— *Enhancement of rent of a jote—Suit by one co-sharer for separate payment of rent.*—A suit by the owner of an undivided share to enhance the rent of a jote, the tenant of which has been in the habit of paying his rent to each sharer separately, will not lie, even though plaintiff's co-sharers be made defendants to the suit. *RAJENDRO NARAIN BISWAS v. MOHENDRO LALL MITTER* . . . 3 C. L. R., 21

181. ————— *Suit by one of two joint khots for enhanced rent—Notice.*—One of several tenants in common, joint tenants, or coparceners (unless he is acting by consent of the others as manager of an estate) is not at liberty to enhance rent or eject tenants at his pleasure. *Doorga Prosad Mytee v. Joynarain Harra, I. L. R., 2 Calc., 474*, distinguished. *BALAJI BAIKABI PINGE v. GOPAL BIN RAGHU KULI* . . . I. L. R., 3 Bom., 23

*KRISHNARAV v. GOVIND*  
[I. L. R., 3 Bom., 25 note

*HIDAYETOOLLAH v. INDERJEET TEWARER*  
[2 Agra, 282

182. ————— *Evidence of previous enhancement in a suit by another co-zamindar.*—More than twenty years before the institution of a suit for the enhancement of the rent of a share in a dependent talukh, the zamindari under which the talukh was held was partitioned under a batwara among three zamindars. A ten-anna share was allotted to one (the present plaintiff), a four-anna share to another, and a two-anna share to a third. The talukhdars continued to hold the entire property, and paid the rent apportioned by law severally to each of the parties entitled. In 1861 the owner of the two-anna share obtained a decree against the talukhdars for enhancement of the rent of his share. In the present suit against the same talukhdars, the defendants contended that the rent of their talukh had not been changed for a period of more than twenty years before suit. *Held* that the decree in the suit of 1861 had the effect of enhancing the rent payable for the whole talukh, that the plaintiff could avail herself of that decree, although she was not a party to it. *SARAT SOONDARY DABEA v. ANAND MOHUN SURMA GHUTACK*

[I. L. R., 5 Calc., 273; 4 C. L. R., 448

See *HEM CHANDRA CHOWDHEY v. KALI PRASANNA BHADURI* . . . I. L. R., 26 Calc., 832

183. ————— *Arrangement for separate payment of rent—Suit for arrears of rent at enhanced rates—Beng. Act VIII of 1869, s. 29.*—One co-sharer cannot (even if he make his co-sharers parties to his suit) sue for the enhancement of his share of the rent, such an enhancement being inconsistent with the continuance of the lease of the

## CO-SHARERS—continued.

## 3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—continued.

entire tenure. *BHARRUT CHUNDER ROY v. KALLY DAS DEX*

[I. L. R., 5 Calc., 574; 5 C. L. R., 545

184. ————— *Parties—Enhancement of rent—Separation of shares—Act XI of 1859, s. 10.*—Two co-sharers, joint owners of a zamindari, caused their shares to be separately registered in the Collector's office under s. 10, Act XI of 1859. Subsequently one of the co-sharers sued certain persons (who held riyati tenures in the co-sharers' zamindari) for enhancement of rent without making the other co-sharer a party. *Held* that no such suit would lie. *Guni Mahomed v. Moran, I. L. R., 4 Calc., 96*, followed. *JOGENDRO CHUNDER GHOSE v. NOBIN CHUNDER CHOTTOPADHYA*

[I. L. R., 8 Calc., 353

185. ————— *Notice of enhancement.*—*Held*, in a suit for enhancement by one co-sharer, to which the other co-sharer was made a party, that one co-sharer is not competent to issue a proper notice of enhancement without the consent of the other co-sharers previously obtained, though the rent has been paid to each co-sharer separately. Under the ruling of the Full Bench, in the case of *Guni Mahomed v. Moran, I. L. R., 4 Calc., 96*, he must first establish his right to a separate contract to recover his rent separately on his individual share. *KASHEEKISHORE ROY CHOWDHEY v. ALIP MUNDUL*  
[I. L. R., 6 Calc., 149; 7 C. L. R., 107

But see *CHUNI SINGH v. HERA MAHTO*  
[I. L. R., 7 Calc., 633; 9 C. L. R., 37

and *ABDOOL HOSSEIN v. LALL CHAND MOHTAN*  
[I. L. R., 10 Calc., 36; 13 C. L. R., 323

186. ————— *Suit by one co-sharer—Parties.*—Even if a single shareholder can raise the rent of a joint tenant without the consent of his coparcener, he can only do so in a suit to which all the sixteen annas proprietors must be made parties. *GOPAL v. MACNAGHTEN* . . . I. L. R., 7 Calc., 751

*BHEEKOO v. OOMAR KHAN*  
[I. N. W., Ed. 1873, 236

187. ————— *Notice of enhancement—Parties.*—A and B were talukhdars of a certain village, each having an eight-anna share. A certain riyat held a jote within the village, in respect of which he paid his rent separately—eight annas to A and eight annas to B. A served a notice of enhancement on the riyat, but the notice was signed by A only, and it did not appear that the consent of B had been previously obtained. A afterwards instituted a suit for arrears of rent at the enhanced rate, making B a defendant to the suit. *Held* that the notice of enhancement was sufficient to maintain a suit so framed. *BIDHU BHUSHUN BASU v. KOMARADDI MUNDUL* . . . I. L. R., 9 Calc., 864

188. ————— *Suit for enhancement of a proportionate share of the rent by one co-sharer—Collection of rent separately.*—A, an eight-anna sharer in an undivided estate, who collected his portion of the rent separately, brought a

**CO-SHARERS—concluded.****B. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—concluded.**

portion to his share. *See also* *Id.* unless it could be shown that the co-sharers had refused to join as plaintiffs. *Biddu Bhushan Basu v. Komaraddi Mundul, I. L. R., 9 Calc., 864*, distinguished. *KALI CHANDRA SINGH v. RAJKISORE BRUDDHO* [I. L. R., 11 Calc., 615]

**189.** ————— *Enhancement by one out of a number of co-sharers when possible—Ijmal, mehal—Practice of separate leases by several co-sharers.*—The mere fact of their being other co-sharers in an undivided mehal is not sufficient to put the plaintiff out of Court in a suit for enhancement in respect of a particular plot of land, and the proper issue in such a case is, whether the defendant-tenant has been holding under the plaintiff separately or under a joint lease from the plaintiff and his co-sharers in the mehal. *Gani Mahomed v. Moran I. L. R., 4 Calc., 96*, *Jogendra Chander Ghose v. Nobin Chander Chattopadhyay, I. L. R., 8 Calc., 353*, distinguished. *RASHBHARI MUKHERJEE v. SAKHI SUNDARI DAS* I. L. R., 11 Calc., 644

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10 B. L. R., Ap., 15	
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[I. L. R., 17 Bom., 514

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[I. L. R., 18 Bom., 231

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[13 B. L. R., 189

See LAND ACQUISITION ACT, 1870, s. 39.

[8 Mad., 192

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21 W. R., 312

[11 C. L. R., 15

I. L. R., 7 Calc., 140

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See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

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[I. L. R., 18 Calc., 199

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[I. L. R., 19 Bom., 221, 770

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[I. L. R., 20 Calc., 687

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See RULES OF HIGH COURT, BOMBAY—RULE No. 183 I. L. R., 16 Bom., 152

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[12 B. L. R., Ap., 4

See LIMITATION ACT, 1877, ART. 84.

[I. L. R., 22 Calc., 943, 952 note

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1. ——— Abated suit—Death of plaintiff—Cost of interlocutory order in abated suit—Civil Procedure Code, 1859, ss. 210, 296.—Under ss. 210 and 296 of Act VIII of 1859, the representative of the deceased plaintiff in an abated suit is liable for costs of interlocutory orders in the suit. *MAHUL-DEE ALLER KHAN v. ROHEEMOODEEN*

[Bourke, O. C., 154

2. ——— Abated appeal—Death of appellant—No application for substitution—Civil Procedure Code (Act X of 1877), ss. 582, 368, 365 and 366.—Per MITTER, J. (GARTH, C.J., dubitante).—Notwithstanding that s. 582 of the Code of Civil Procedure does not expressly direct that the word “plaintiff” occurring in s. 366 shall be held to include an “appellant,” yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may, by analogy, be taken to be conferred on the Appellate Court. *Lakshmi Bai v. Balakrishna*, I. L. R., 4 Bom., 654, followed. *RAJMONEE DABEE v. CHUNDER KANT SANDEL*

I. L. R., 8 Calc., 440

[10 C. L. R., 437

3. ——— Account, Suit for—Suit for account by principal against agent.—Where in a suit for an account by a principal against his agent, the defendant falsely denied his fiduciary position, he was ordered to pay the whole costs of the suit up to and including the costs of an appeal to the Privy Council without regard to the result of the account. *HURBINATH RAI v. KRISHNA KUMAR BAKSHI*

[I. L. R., 14 Calc., 147

L. R., 13 I. A., 123

4. ——— Admiralty or Vice-Admiralty—Practice—Appeal from original side in exercise of Admiralty or Vice-Admiralty jurisdiction—Increased costs caused by excessive bail in salvage case.—In an action of salvage in which a ship was arrested and the bail asked for was found to be excessive, the Court held that the promovents must pay to the impugnants the costs required by the bail being excessive. *The George Gordon*, L. R., 6 P. D., 46, followed. Where an appeal was held to lie under the High Court Charter and the Letters Patent from the original side in the exercise of Admiralty or Vice-Admiralty jurisdiction, and the procedure was mainly governed by the Civil Procedure Code, the usual practice as to costs on appeal was followed. *IN THE MATTER OF THE SHIP “CHAMPION”*

[I. L. R., 17 Calc., 84

5. ——— Consolidation of two separate salvage claims—Separate costs.—When two separate salvage actions are consolidated at the instance of the common impugnant, and no order is made giving the conduct of both to one plaintiff, the promovents are entitled to separate costs. Practice of the Court followed, and costs given on the ordinary scale provided for in the rules under the Civil Procedure Code, and not under the schedule relating to Vice-Admiralty actions. *IN THE MATTER OF THE STEAMSHIP “DRACHENFELS.” THE “RETRIEVER” v.*

## COSTS—continued.

## 1. SPECIAL CASES—continued.

THE "DRACHENFELS." THE "HUGHEL" v. THE  
"DRACHENFELS" . . . I. L. R., 27 Calc., 860

of the objections save as to two, which he declined he had no jurisdiction to entertain. The objector then made a special application to the Judge to obtain time to make an application with reference to these objections to the Court from which the decrees had been transferred, and accordingly time was granted him to do so; but, instead of applying, the objector transferred an appeal to the High Court against

11 C. L. R., 348

7. ————— Laches in bring-

present an appeal against the order of the Judge remanding the suit, and that he must proceed by way of appeal. The plaintiff having appealed, the order of the Judge was set aside; but it was held that by reason of his laches the plaintiff was disentitled to his costs. TUKER ALI v. SAADUT ALI

[5 N. W., 137

8. ————— Costs of successful appellant refused—Failure to prove exclusive title when set up—The costs of the appeal, though successful, were refused, because the defendant appellant had set up as his defence an exclusive title, which he had failed to prove. LACHMESWAR SINGH v. MADOWAR HOSSAIN

[I. L. R., 19 Calc., 253

I. R., 19 I. A., 48

9. ————— Dismissal of appeal—Time occupied in hearing of preliminary objection to appeal.—An appeal was dismissed on the ground that no appeal lay which was taken by the

## COSTS—continued.

## 1. SPECIAL CASES—continued.

respondents and was unsuccessful. TOOLSEE MONEY DASSEE v. SUDEVI DASSEE

[I. L. R., 28 Calc., 361

3 C. W. N., 347

of the Court. RAMANATH DUTT v. MATUNGINEM DOSSEE . . . 12 B. L. R., 110

11. ————— Compromise of

[9 B. L. R., Apr., 19

client. DOMUN v. EMMAMALLY

[I. L. R., 7 Calc., 301

13. ————— Suit for damages—Successful plaintiff's costs allowed between attorney and client.—In a case against a railway

14. ————— Mortgage and

15. ————— Redemption, suit

award him costs as between attorney and client. CHUNDER COOMAR CHATTERJEE v. KESAV CHANDRAN CHATTERJEE . . . 1 Ind. Jur., N. S., 224

the mortgage sued upon, in execution of a decree

**COSTS—continued.****1. SPECIAL CASES—continued.**

upon another mortgage, paid off the amount due to the plaintiff for principal and interest, and applied to the Court that he might be made a party, and that, upon his paying the plaintiff the costs of the suit to be taxed as between party and party, the plaintiff should be directed to re-convey the property to him free from all encumbrances. *Held* that the practice was to make the costs in such circumstances payable as between attorney and client, and not as between party and party. **OBHOY CHURN SEN v. DABENDRO NATH MULLICK** . . . **8 C. L. R., 437**

**16.** ————— *Change of attorneys during a pending suit—Costs of both attorneys realized by the second attorney—Attorney's lien for costs.*—Case in which, upon a change of attorneys during the pendency of a suit, there being no express agreement as to the first attorney's costs, it was *held* that the second attorney, on recovering the costs of both attorneys from the client after notice that the costs of the first attorney were unpaid, did so on behalf of the first attorney to the extent of his share of the costs. **ORE v. NORENDRA NATH SEN** [I. L. R., 19 Calc., 368]

**17.** ————— *Agreement as to costs between attorney and client—Change of attorney—Right of attorney to his taxed costs.*—Where *F*, an attorney, agreed to conduct a suit for his client and to accept Rs150 for his personal services, and not in respect of out-of-pocket costs and counsel's fees, and in the event of his client being successful to recover his full costs from the opposite party and to refund the Rs150, it was *held*, upon the client desiring to change to another attorney, that he could do so upon payment to *F* of his taxed costs. **GHASSEE JEMADAR v. NASSIRUDDIN MISTRY** . I. L. R., 28 Calc., 769

*See BASANTA KUMAR MITTER v. KUSUM KUMAR MITTER* . . . . . **4 C. W. N., 767**

**18.** ————— *Lien of attorney for costs—Application for costs to be paid out of money in hands of receiver in the suit—Practice.*—The attorneys for the plaintiff claimed a lien on the amount in the hands of the receiver of the Court to the credit of the plaintiff in a partition suit, for the costs of the suit which had been secured by the deposit with the attorneys of the title deeds of the plaintiff's family dwelling-house which formed a portion of the property sold by the receiver under the decree in the suit. *Held*, on an application by the attorneys for payment to them of such costs, that the lien could not be given effect to in summary proceedings of this nature, but should form the subject of a regular suit. Except in such a suit, it is not the practice of the Court to make any order for payment of costs between an attorney and his client. **Domun v. Emaum Ally**, I. L. R., 7 Calc., 401, followed. **MAHOMMED ZOHRUDDIN v. MAHOMMED NOOROODDEEN** . I. L. R., 21 Calc., 85

**19.** ————— *Attorney's lien for costs—General jurisdiction of High Court over all suitors—Compromise by parties without knowledge of attorney—Lien, Notice of.*—The decree obtained by the plaintiff in this suit was satisfied by

**COSTS—continued.****1. SPECIAL CASES—continued.**

defendant behind the back of the plaintiff's attorney, although he had notice of the lien for costs of the plaintiff's attorney. The plaintiff's attorney thereupon applied for an order upon the plaintiff and the defendant, or either of them, to pay his costs. *Held* the High Court has general jurisdiction over its suitors; that although a defendant has the right to compromise with a plaintiff without the knowledge of the plaintiff's attorney, such compromise must be made with the honest intention of ending the litigation, and not with any design to deprive the attorney of his costs, and he cannot make a payment to the plaintiff under that compromise, if he has notice of the lien for the costs of the plaintiff's attorney. **KHETTER KRISTO MITTER v. KALLY PROSONNO GHOSE** . . . . . **I. L. R., 25 Calc., 887**  
**2 C. W. N., 508**

**20.** ————— *Attorney's costs—Summary jurisdiction—Collusive and fraudulent compromise to deprive attorney of his costs—Compromising suit without knowledge of attorney.*—An attorney applied for an order that the plaintiff and the defendant, or either of them, should pay to him his taxed costs on the ground that they had fraudulently and collusively compromised the suit with the object of depriving him of his costs. *Held* that in cases of this kind where charges of fraud and collusion are made, it is inconvenient for the Court to dispose of the issues on affidavits alone. *Held*, also, that it is not the practice of the Court to interfere summarily between attorneys and their clients as regards claims for costs. **Khetter Kristo Mitter v. Kally Prosonno Ghose**, I. L. R., 25 Calc., 887, dissented from. **RAMDOYAL SEROWGIE v. RAMDOY** [I. L. R., 27 Calc., 269]  
**4 C. W. N., 208**

**21.** ————— *Award—Application to file an award—Act VIII of 1859, s. 327.*—Where an application under s. 327, Act VIII of 1859, was considered as a regular suit, the Judge was right in decreeing costs as in a regular suit. **ROY PRIYANATH CHOWDHRY v. PRASANA CHANDBA ROY CHOWDHRY** [2 B. L. R., A. C., 249]

**S. C. PREONATH CHOWDHRY v. RAMDHUN** [11 W. R., 104]

**22.** ————— *Bombay Minor's Act (XX of 1864)—Suit to recover costs of proceedings under.*—An action brought to recover costs of proceedings held under Act XX of 1864 is not maintainable when the Court, before which such proceedings were taken, has made no order as to the payment of such costs. **KABIR VALAD RAMJAN v. MAHADU VALAD SHIWAJI** . . . . . **I. L. R., 2 Bom., 360**

**23.** ————— *Certificate under Act XL of 1858—Costs of opposing grant of certificate.*—Where the widow of a deceased proprietor, as the guardian of his minor son, put in a petition for a certificate under Act XL of 1858, in which she represented that she was in possession of the whole of the deceased's property, specifying a particular pergunnah and its appurtenances, *Held* that, though she did not expressly ask for a certificate to

## COSTS—continued.

## I. SPECIAL CASES—continued.

manage the particular pergunnah named, as her petition was so worded as to obtain, and had the effect of obtaining, a certificate of that tenor, she must be held liable for the costs of a party entitled to object to the grant of such a certificate, and appealing with a view to its amendment, *FEDA HOSSAIN v. KHANBOORUNISSA* . 9 W. R., 459

24. ——— Collector—Costs of investigation into conduct of ameen—Power to award costs.—Upon the application of the Collector, who was a party to a suit, an enquiry was held by the Subordinate Judge into the conduct of a Civil Court

IN THE MATTER OF THE INDIAN COMPANIES ACT, 1882, AND IN THE MATTER OF T. F. BROWN & Co.  
[L. L. R., 14 Cal., 219]

GAZI . 2 B. L. R., A. C., 337: 11 W. R., 270

27. ——— Pro forma defendants—Sunt for contribution against co-sharers.—When co-sharers who have paid their share of re-

[Marah., 239: 1 Hay, 500]

28. ——— Pro forma de-

costs, which, however, should be a small sum,

## COSTS—continued.

## 1. SPECIAL CASES—continued.

sufficient to cover the costs of their appearing, *RAMPUTTY KOER v. KALSH CHURN SINGH*  
[14 W. R., 94]

29. ——— Suit for contribution against co-sharers, some of whom only were defaulters in payment of revenue

revenue, after deducting his own share, against all the co-sharers, the lower Court made the plaintiff pay the costs of the defendant, who had not made default in payment of revenue. Held that, since the payment by the plaintiff

in the proportion of their respective shares in the estate. *RADHA JIBON MUSTOOF v. FORLONG*  
[2 Hay, 122]

30. ——— Defendants—Conduct renders

*LALLAH BHUGWAN DOSS v. AKBAR*  
[1 Ind. Jur., N. S., 390]

31. ——— Conduct rendering them liable for costs—Defendant refused costs, though claim against him dismissed—Where a party's admissions and conduct induced the supposition of his liability for a claim, the Court refused him his costs, although the suit against him founded on such claim was dismissed. *SEENATH ROY v. GOLUCK CHUNDER SEIN* . 15 W. R., 348

32. ——— Unnecessary and unsuccessful defence in mortgage suit.—Sunt on a mortgage against A, the executrix under the will of the mortgagor and entitled to a life estate in the property. B, C, and D, the reversioners under the will, were also joined as defendants. They pleaded that they were not necessary parties, but joined A in disputing the claim in suit. The Court below decreed the claim in full with costs against A, but dismissed the suit with costs as against B, C, and D. Held that if the reversioners had confined their

*CHANDRA SINGH* . 4 C. W. N., 80

33. ——— Unscrupulous conduct of defendant.—Where the plaintiff brought

## COSTS—continued.

## 1. SPECIAL CASES—continued.

a series of charges and claims, the bulk of which he abandoned at the hearing and was defeated on others, costs were, on account of the defendant's unscrupulous conduct, given to the plaintiff, though he only recovered judgment to a trifling amount. **RAM GOBAIL CHATTERJEE v. BHOSHMOHEN BANERJEE**

[Cor., 123]

**34.** ———— *Defendant colluding with plaintiff.*—A defendant who colludes with the plaintiff and induces him to bring a suit for his benefit may be ordered to pay the costs of his co-defendants in the Court below. It seems that he may also be ordered to pay the costs of an appeal by the plaintiff. **BEEROO RAOON v. ANGOORDEO DEO NARAY SINGH** . . . . . **Marsh, 608**

**35.** ———— *Separate appearance of—Common defence.*—Where the defence is common and not separate, one set of costs should be awarded to all the defendants, even though they appear by separate vakils. **DE ASSIS v. DE AROOS** [17 W. R., 188]

**36.** ———— *Separate appearance of—Common defence.*—Several defendants were sued in respect of the same matter and their defences were identical, but they appeared separately. *Held* that, in dismissing the suit, the Judge properly allowed the defendants the costs of a joint defence. **JYOTISHEN MOOKHERJEE v. HIRAYDINGO BURDAL** . . . . . **Marsh, 85: 1 Hay, 182**

**KASHER NATH ROY CHOWDERY v. HELLODHUT ROY** . . . . . **2 W. R., 60**

**37.** ———— *Separate defence where defences are identical.*—Where the obligees of a bond brought a suit against their joint obligors, the heirs of their surety, a purchaser from these heirs of the property mortgaged in the money-bond, and one D, in which suit they claimed to recover the money due on the bond by the sale of the property mortgaged therein, a 6½ biswas share in certain property, and also by the sale of the property mortgaged in the security bond.—*Held* that one set of costs was enough for the heirs of S and the purchaser from them of the property mortgaged in the security bond, as their defences were identical, and that D's costs should be calculated on the value of the 6½ biswas, the decree of the Court of the first instance being modified to this extent. **BUTP SINGH v. ZAMUTL ABDIN** . . . . . **1 L. R., 9 All, 205**

**38.** ———— *Separate appearance of—Separate defences.*—Under the Code of Civil Procedure, it is the duty of the first Court to ascertain the costs of suit, i.e., the costs of all the parties to the suit; but when the first Court does not consider that the defendants have properly severed in their defence and properly employed different vakils, the Court ought not to allow more than one set of costs to the defendants, and should only specify in its decree the costs so allowed. **RAM CHUNDER SEN v. DOORGA NATH ROY** . . . . . **2 C. L. R., 152**

**39.** ———— *Separate appearance of.*—In a suit against several defendants to

## COSTS—continued.

## 1. SPECIAL CASES—continued.

recover possession of land, one of them stated in defence that he had nothing to do with it and made good his defence. The other defendants claimed to be entitled to the land and proved their title. The disclaiming defendant appeared by a separate pleader, and incurred a separate set of costs. *Held* that the Sudder Ameen rightly awarded a separate set of costs to him, and the Judge had not exercised a sound discretion in modifying the Sudder Ameen's decree, by awarding one set of costs only to all the defendants. **RAMCHANDRA GOSWAMI v. MITHAJI BAGCHI**

[2 B. L. R., A. C., 169]

**S. C. RAM CHUNDER GOSSAIN v. MITTHI LALL BAGCHEE** . . . . . **11 W. R., 19**

**40.** ———— *Separate appearance of—Suit to recover endowed property.*—Certain landed property, alleged to have been sold to an idol, and registered in the name of the vendee's infant son as shebait, had, after the death of that son, been mortgaged twice by the vendee, who succeeded to the office of shebait, and was mortgaged subsequently, on the death of the vendor, by his widow, to pay off the charge created by her husband. The last mortgage was foreclosed, and the mortgagee obtained a decree for possession. In a suit for the recovery of the property by a descendant of the vendee claiming as shebait of the idol, it was held that the zamindar and the patnidar, who were both compelled to appear for the protection of their interests, and whose defences were not necessarily identical, were entitled to separate costs. **GOSIND NATH ROY v. LUCHMEER KCOMABEE** 11 W. R., 38

**41.** ———— *Separate costs allowed to separate defendants—Receipt for costs.*—Where two separate sets of defendants were allowed separate costs,—*Held* it was not necessary to keep the whole amount in Court after levying it from the plaintiffs, until a joint receipt could be given by the whole of the defendants: the proper course was to give notice to the second set of defendants to come in and show what portion of the costs they were entitled to. **NETTER CHUNDER PAUL v. NUTUBONISIA BEEREE** . . . . . **9 W. R., 387**

**42.** ———— *Costs of defendants with separate interests consenting to decree.*—The rules relating to pleaders' fees by the Court on 13th June 1866 do not provide for the case of defendants who have separate interests, and who consent to a decree, the amount of costs to be allowed in such a case being in the discretion of the Court. **RAMPUTTY KOER v. KALEE CHURN SINGH**

[14 W. R., 94]

**43.** ———— *Costs of ijmal holders as defendants.*—Ijmal-holders, defendants, should be represented ijmal by one pleader and one set of pleadings, and are not entitled to separate costs. **BRINDABAN CHUNDER CHOWDERY v. RAM COOMIE CHOWDERY** . . . . . **1 W. R., 139**

**44.** ———— *Separate defence on charge of misappropriation—Joint charge.*—Under a charge against several defendants for having

## COSTS—continued.

## 1. SPECIAL CASES—continued.

jointly;  
bound to  
others,  
entitled.

SURMA v. SCOSHA DEBIA

U W. 21, 22

his costs in appeal. LEWIN v. MORRISON

[2 Agra, Pt. II, 151

AO Rent deposited

GURU DAS KINDE CHOWDHRY

[I L R, 31 Cal, 680

it was therefore not barred by limitation, and that, looking to the great delay there had been on the part of the applicant, he should not be allowed any costs. GIRDHARI v. SITAL PRASAD

[I L R, 11 All, 372

49. ——— Error or mistake—Proceedings initiated through error of Courts.—On the 14th February 1881, the High Court dismissed an application of the 22nd March 1883 by a punda-nashin lady for leave to appeal in *forma pauperis* from a decree, dated the 16th September 1882, the application, after giving credit for 50 days spent in obtaining the necessary papers, being out of time by 73 days. On the 16th August 1884, an order was passed allowing an application which had been made for review of the previous order to stand over, pending the decision of a connected case. On the 24th April 1885, the connected case having then been decided, the application for review was heard and dismissed. Nothing more was done by the appellant until the 14th June 1885, when, on her application, an order was passed by a single Judge allowing her, under s. 5 of the Limitation Act (XV of 1877), to file an appeal on full stamp paper, and she thereupon, having borrowed money on onerous conditions to defray the necessary litigation-fees, presented her appeal, which was admitted provisionally by a single Judge. Held by MAHMOOD, J., that the expiration of the 15th June 1885 was one which the

## COSTS—continued.

## 1. SPECIAL CASES—continued.

party, and that the appeal was dismissed with costs. HUSAINI BEGAM v. COLLECTOR OF MUZAFFARNAGAR

I L R, 9 All, 11

The Judge whether sufficient for the admission, holding

MAHMOOD, J., on that point was affirmed, and the appeal was eventually dismissed with costs. HUSAINI BEGAM v. COLLECTOR OF MUZAFFARNAGAR

I L R, 9 All, 655

49. ——— Fraud—Putting forward fabricated documents.—Where an ikramamah relied on by the respondents and on which the case depended was found to be fabricated, and the appellant was unsuccessful, no order was made as to costs, fabricated documents having also been put forward on behalf of the appellant. COOMARI RODESHWAR v. MASROOF KORA

L R, 13 L A, 20

50. ——— Fresh suit wrongly brought—Bringing fresh suit where appeal is the proper course.—Where the Court refused to grant a decree given in terms of a petition embodying

TERJEER U W. 21, 22

51. ——— Government—Suit for compensation for lands taken for railway.—The plaintiff, as ijaradar, claimed a sum of money as compensation for land taken compulsorily for the purpose of a railway, and which had been awarded and satisfying in the lands under him claimed a p

**COSTS—continued.****1. SPECIAL CASES—continued.**

to an excess in the demand of the farmer beyond that which he succeeded in establishing; and that Government was entitled to receive the costs which it had incurred from both parties, in the proportion in which each had failed in establishing his claim. **NUSEEROODEEN AHMED v. RAILWAY COMMISSIONERS** . . . Marsh., 91:1 Hay, 157.

**52. — Survey proceedings—Allegation of misconduct and collusion of survey officers.**—The act of the survey authorities in demarcating lands is a necessary and legal act, and Government cannot be saddled with costs unless it can be proved that its officers are wilful wrong-doers. A mere allegation of the plaintiff, to the effect that the defendant had colluded with the survey officers, is no reason for saddling the Government with costs. **COLLECTOR OF MOORSHEDEBAD v. RAMMOHINEE DOSSEE** . . . 1 Hay, 520

**53. — Application to sue in forma pauperis—Omission to make inquiry into pauperism—Civil Procedure Code, ss. 409, 412.**—*A* applied for leave to file a suit in forma pauperis against *B*. *B* resisted the application on the ground that *A* was a minor. The Government pleader also resisted on the ground that *A* was not a pauper. The Court, without inquiring into *A*'s pauperism, rejected the application solely on the ground that *A* was a minor, and that he was not properly represented by a next friend or guardian. The Court ordered all costs to be paid out of the minor's estate. The minor died soon afterwards. The Collector then applied to the Court to attach certain property in *B*'s hands which was alleged to form a part of the minor's estate. *B* objected, but the attachment was allowed. *Held*, on an application for revision of the order on which the order for costs against the minor's estate was held to be illegal and *ultra vires*, that no inquiry having been made into *A*'s pauperism and no order passed such as is contemplated in s. 409 or 412 of the Code, the Collector was not entitled to costs. **AMICHAND TALAKHAND v. COLLECTOR OF SHOLAPUR** . . . I. L. R., 13 Bom., 234

**54. — Grounds of appeal—Practice.**—If grounds of appeal which are absolutely untenable are joined with grounds which are tenable, in order to bring a case within the rule as to the value authorizing an appeal as of right, this matter may be considered in regard to the question of costs. **HUBRO DUBGA CHOWDHURI v. SARUT SUNDARI DEBI** [I. L. R., 8 Calc., 332

**55. — Guardian—Guardian ad litem—Misconduct.**—Where a guardian ad litem of an infant had been guilty of gross misconduct in putting executors to proof of a will which he wished to upset for his own private purposes, and which the evidence showed was to his knowledge duly executed by the testatrix in a sound state of mind,—*Held* that he was liable for the costs of the suit. **GOOLAM HOSSEIN NOOR MAHOMED v. FATMABAI** [I. L. R., 8 Bom., 391

**56. — Guardian ad litem—Decree for costs against—Civil Procedure**

**COSTS—continued.****1. SPECIAL CASES—continued.**

**Code, 1877, s. 458.**—The Civil Procedure Code does not authorize a Court to decree costs against the guardian of a defendant except in the case referred to in s. 458. **NARASIMHA RAU v. LAKSHMIPATI RAU** [I. L. R., 3 Mad., 263

**57. — Civil Procedure Code (1882), s. 220—Practice—Costs of guardian ad litem—Advance by plaintiff for costs of minor defendants—Contract Act (IX of 1872), ss. 68, 70—Right to recover amount advanced.**—Plaintiff, having, in a prior suit, sued the defendants, who were minors, and their father, for specific performance, was ordered by the Court to advance money to the guardian ad litem of the minors (who was appointed by the Court), to enable him to conduct their defence. Plaintiff succeeded, but the Court refused to provide in its decree for the repayment to plaintiff of the amount so advanced. On the plaintiff bringing this suit to recover that amount,—*Held per SUBRAMANIA AYYAR, J.*, (1) that the Court in which the prior suit had been brought had power neither to direct the plaintiff to make the advances to the guardian as had been done, nor to award the amount so paid as costs in the cause. The present suit, therefore, was not unsustainable for the reason that the subject-matter of it was one for the Court to have dealt with in the previous suit; (2) that the circumstances of the case were not such as to render the amount recoverable under s. 70 of the Contract Act, inasmuch as the defendants could not be said to have enjoyed the benefit of the expenditure; (3) that payments or charges connected with legal expenses in which infants are concerned may, in certain circumstances, come under the head of necessities within the meaning of s. 68 of the Contract Act. Disbursements properly made in defence of the suit by the guardian ad litem out of the plaintiff's advances might be allowable if it be alleged and proved that there were reasonable grounds for the defence put forward, though it proved unsuccessful. But that this ground could not now be relied upon on second appeal, inasmuch as it had not been put forward in the Court below, when an issue relating to it could have been framed. *Per DAVIES, J.*, that a matter of this nature can and should be settled in the suit in which it arises: and that where a plaintiff is successful, a supplementary issue should be framed and tried as to the amount due to him on account of advances made by him to the guardian ad litem for conducting the defence, and a decree passed in his favour for the total amount of costs found to have been properly incurred in the case by the guardian out of such advances. **VENKATA VIJAYA GOPALA RAJU v. TIMMAYYA PANTULU** [I. L. R., 23 Mad., 314

**58. — Indemnity, Contract of—Costs incurred in course of ascertaining and settling claim.**—In 1864 a lease of a house was granted to *A* for a term of ten years. The lease contained a covenant to repair. *A* died, and *B*, his administrator, assigned the lease to another, and it ultimately became vested in the plaintiff. In 1872 the plaintiff

## COSTS—continued.

## 1. SPECIAL CASES—continued.

to pay C, and for the amount of his own costs. The plaintiff gave notice to the defendants to intervene

dants the sum recovered from him by B, together with his own costs of defence. *Held* that, in the case of contracts of indemnity, the liability of the party indemnified to a third person is not only contemplated at the time of the indemnity, but is the very moving cause of that contract; and in cases of such a nature costs reasonably incurred in resisting, or reducing, or ascertaining the claim may be recovered. *Held*, therefore, that the costs incurred by B in the suit instituted against him by C, and those incurred by the plaintiff in the suit by B against him, were reasonably and properly incurred, and that he was entitled to recover them from the defendants. *PEPIN v. CHUNDER SEKHAR MOOKERJEE*

[I. L. R., 5 Calo., 811: 8 C. L. R., 187

[1 Mad., 360

*See BOMBAY, BARODA AND CENTRAL INDIA RAILWAY CO. v. SASSOON*. I. L. R., 18 Bom., 231

60. Jurisdiction—*Want of jurisdiction*—Power to give costs.—After notice served

*BOSE v. DHURENDHAR ROY*

[Marsh., 3: 2 Hay, 188

1 Ind. Jur., N. S., 38

*JUGGESHUR BUNWAZEE GOBIND v. CHUNDER SIRCAR*. Marsh., 375: 2 Hay, 344

[14 W. R., 313

## COSTS—continued.

## 1. SPECIAL CASES—continued.

Express power is now given to the Court by s. 220 of the Civil Procedure Code, 1882, to give costs in such a case.

63. Judge exceed-

64. Landlord and tenant—*Construction of contract to pay costs*.—M C M and others took a share of a turuff in panni by executing a kabulist in favour of R L D and others, which con-

of the other parties to the suit. *RAJ LUCKHER DERRA v. MOHESU CHUNDER MOJOMDAR* 14 W. R., 191

65. Letters of administration—

of the deceased husband. *JAIKISONDAS GOPALDAS v. HARKISONDAS HULLOCHANDAS* I. L. R., 2 Bom., 9

66. Litigation unnecessary—*Defendant not to blame for litigation*.—In a suit for rent which was dismissed on proof that the defen-

[5 N. W., 20

## COSTS—continued.

## 1. SPECIAL CASES—continued.

one act, admitted the claim, and retired from the contest. *KOSSELLA KOEN v. BENARY PATUCK* [12 W. R., 70]

80. ———— *Suit against several defendants dismissed for multifariousness.*

In a suit against 34 defendants to recover Rs. 20 highas of land 13 came in and defended separately, each in respect of his own portion of the land claimed. The suit was dismissed for multifariousness. Fixing a certain valuation (Rs. 440) for the suit so far as it was dismissed, the Judge allowed each defendant full costs upon that valuation (a vakils fee of Rs. 257 to each defendant, being in many instances greater than the value of the property in dispute. *Held* that this could not be a just and equitable way of awarding fees, that the best plan in the present case was to allow each defendant in respect of a plot exceeding 20 highas and not exceeding 40 highas, three gold mohurs; and of a plot less than 20 highas, two gold mohurs. *ROODER NARAIN ROY v. COOMAR NARAIN PATSAIK* 13 W. R., 320

70. ———— *Mortgage—Costs of enforcing mortgage.*—A mortgage is, as a general rule, entitled to the costs of enforcing his security; but where the Court, in consideration of his usurious bargain, declines to award them wholly or in part, the High Court will not interfere. *CARVALHO v. NUNDIR* [I. L. R., 3 Bom., 202]

71. ———— *Right to personal decree for costs against mortgagor.*—Where a mortgage-deed provided that the costs of any proceedings necessitated by the default of tenants in payment of rents should be deducted from the revenues, and there was no express promise by the mortgagor to personally pay these expenses, *Held* that the mortgagor was not entitled to a decree for such costs against the mortgagor personally. *GANESH DHARMIDHAR MAHARAJDEV v. KESHANRAV GOVIND KULGAVKRA* [I. L. R., 15 Bom., 625]

72. ———— *Civil Procedure Code (Act XIV of 1882), s. 221—Costs due by mortgagee to mortgagor—Set-off against the mortgage-debt.*—The mortgagor is entitled to set-off or deduct the amount of costs payable to him under the decree against or from the mortgage-debt payable by him. If the amount of the costs be larger than the mortgage-debt, the mortgagor is entitled to obtain possession at once of the mortgaged property and to recover the balance against the mortgagor. *SIDU v. BALI* I. L. R., 17 Bom., 32

73. ———— *Official Assignee—Payment of costs personally.*—Civil Procedure Code, XIV of 1882, s. 219—Practice.—If the Official Assignee defends a suit, he is liable, in the event of failure, to be ordered to pay the plaintiff's costs in the same way as any other defendant, and if the estate be insufficient to pay the costs, he will have to bear them personally. It is for him to protect himself by getting a guarantee of indemnity from the parties who set him in motion. *BEVIS v. TURNER* [I. L. R., 7 Bom., 484]

## COSTS—continued.

## 1. SPECIAL CASES—continued.

74. ———— *Appeal against order of adjudication of insolvency.*—The Official Assignee is entitled to his costs of appearing in an appeal against an order of adjudication. IN THE MATTER OF HAROON MAHOMED [I. L. R., 14 Bom., 183]

75. ———— *Parties—Parties added at hearing, Liability of, for costs.*—The plaintiffs having filed their plaint against parties *prima facie* liable to them upon the contract, and having opposed a claim made by the original defendants to have the suit dismissed as against them on their paying money into Court, and to have third parties added as defendants, *Held* that the plaintiffs having succeeded against the third parties ordered to be added as defendants, the added defendants were liable for the whole costs. *ASSARAM BURTEAH v. COMMERCIAL TRANSPORT ASSOCIATION* 2 Ind. Jur., N. S., 113

76. ———— *Parties in Court below not made parties to appeal.*—In the first Court the Government obtained their costs; the opposite party appealed, but did not make the Government a respondent. On appeal the decree of the first Court was reversed. *Held* that the Government, not having been made a party to the appeal, were entitled to recover their costs in the first Court. *GOVERNMENT v. LALJI SARU* 1 B. L. R., S. N., 23

*BHOYRUD CRUNDER DOSS v. WAJEDUNNISA KHATOON* 6 C. L. R., 234

77. ———— *Parties unnecessarily joined—Parties who have no interest in suit.*—Where parties who have no interest in a suit are unnecessarily made co-defendants, the lower Court ought, as a general rule, to award them costs; but as by s. 187, Act VIII of 1859, the awarding of costs is left to the discretion of the Court, no appeal lies from its decision. *COLLECTOR OF DACCA v. KUMALAKANT MOOKERJEE* 2 W. R., 33

78. ———— *Parties unnecessarily joined—Disclaimer of interest—Discretion as to costs.*—Although the question of costs is within the discretion of a Court, yet the Court is bound to give some reasons for the exercise of that discretion. A party disclaiming all interest in a suit and unnecessarily made a party to it is entitled to costs. *SHUMS EUSHI v. LALLA NUND RAM* 11 W. R., 48

79. ———— *Parties unnecessarily joined—Suit for foreclosure—Disclaiming defendants.*—Suits for foreclosure may be dismissed with costs against disclaiming defendants. *MACKIN TOSH v. NOBINMOXEY DOSSEE* [2 Ind. Jur., N. S., 16]

80. ———— *Party unnecessarily joined in suit.*—One of several judgment debtors jointly liable under a decree, having paid a larger amount than was due as between himself and his co-defendants, brought a suit to recover from them the excess paid by him. One of the defendants having paid more than his share, the claim against him was

## COSTS—continued.

## I. SPECIAL CASES—continued.

KASHEENATH SEN v. CHUNDERMONER DEBIA  
[9 W. R., 288]

added to costs simply because he had been present watching the case. COLLECTOR OF THE 24-PERGUNNAHS v. WILKINSON. 12 W. R., 444

82. ————— Party unnecessary.

SAMMA v. DEVARAKONDA KANAYA  
[1 L. R., 4 Mad., 134]

83. ————— Party disclaimed.

Doss. Marsh., 122; 1 Hay, 266

S. C. HUNGOONMAN DOSS v. KONGERUNISSA BEGUM  
[W. R., F. B., 40  
1 Ind. Jur., O. S., 42]

84. ————— Partition—Suit for partition by one of several co-sharers.—The costs of a suit for partition by one shareholder of a patni talukh against his co-sharers, as well as of effecting a partition,

[3 B. L. R., Ap., 120; 12 W. R., 160]

85. ————— Hindu widow.  
—In a suit by a childless Hindu widow for partition of her late husband's estate, from which she alleged

## COSTS—continued.

## I. SPECIAL CASES—continued.

might be paid by the sale absolutely of the share allotted to her, was refused. KISTOZAMINY DOSS v. MISTOONJOY DUTT. 11 B. L. R., Ap., 35

86. ————— Costs on unjustifiable partition suit—Civil Procedure Code, at suit at it is re. and brought unjustifiably and to the detriment of the others, ought to be paid by the plaintiff. BHOGUN MONUM DRY v. DINONATH DRY. 1 Hyde, 123

87. ————— Civil Procedure Code (1882), s. 222—Costs of partition charged under that section on shares of parties in partition

of a loan advanced by S C to him. In 1887 K S brought a suit to which S C was not made a party against K B for partition, and on 27th April 1888 obtained a decree under which a commission of partition was issued. In the course of the suit, both K S and K B died.—K B on 2nd September 1888 and K S on 30th March 1892—and by orders of Court their sons were put on the record in place of their respective fathers. The return to the commission of partition was made on 24th February 1892 and on 20th July 1893, and order was made confirming the return, and under s. 223 of the Civil Procedure Code, the costs of suit and of the commis-

described as a divided moiety. In an application made both in the partition and mortgage suits, by the defendants in the partition suit for an order for sale of a portion of their share of the property in order to pay the costs of the suit and of the partition and other debts and liabilities for which they were liable,—Held that the

( 1827 )

DIGEST OF CASES.

COSTS—continued.

1. SPECIAL CASES—continued.

mortgagee, having had the benefit of the partition, and having accepted and approved of it as part of his title, as shown by the proceedings for sale, was, though not a party to the partition suit, bound by the equities attaching to the mortgaged property as incidents of the partition. He was therefore, liable in respect of the partition created by the order of Court made in that suit under s. 222 of the Civil Procedure Code, and such proportionate share of those costs should be deducted in priority out of the proceeds of the sale of the mortgaged property. The defendants in the partition suit, however, not being parties to the mortgage suit, such an order could not be properly made at their instance, but they should enforce the charge for costs against the mortgagee by supplemental suit, and the Court stayed the sale of the property for a reasonable time to give the parties an opportunity of moving for stay of the sale in any such suit as might be instituted.

KHETTERPAL SHITIRUTNO v. KHEAL KHESTO BHUTTACHARJEE. KALLY CHURN BHUTTACHARJEE v. DURG A CHURN BHUTTACHARJEE  
DHUR COUCH v. KALLY CHURN BHUTTACHARJEE  
[I. L. R., 21 Cal., 904]

88. Partnership—*Suit relating to partnership.*—Under ordinary circumstances, the costs of a partnership suit should be paid out of the assets of the partnership, or, in default of assets, by the partners in proportion to their respective shares, unless any partner denies the fact of a partnership, or opposes obstacles to the taking of the accounts, and so renders a suit necessary, when he is usually made to pay the costs up to the hearing. RAM CHUNDER SHAH v. MANICK CHUNDER BANIKYA  
[I. L. R., 7 Cal., 428; 9 C. L. R., 157]

89. *Suit on bath-chitta.*—Some partners denying debt, others admitting debt.—In a suit brought against several partners to recover a sum of money on a bath-chitta, some of the partners denied the debt and the partnership, whilst others admitted both the partnership and the liability; the Court found in favour of the plaintiffs, and gave them a decree for the amount sued for with costs, and ordered the defendants who had disputed the debt and the fact of the partnership to pay the costs of the other defendants who had admitted their liability. JUGGUT CHUNDER ROY v. ROOP CHAND SHAW  
[I. L. R., 6 Cal., 811]

90. Payment into Court—*Money paid into Court at settlement of issues.*—At the settlement of issues, defendant paid money into Court, which plaintiff took out in part satisfaction of his claim, and raised an issue as to damages. The plaintiffs subsequently accepted the sum paid in full satisfaction and withdrew the suit. Held that the plaintiff was entitled to his costs up to and including those of the settlement of issues. ARDESIR LIMJI v. SOBARJI PESTANJI  
1 Bom., 70

COSTS—continued.

1. SPECIAL CASES—continued.

91. Admission.—A deposit of costs, accompanied by a prayer that they should be enquired into upon a particular principle, does not imply an admission on the part of the depositor of his obligation to pay costs to the extent of the deposit. LEELEANTUNG SINGH v. COURT OF WARDS  
14 W. R., 387

92. Civil Procedure Code (1882), s. 379—*Suit for injunction or damages.*—Payment into Court by defendant to satisfy plaintiff's claim—Costs in such case—Costs—Civil Procedure Code (1882), s. 220—Discretion of Court.—The plaintiffs sued alleging certain windows in their house to be ancient windows and complaining that a building in course of erection by the defendant would, when completed according to the building plan, obstruct the light through the said windows. In his written statement the defendant denied that the plaintiffs' windows were ancient, and that the plaintiffs were entitled to the light and air as an easement. At the time of filing his written statement, the defendant paid into Court the sum of Rs 200, which in his written statement he stated was more than sufficient to compensate the plaintiffs for any damages they might sustain, and which he (defendant) paid in without prejudice to his contentions, but for the sake of peace and to avoid litigation. At the hearing the plaintiffs abandoned their claim for an injunction, but insisted that they were entitled to more than Rs 200 as damages. The Court found that the plaintiffs' windows were ancient, but that the Rs 200 paid into Court were sufficient damages. It therefore ordered that the defendant should pay all the plaintiffs' costs up to the date at which the Rs 200 were paid into Court, and as to their subsequent costs that the defendant should pay three-fourths of the plaintiffs' subsequent costs, and the plaintiffs should pay to the defendant one-fourth of the defendant's subsequent costs. The Court offered to simplify its order by directing the defendant to pay all the costs of the plaintiffs up to the date of paying the Rs 200 into Court and half the plaintiffs' taxed costs subsequent to that date. The defendant appealed, contending that under s. 379 of the Civil Procedure Code (Act XIV of 1882) the plaintiffs' costs subsequent to the payment into Court should have been ordered to pay all the defendant's costs subsequent to the payment into Court. Held that the suit was not one to recover a debt or damages, and therefore, s. 379 of the Civil Procedure Code did not apply. That being so, the Judge had full discretion under s. 220 of the Civil Procedure Code to apportion the costs, and the Court of Appeal would not interfere with that discretion. Held, also, that in cases not being suits to recover a debt or damages where money is paid into Court, the principle underlying s. 379 of the Civil Procedure Code ought to regulate the discretion of the Court in directing the payment of costs. LUXUMON NANA PATIL v. MOROBA RAMCHISHNA  
[I. L. R., 21 Bom., 502]

93. Payment out of Court—*Failure to join in application to take money out of Court.*—Suit for share of money.—A suit by A having been decreed and execution proceedings taken

## COSTS—continued.

## 1. SPECIAL CASES—continued.

cut, the judgment-debt is paid into Court the amount decreed. Subsequently the decret-holder (A) and his

of the Subordinate Judge was correct and just  
*ASOODHYA DOSS v. MUTHOOZA DOSS* 23 W. R., 14

94. ———— *Plaintiffs—Separate appearance of plaintiffs.*—Plaintiffs in the same interest should be represented by the same pleader (or set of pleaders, no costs being allowed for others. *JANKIBAI v. ATMARAM BAHURAY* 8 Bom., A. C., 241

*SZETA PATTI MAHADEVI v. SURYUDAMMA*  
 [I. L. R., 18 Mad., 128

96. ———— *Pleas taken out of time—Pleas taken after hearing of evidence—Plea of res judicata.*—Costs not allowed where the plea of *res judicata* was not raised until after all the evidence had been taken. *RUN BAHADOOR SINGH v. LUCHO KOOR*

[I. L. R., 6 Cal., 406; 7 C. L. R., 251

that three of the properties were ancestral and joint; but as to the other items, the second defendant stated that they were the self-acquired property of her

rejected the plaint. On appeal, *held* by *PETRE-BAY, C.J.*, and *NORRIS, J.*, that the plaint was

## COSTS—continued.

## 1. SPECIAL CASES—continued.

sufficiently stamped. The only relief prayed for was partition, and for the purposes of the stamp the cause of action which is stated in the plaint,

*GANGULI v. ASHUTOSH GANGULI*  
 [I. L. R., 20 Cal., 762

[23 W. R., 463

*See* *MADAN THAKUR v. LOPEZ*  
 [9 B. L. R., Ap., 22: 18 W. R., 253

*UMATUL FATIMA v. AZHUR ALI*  
 [9 B. L. R., Ap., 23 note: 15 W. R., 356

*SARODA PRASAD MULLICK v. LUCHIMPAT SINGH DUGAR* 9 B. L. R., 23 note: 18 W. R., 69

and *NIL MADHUB DOSS v. BISSUMDHEN DOSS*  
 [21 W. R., 411

*v. PROSUNNO COOMAR SANNYAL*  
 [I. L. R., 10 Cal., 106

101. ———— *Probate—Costs of obtaining probate—Liability of residuary estate for costs.*—The appellant cited the respondent, who was the executor of one T, to bring in and prove his testator's will. The Division Court (*STABLEING, J.*) ordered the respondent to lodge the will in Court and to take out

**COSTS—continued.**

1. SPECIAL CASES—continued.

**COSTS—continued.**

1. SPECIAL CASES—continued.

mortgagee, having had the benefit of the partition, and having accepted and approved of it as part of his title, as shown by the proceedings for sale, was, though not a party to the partition suit, bound by the equities attaching to the mortgaged property as incidents of the partition. He was, therefore, liable in respect of a proportionate share of the charge for costs of the partition created by the order of Court made in that suit under s. 222 of the Civil Procedure Code, and such proportionate share of those costs should be deducted in priority out of the proceeds of the sale of the mortgaged property. The defendants to the partition suit, however, not being parties to the mortgage suit, such an order could not be properly made at their instance, but they should enforce the charge for costs against the mortgagee by supplemental suit, and the Court stayed the sale of the property for a reasonable time to give the parties an opportunity of moving for stay of the sale in any such suit as might be instituted.

KHETTERPAL SMITHUNO v. KHEAL KRISTO BHUTTAACHARJEE. KALLY CHURN BHUTTAACHARJEE r. DURGACHURN BHUTTAACHARJEE. SMITH-DHUR COUCH v. KALLY CHURN BHUTTAACHARJEE

[I. L. R., 21 Cal., 904]

88. Partnership.—*Suit relating to partnership.*—Under ordinary circumstances, the costs of a partnership suit should be paid out of the assets of the partnership, or, in default of assets, by the partners in proportion to their respective shares, unless any partner denies the fact of a partnership, or opposes obstacles to the taking of the accounts, and so renders a suit necessary, when he is usually made to pay the costs up to the hearing. *RAM CHUNDER SHAH v. MANICK CHUNDER BANIKYA* [I. L. R., 7 Cal., 428: 9 C. L. R., 157]

89. *Suit on bath-chitta*—Some partners denying debt, others admitting debt.—In a suit brought against several partners to recover a sum of money on a bath-chitta, some of the partners denied the debt and the partnership, whilst others admitted both the partnership and the liability; the Court found in favour of the plaintiffs, and gave them a decree for the amount sued for with costs, and ordered the defendants who had disputed the debt and the fact of the partnership to pay the costs of the other defendants who had admitted their liability. *JUGGUT CHUNDER ROY v. ROOP CHAND SHAW* [I. L. R., 6 Calc., 811]

90. Payment into Court—At the settlement of issues, defendant paid money into Court, which plaintiff took out in part satisfaction of his claim, and raised an issue as to damages. The plaintiffs subsequently accepted the sum paid in full satisfaction and withdrew the suit. *Held* that the plaintiff was entitled to his costs up to and including those of the settlement of issues.

**COSTS—continued.**

—continued.  
1. SPECIAL CASES—continued.

**COSTS—continued.**  
**1. SPECIAL CASES—continued.**

**91.** \_\_\_\_\_ *Deposit of costs*  
*—Admission.*—A deposit of costs, accompanied by a  
 prayer that they should be enquired into upon a  
 particular principle, does not imply an admission on  
 the part of the depositor of his obligation to pay  
 costs to the extent of the deposit. **LEE LAMUND**  
**SINGH v. COURT OF WARDS** • **14 W. R., 387**  
 \_\_\_\_\_ *Civil Procedure*  
*Suit for injunction or damages*

particulars of the deposit of the 14 W. R.,  
costs to the extent of the deposit  
SINGH v. COURT OF WARDS

92. Code (1882), s. 379—Suit for injunction or damages  
—Payment into Court by defendant to satisfy  
plaintiff's claim—Costs in such case—Costs—Civil  
Procedure Code (1882), s. 220—Discretion of  
Court.—The plaintiffs sued alleging certain windows  
in their house to be ancient windows and complaining  
that a building in course of erection by the defendant  
would, when completed according to the building plan,  
obstruct the light through the said windows. In his  
written statement the defendant denied that the  
plaintiffs' windows were ancient, and that the plaintiffs  
were entitled to the light and air as an easement.  
At the time of filing his written statement, the defen-  
dant paid into Court the sum of R200, which in his  
written statement he stated was more than sufficient  
to compensate the plaintiffs for any damages they  
might sustain, and which he (defendant) paid in  
without prejudice to his contentions, but for the sake  
of peace and to avoid litigation. At the hearing the  
plaintiffs abandoned their claim for an injunction,  
but insisted that they were entitled to more than  
R200 as damages. The Court found that the plain-  
tiffs' windows were ancient, but that the R200 paid  
into Court were sufficient damages. It therefore  
ordered that the defendant should pay all the plain-  
tiffs' costs up to the date at which the R200 were  
paid into Court, and as to their subsequent costs the plain-  
tiffs' subsequent costs, and the plaintiffs should pay  
to the defendant one-fourth of the defendant's subse-  
quent costs. The Court offered to simplify its order  
by directing the defendant to pay all the costs of the  
plaintiffs up to the date of paying the R200 into Court,  
and half the plaintiffs' taxed costs subsequent to that  
date. The defendant appealed, contending that under  
s. 379 of the Civil Procedure Code (Act XIV of 1882)  
the plaintiffs should have been ordered to pay all the  
defendant's costs subsequent to the payment into Court.  
Held that the suit was not one to recover  
debt or damages, and therefore s. 379 of the Civil  
Procedure Code did not apply. That being so, the  
Court had full discretion under s. 220 of the Civil  
Procedure Code to apportion the costs, and the Court  
would not interfere with that discretion.  
Held, also, that in cases not being suits to recover  
debt or damages where money is paid into Court  
the principle underlying s. 379 of the Civil Procedure  
Code ought to regulate the discretion of the Court  
directing the payment of costs. LUXMUNJI  
PATIL v. MORABA RAMOBISHNA

[I. L. R., 21 B.]

Payment out of  
the deposit to take  
the amount of the  
deposit into account  
in the calculation of  
the costs.

93. ————— **Payment out of Court—**  
*Failure to join in application to take money out of Court—Suit for share of money.—A suit by A having been decreed and execution proceedings taken*





## COSTS—continued.

## 1. SPECIAL CASES—continued.

which they had taken an active part, but the general costs of hearing in the lower Court, except so far as the suit was their suit. B was liable for the costs throughout. The appellant (defendant) was not entitled, by bringing the company on the record against their will, to obtain an additional security for the costs already incurred in the lower Court. The assignee of a decree who is made respondent in an appeal from it and takes no steps actively to support it, ought not to be ordered to pay costs. *RAMESH CHANDRA v. RITIK*

I. L. R., 20 Bom., 187

Code, and the judgment was reversed.

for them in the sense that they had any voice or control in the conduct of it, they were not party respondents, though they might fall under the category of persons interested under s. 20, and so might be bound by the decision. The decree must therefore be amended by limiting the order as to the payment of costs to the plaintiffs Nos. 1 and 2. *SURESH CHANDRA v. BAIKUNTH DESAI*

I. C. W. N., 65

## COSTS—continued.

## 1. SPECIAL CASES—continued.

is brought for the principal sum and interest due on a mortgage, the High Court gave costs, although the decree was for less than Rs. 1,000, as the Small Cause Court had no jurisdiction. *MINTENOR DUTT v. KAMRAN DOSAEE*

1 Ind. Jur., N. S., 95

Suit on a con-

Court an uncontrolled discretion as to costs in suits. *SARAPATI MODALITAR v. NARAYANAMI MODALITAR*

1 Mad., 115

## 114. Civil Procedure

Code, 1859, s. 157.—Portion of costs given to losing party.—Portion of the costs awarded to the defendant in exercise of the discretion given by Act VIII of 1859, s. 187, where in a suit for a fine jewels it appeared on the evidence of the plaintiffs that they were not worth so much as stated in the plaint, and the suit might have been brought in the Small Cause Court. *SARAPATI MODALITAR v. NARAYANAMI MODALITAR*

1 Hyde, 172

## 115. Act XXVI of

1858, s. 3.—Small Cause Court suit brought in High Court.—The fact that a suit was brought in the High Court because it was thought necessary to attach the defendant's property before judgment, which could not have been done by the Small Cause Court, does not take the case out of the operation of s. 3, Act XXVI of 1858. *HARAN CHANDRA GOSWAMI v. BAIKUNTH DESAI*

12 Hyde, 237

## 116. Small Cause

Court Act (XXVI of 1858), s. 2.—Mortgage, loan suit by a mortgagee, the prayer of the plaint was for a decree for Rs. 100 with interest, and for costs one or more in default of payment. Held that it was an action within s. 2 of Act XXVI of 1858, and, therefore, the plaintiff was not entitled to costs. *KARSI THAKUR CHITRADEE v. KIRANDEE DESAI*

12 Ind. Jur., O. C., 27

## 117. Appellate Court

Act XXVI of 1858, s. 3.—Appellate Court, Power of the Court to award costs.—The Court has power to award costs in a suit brought in the High Court, where the plaintiff has failed to establish his case, and the defendant has succeeded in his defence. *SARAPATI MODALITAR v. NARAYANAMI MODALITAR*

12 Ind. Jur., O. C., 27

I. C. W. N., 65

Small Cause Court

Act IX of 1859.—Suit on a mortgage.

I. L. R., 20 Bom., 187

Small Cause Court

Act IX of 1859.—Suit on a mortgage.

**COSTS—continued.****I. SPECIAL CASES—continued.**

Small Cause Court brought by reason of there being no process of that Court whereby satisfaction of its decree could be obtained.—*Held* that the High Court had power to award to the plaintiff his costs of suit. Under the circumstances of the case, costs were not given. *MADAN MOHAN BOSH v. LAWRENCE*

[1 B. L. R., O. C., 68]

119. ———— *Act XXVI of 1864, s. 9—Set-off.*—Where the defendant proved a set-off against the plaintiff, and thus reduced the amount which he (plaintiff) was entitled to recover from the defendant for breach of contract.—*Held* that, notwithstanding the provisions of s. 9 of Act XXVI of 1864, the plaintiff was entitled to his costs. *KISHORCHAND v. MADHWAJ*

[I. L. R., 4 Bom., 407]

120. ———— *Presidency Small Cause Courts Act (XV of 1882), s. 22—Presidency Small Cause Courts Act (I of 1895), s. 11—Suit brought before, but determined after, the passing of Act I of 1895—Certificate for costs—General Clauses Consolidation Act (I of 1868), s. 6.*—The plaintiff, before the passing of Act I of 1895, instituted in the High Court a suit to recover from the defendant a sum of over R2,000, which was reduced to a sum of less than R2,000 before the hearing, and therefore below the limit for suits cognizable by the Small Cause Court. At the time of its institution, Act XV of 1882 was applicable, by s. 22 of which Act a plaintiff was deprived, in a suit cognizable by the Small Cause Court, of his costs if he obtained a decree "for less than R2,000," unless the Judge who tried it certified it was a fit case to be tried in the High Court. The suit was not determined until after the passing of Act I of 1895, by s. 11 of which the deprivation of costs applied to cases in which the plaintiff obtained a decree for less than R1,000. The Judge made a decree in favour of the plaintiff and, without certifying that the case was one fit to be brought in the High Court, he allowed the plaintiff the costs of the suit. *Held*, on appeal, that the case was governed by s. 6 of the General Clauses Consolidation Act (I of 1868); Act I of 1895 was not applicable, and the plaintiff was not entitled to his costs of suit. *The Principle of Deb Narain Dutt v. Narendra Krishna, I. L. R., 16 Calc., 267, applied.* *ISMAIL ARIFF v. LESLIE* I. L. R., 24 Calc., 399

[I. C. W. N., 18]

121. ———— *Right of plaintiff recovering less than R2,000 in High Court—Presidency Small Cause Court Act (XV of 1882), s. 22—Presidency Towns Small Cause Court Amendment Act (I of 1895)—General Clauses Consolidation Act (I of 1868), s. 6.*—In this suit the plaintiffs recovered a total sum of R1,907 from the defendant for breach of contract. The suit was brought in 1894. It was contended for the defendant that s. 22 of the Presidency Small Cause Court Act (XV of 1882), which was in force at the date of the institution of the suit, applied to the case, and that under that section the plaintiffs, although successful, were not entitled to their costs. *Held* that the plaintiffs

**COSTS—continued.****I. SPECIAL CASES—continued.**

were entitled to recover costs. The power to award costs is derived entirely from Acts of the Legislature, and in making the award the Court cannot base its decision on provisions which have been repealed and are no longer effective at the time its order is passed. *Held*, also, that s. 6 of the General Clauses Act (I of 1868) did not apply to the case. *Ismail Ariff v. Leslie, I. L. R., 24 Calc., 398*, not followed. *YONOSUKE MITSUE v. OOKERDA KURTSY*

[I. L. R., 21 Bom., 779]

122. ———— *Special appeal—Costs of special appeal after remand by High Court.*—If a case, after being decided in appeal by the Zilla Court, is brought before the High Court in special appeal and is remanded, the costs of the special appeal can only be recovered if the High Court's order of remand provides that they are to abide the decision on appeal below. *DIGAMBU CHATTERJEE v. RAM ROODRO GUNGOPADHYA* . . . 13 W. R., 39

123. ———— *Stay of execution—Application for stay of execution—Practice.*—Where the defendants in an original suit applied to the Appellate Court for stay of execution of the decree pending the appeal.—*Held* (BANERJEE, J., dissenting) that the applicant who asked for the indulgence must pay the costs of the application. *CHUNI LAL v. ANANTRAM* [I. L. R., 25 Calc., 893]

124. ———— *Suit or appeal only partly decreed—Discretion of Court in awarding.*—It is not correct in law or justice to say that costs must be invariably awarded in proportion to the amount decreed and dismissed. The Court can exercise the largest discretion in the matter; but this discretion is to be exercised with special reference to all the circumstances of the case, including the conduct of the parties. *SHEO DYAL TEWARER v. JUDONATH TEWARER. SHEO DYAL TEWARER v. BISHONATH TEWARER. SHIB DYAL TEWARER v. BISHONATH TEWARER. JUDONATH TEWARER v. BISHONATH TEWARER*

[9 W. R., 61]

125. ———— *Failure as to portion of special appeal.*—Where a special appellant to the High Court failed as to a portion of his appeal, the costs of that Court were decreed against him. *HERRA RAM BHUTTACHARJEE v. ASHRAF ALI* [9 W. R., 103]

126. ———— *Proportionate costs on partial decree.*—In cases of partial decree, costs should be awarded to both parties in proportion to the amount decreed and dismissed. *NINBOORA v. HEERARAM MISSEB* . . . 1 Hay, 277

127. ———— *Costs to defendants on sum in excess of what plaintiff is entitled to.*—When a plaintiff has asked for a sum which is in excess of what the Court holds him entitled to, and to which a lower rate of pleader's fee or of stamp duty applies than to the rest of the claim, the defendant who succeeds in that part of the case is entitled to recover the costs applicable to that particular part of

## COSTS—continued.

## 1. SPECIAL CASES—continued.

the subject-matter (BAYLEY, J., dissenting). *BAMA-  
BOONDERY DEBIA v. ROGERS* 7 W. R., 137  
Upheld on review 8 W. R., 55

portioned to as was given in the  
cable to that matter upon which he has succeeded.  
*TARACHAND MOOKERJEE v. JADOONATH MOOKERJEE*  
[Marsh., 79:1 Hay, 141

*JADOONATH MOOKERJEE v. TARACHAND MOOKERJEE*  
[1 Ind. Jur., O. S., 103

120. ———— *Order decreeing  
costs in proportion.*—An order decreeing to plaintiff  
his costs in proportion must be taken to mean as if

*REVENUE DEPARTMENT v. JADOONATH MOOKERJEE* 4 W. R., MIA., 9

130. ———— *Unsuccessful  
plaintiff as to whole claim.*—Where a plaintiff is  
entitled to some part of his claim, he ought not to be  
deprived of the benefit of the decree by such an order  
as to costs as would make him liable to the defendant  
for more than he would himself recover. *RAM  
CHANDER CHOWDHRY v. MARIOTT* 15 W. R., 485

131. ———— *Plaintiff only  
partly successful.*—Pressure by defendants to sue.—  
Although the plaintiff was unable to satisfy the Judge  
below as to each item of property for which she sued  
and did not obtain a decree for the full amount claimed;  
yet she was held entitled to recover the whole of  
the costs incurred by her in a suit into which she had  
been forced by the defendants for the recovery of her  
property. *SHIB PERSHAD CHUCKERBUTTY v. GUNGA  
MONEE DEBEE* 18 W. R., 391

at the rate of 2 per cent. on the amount disallowed,  
on the ground that such was in accordance with the  
practice not only of the Court of the Munsif, but of  
the First Subordinate Judge of the district. Held  
that the method adopted was erroneous, and that the  
proper mode of giving effect to such a decree was to  
calculate the amount of the costs of the suit as laid,  
and then divide the entire sum proportionately  
between the parties according as they have respectively  
succeeded or failed. *Bamasoondery Debia v. Rogers*,  
7 W. R., 127, followed. *LECKIE v. JOY GOBINDO  
NATH ROY* 7 C. L. R., 114

## COSTS—continued.

## 1. SPECIAL CASES—continued.

the general rule that the costs shall be  
the costs. *BADRA PERSHAD SINGH v. RAM PAR-  
MESWAR SINGH*

[I. L. R., 9 Cal., 797: 13 C. L. R., 22

134. ———— *Suit for damages  
—Decree for nominal damages.*—Costs to defendant  
on difference.—Where a suit for damages was par-  
tially decreed on a finding of nominal damages, and  
costs on the amount undecreed were awarded to the  
defendant with interest.—Held that there was no  
good reason for such a course, and no ground of jus-  
tice for saddling the plaintiff with defendant's costs.  
*MOSSEUTY v. MUNGOBY* 24 W. R., 89

High Court upon a decree of the  
if not provided for by the decree. *LEELANUND  
SINGH v. COURT OF WARDS* 14 W. R., 387

portion of his claim which was disallowed. *HAREY-  
DER KISHORE SINGH v. ADMINISTRATOR GENERAL  
OF BENGAL* I. L. R., 12 Cal., 357

137. ———— *Suit for repara-  
tion or damages.*—Decree refusing to award, and not  
giving damages.—"Substantial success."—*See*

**COSTS—continued.****1. SPECIAL CASES—continued.**

for an injunction or damages for obstruction by the defendant of the plaintiff's light and air, the defendant paid R200 into Court. The first Court granted an injunction, but on appeal the decree was varied, and an injunction refused, but R500 damages given to the plaintiff. On the question of costs, it was argued for the defendant (appellant) that he should be given his costs of appeal, as he had succeeded in setting aside the injunction granted by the lower Court, and should also get his costs of hearing in the lower Court, as the whole contest there had been as to the right to an injunction, which in appeal had been refused. The defendant had paid R200 into Court when he filed his written statement, and would have paid more if he could have obtained any indication from the plaintiff of the amount that would satisfy him. Nothing, however, would satisfy the plaintiff but an injunction, and he had failed to get it. *Held* that the plaintiff should have his costs of hearing in the lower Court, and that each party should pay his costs of the appeal and of the proceedings on the rule for an injunction before the trial, the ordinary rule should be observed, and the costs should follow the event. The event in this case was that the plaintiff had proved his case against the defendant, although he had not got the precise form of relief which he wanted. If a party substantially succeeds, he is entitled to his costs. **GHANASHAM NILKANT NADKARNI v. MOROBA RAM-CHANDRI PAI** . . . **I. L. R., 18 Bom., 474**

**138.** ——— **Summary suit for possession—Cases under s. 15, Limitation Act, XIV of 1859—Act XX of 1865—Pleader's fees.**—In cases under s. 15, Act XIV of 1859, it was in the discretion of the Court to give costs, either as provided in s. 1 of the rules passed by the High Court under Act XX of 1865 or (if the proceedings be a miscellaneous case) according to s. 8 of those rules. **RADHA KRISTO CHAKLANUVIS v. KALEE PROSSONO ROY**

**[15 W. R., 268]**

**139.** ——— **Tender—Amount stipulated for in contract not tendered—Right of plaintiff to come to Court for determination of amount of compensation.**—In a suit on a bond which stipulated for interest at 6 per cent. and 24 per cent. interest from date of loan in case the terms of the bond were not complied with, the defendant tendered what he considered sufficient compensation to the plaintiff before suit, and claimed exemption from payment of interest and costs. *Held* that, as the defendant had not tendered the amount stipulated for in the bond, the plaintiff was justified in coming to the Court to obtain a decision as to the rate of compensation which should be paid and was entitled to his costs. **VENGDES-WARA PUTTER v. CHATU ACHEN**

**[I. L. R., 3 Mad., 224]**

**140.** ——— **Third persons, Payment of costs by—Civil Procedure Code, 1859, s. 187—Power of Court to order costs to be paid by person not a party to the suit—Sham plaintiff.**—**A L D** and others having got a decree in a suit in which **S B D**, a purdah-nashin, was plaintiff, a rule

**COSTS—continued.****1. SPECIAL CASES—continued.**

*nisi* was obtained by them against **J C S** and another, on the ground that he was the real plaintiff and **S B D** only a nominal one. It appeared that **S B D** had no means of her own, but lived in the house of **J C S**, who could explain nothing of her circumstances, or why she was residing in his house; but he stated that she had purchased the former plaintiff's right in the suit against a decree, she having been previously uninterested in the matter, and the only reason suggested for her doing so was that a small portion of the premises in question would serve for carrying out a religious purpose said to be entertained by her. The Court found that **S B D** was only a sham plaintiff, and that **J C S** was the real one, and the rule was made absolute. *Held* that the words "another party" in s. 187 of Act VIII of 1859 should be read as if identical with "another party to the suit." *Held*, also, that the Court cannot, by its judgment in any given suit, deal directly with persons not before it in that suit; that the Court has the same power of directing that the costs of any party to a suit for the recovery of land shall be paid by a person who is not on the record, as the late Supreme Court had, and as the Courts at Westminster still possess and exercise; that the recovery of costs from the real plaintiff in a suit in which the plaintiff on the record is only a sham one is not a step in the proceedings in any particular suit, nor can it be made the subject of a separate plaint, but is of the nature of a substantive proceeding in personam, and is within the equitable jurisdiction of the Court; that if the plaintiff on the record in a suit be only a sham one, the defendant may proceed against the real plaintiff for costs; that the real plaintiff in a suit in which the one on the record is a sham plaintiff is liable for the costs. **BAMA SUNDERY DOSSEE v. ANUNDOLOLL DOSS** . . . **Bourke, O. C., 44**

**Affirmed on appeal** . . . **Bourke, A. O. C. 98**

**S. C. JOINTEE CHUNDER SKIN v. ANUNDO LALL DAS** . . . **14 W. R., O. C., 1**

**141.** ——— **Person setting Court in motion for improper purpose—Champany and maintenance.**—Where the Court finds any person, though not a party to the suit, guilty of champany or maintenance, and setting in motion the process of the Court for improper purposes, such person will be made to pay the costs of such proceeding. **JUG-GESSUR COOWAR v. PROSSONO COOMAR GNOSH**

**[1 Ind. Jur., N. S., 282]**

**142.** ——— **Order for payment of costs by person not party to the suit, and after dismissal of suit—Power of Mofussil Courts.**—The plaintiffs brought a suit for the recovery of certain property, and **R** and **D**, being desirous of entering into a transaction for the purpose of assisting the plaintiffs to recover it, agreed that they should receive one-half the property that might be recovered in consideration of their assistance in recovering it; they thereupon purchased from the plaintiffs for a nominal sum one-half their interest in the property, but instead of taking a conveyance in their own names and joining as plaintiffs in the suit, they took

**COSTS—continued.****1. SPECIAL CASES—continued.**

a conveyance in the name of one S, an indigent member of their family and dependent on them for support, and caused the suit to be brought in the name of S

not parties to the suit, such as is possessed by the original side of the High Court. **RAMNIDHY KOONDOP v. AJOODYARAM KHAN**

[11 B. L. R., Ap., 37: 20 W. R., 123

**144.** ———— *Sham defendant.*—The Court will not order a person not on the

matter of the suit; and when the plaintiff knew before the trial the circumstances under which he afterwards sought to make such third person responsible for the costs, and might have added him as a defendant on the record. **FRANKUMARI DASI v. ARINASH CHANDRA MOOKERJEE** 9 B. L. R., 210

*See* **CHUNDER KANT MOOKERJEE v. RAMCOOMAR KOONDOP**

[13 B. L. R., 530: 22 W. R., 138

terest in the suit, made a co-plaintiff on the record.

tion of the Courts They gave no support to the

**COSTS—continued.****1. SPECIAL CASES—continued.**

contention that an independent action will under such circumstances lie. **RAM COOMAR COONDOP v. CHUNDERKANT MOOKERJEE**

[1 L. R., 2 Cal., 233: 1 L. R., 4 L. A., 23

**146.** ———— *Payment of costs by persons made parties without their consent.*—Persons who without their consent are made parties to

**147.** ———— *Transfer of case from undefended to defended board—Practice.*—The costs of a transfer of a case from the undefended to the defended board must be borne by the party making the application. **BINDOO MADHVA MITTER v. WOONES CHUNDER PAUL** 2 Hyde, 88

**BHOOTAB CHUNDER DOSS v. CHUNDI CHURY MITTER** 248 Bourke, 238

*costs.* **SOOKABAI v. LAKSHMIBAI** 12 Bom., 9

**149.** ———— *Trustees—Separate set of costs.*—Trustees will be allowed a separate set of costs on appeal. **PETERS v. MANUK**

[13 B. L. R., 383: 22 W. R., 175

**150.** ———— *Trustee delaying in assigning the legal estate—Costs—Costs que trust, Conveyance by, and suit by purchaser to compel trustee to join in the conveyance.*—A trustee who acts unreasonably in delaying to join in a conveyance, though guilty of no actual misconduct, further than that shown by an unwarrantable delay

[1 L. R., 11 Cal., 628

**151.** ———— *Valuation of suit—Discretion as to costs.*—A Judge is not bound to give costs at a certain valuation. **KHODA BUXSH v. MOWLA BUXSH** 14 W. R., 255

**152.** ———— *Stamp duty—*

only  
p duty  
plaintiff,  
to pay  
JOHNSA  
lov., 5

## COSTS—continued.

## 1. SPECIAL CASES—continued.

153. *Appellate Court*—*First Act, 1870, s. 12—Discretion as to costs.*—An appellant was held to have acted rightly in putting in his appeal upon the valuation of the plaintiff as appeared of by the first Court, although that valuation had been previously overestimated, and the Appellate Court was held to have been justified in awarding costs in respect of what it considered the proper valuation. There is a thing in s. 12 of the Court First Act to preclude a Judge from exercising his discretion as to costs. *MUTHUSWAMI MURUGAIAN v. MUTHUSWAMI RAMIAH* . 20 W. R., 208

154. *Vendor and purchaser*—*Suit for damages for breach of contract and refusal of earnest money—Limitation to tender.*—In a suit for damages for breach of a contract to sell immovable property and for refund of the earnest money paid to the plaintiff by the defendant in which the plaintiff obtained a decree for the earnest money. *Held* that, as the defendant had not paid the earnest money into Court, nor formally tendered it, she must pay the costs of the suit. *PITAMPATI SUNDARAM v. CASIMIR*

[I. L. R., 11 Bom., 273]

155. *Vexatious litigation—Successful party ordered to pay costs.*—The Court departed from the general rule that a successful party is entitled to his costs, in a case where the appellant had manifestly acted vexatiously towards the respondent, and, as a protest against frivolous litigation, ordered the appellant to pay the respondent's costs. *GRANTEE RAM v. PALAN RAM* . 2 N. W., 73

156. *Will—Costs of opposing will by heirs of deceased.*—The heirs of a deceased person have a right to insist upon an adverse will being proved in a legal form by the attesting witnesses, and ought not to be added with the adverse party's costs when opposed by such opposition as they were entitled to offer. *MATHEWISSER DOSSER v. HENRI PERSHAD MUNDUL* . 24 W. R., 25

157. *Withdrawal of suit—Omission to obtain leave to bring another—Civil Procedure Code, ss. 97 and 187.*—The High Court has no power, under the Civil Procedure Code, to award costs to the defendant when the plaintiff withdraws, not having asked leave to do so, with liberty to bring another suit for the same matter. *BRASS v. THIRUVAGADA PILLAI* . 1 Mad., 247

158. *Order for costs made in absence of, and without notice to, plaintiff.*—The plaintiffs on the day fixed for hearing asked for permission to withdraw a suit, which was granted *ex parte*. Before the order was drawn up, the defendants' pleaders, hearing that the suit had been withdrawn, applied for their costs. The application was allowed and the order was prepared, costs being awarded to the defendants. *Held* that, as the defendants had been summoned, the lower Court should neither have passed an order allowing the suit to be withdrawn without notice to the defendants, nor should it, without notice to the plaintiffs, have passed an order charging

## COSTS—continued.

## 1. SPECIAL CASES—concluded.

*Then with costs.* *MISSEER DEBEE PERSHAD v. BOLDEO PERSHAD* . 5 N. W., 118

## 2. COSTS OUT OF ESTATE.

159. *Administration suit—Next friend—Unnecessary suit—Liability of next friend for costs—Adoption of suit by plaintiff—Costs of solicitor of next friend where suit unnecessary—Solicitor's lien on estate recovered or preserved by suit—Preservation of estate from future risk—Appointment of receiver—Insane executrix—Act II of 1871, s. 35.*—The plaintiff, who was a minor, sued by her next friend (her husband) for the administration of her father, Purabhatam Ramji. The defendants in the suit were the plaintiff's mother, Nanbai, who was the widow and executrix of Purabhatam Ramji, and one Burjorji, who had been appointed by Nanbai to act for her during her absence on pilgrimage. The plaintiff alleged that Nanbai was insane and unfit to manage the estate, and that Burjorji was mismanaging and wasting it. A receiver was appointed shortly after the filing of the suit. At the hearing the suit was dismissed as against Burjorji, and the Court ordered that his costs should be paid by the plaintiff's next friend, being of opinion that he was the real actor in the suit, and that it would be unfair to make the plaintiff's estate bear the costs of proceedings in which she had no real voice. The Court was further of opinion that at the time the suit was filed Nanbai was not of unsound mind, but that she had subsequently become insane. The usual accounts were ordered to be taken as against Nanbai. The result of taking these accounts was that her administration of the estate as executrix was found to be unimpeachable, and in December 1883 the Court made an order directing that the next friend should pay the costs of the infant plaintiff. The next friend became insolvent, and his solicitors (the respondents) obtained an order from the Judge in chambers that the receiver should pay their costs out of the estate in his hands. The plaintiff appealed. The respondents contended that the plaintiff had adopted the suit, and that they had a lien for their costs—at any rate so far as they were incurred for the recovery and preservation of the estate. *Held* that the respondents were not entitled to be paid out of the estate. The plaintiff had done no overt act signifying her adoption of the suit, and the fact that she remained passive was consistent with her disapproval of it, as the decree did not immediately affect her, or require her to take action until the death of her mother Nanbai. *Held*, also, that the property in the hands of the receiver could not be held to have been recovered by means of the suit, as it appeared that the investments were of a perfectly legitimate nature; that there was no cause for alarm with respect to the safety of the property, and that the suit, so far as it was based on alleged danger to the estate, was quite uncalled for. It was argued for the respondents that the appointment of a receiver preserved the estate from future risk arising from the fact that the executrix Nanbai was of unsound mind. *Held* that the mere fact that the appointment of a receiver

## COSTS—continued.

## 2. COSTS OUT OF ESTATE—continued.

would preserve the estate from a possible danger in the future could not bring the case within the ordinary rule as to solicitor's fees. *DEVKABAI v. JEFFERSON, BHAISSANKAR, AND DINSHA*

[I. L. R., 10 Bom., 248]

160. ——— Administrator. General's Act II of 1874, s. 18 and s. 35—Conflicting claims to property in possession of Administrator General under order of Court—Costs of Admini-

defendant No. 3) presented a petition to the High Court alleging that all the property in the said box belonged to her deceased mother S, and was in danger of being misappropriated by the plaintiff. Upon these allegations the Court, on the 16th January 1886, made an

of the ornaments in the box had belonged to the estate of S, sued to recover the remainder of the ornaments therein, which she alleged belonged to herself, and which she specified in a separate list. Defendant No. 3 denied her claim and contended that all the

her property should be delivered over to her by the

out of the estate of S, and if and in so far as that estate proved insufficient, he was entitled to recover them out of the property which was the subject-matter of the suit. *Held*, also, that the costs of the Administrator General included the expenses incurred by him in taking care of the property entrusted to him by the order of the Court; such expenses to be apportioned according to the amounts respectively belonging to the estate of S and to the plaintiff, and to be paid accordingly out of the said estate and out of the property of the plaintiff. *AMIR JAN v. RIVETT-CARRAO*

I. L. R., 10 Bom., 350

161.

Partnership suit

Deceased partner—Costs of his legal representa-

## COSTS—continued.

## 2. COSTS OUT OF ESTATE—continued.

five ordered out of the estate he represents—Benefi-

costs were ordered by the said decree to be paid out of the partnership assets, and in case such assets should be insufficient, it was ordered that the plaintiff do recover his costs from the estate of H. There were no assets of the partnership. The plaintiff now took out a summons calling on R as son and legal re-

bound by it. *Held* that the summons must be dismissed. The decree, so far as it purported to affect the estate of H, was not a valid decree, inasmuch as the person or persons beneficially interested in that estate were not then before the Court. *LOUDON v. KHATAO ROWJI*

I. L. R., 16 Bom., 515

162. ——— Unsuccessful suit while in possession pending appeal—Reversal of decree

of suit. B meanwhile, having appealed to the Privy Council, obtained a decree restoring her to possession of the estate. *Held* that A could not recover the costs he was charged with from the estate. *HURO MONKE alias HURO MONKE DEHIA v. RAM KRISHN AGARWAL*

8 W. R., Mts., 124

163. ——— Will, Construction of—Difficulty of construction caused by testator—In a suit for the construction of a will, *Held* that the difficulty of construction having been caused by the testator himself, and in regard to the circumstances and position of the parties, costs should come out of the estate.

*INDAR KUNWAR v. JAIPAL KUNWAR*

[I. L. R., 15 Calc., 725]

L. R., 15 I. A., 127

164. ——— Suit for construction of will—Construction too simple to require assistance of Court.—In a suit for the construction of a will, where the construction was not so difficult as to have required the assistance of the Court, it was *held* to be not a case where the estate should bear the costs. The suit was therefore dismissed with costs. *NARAYANI DAS v. ADMINISTRATOR GENERAL OF BENGAL*

I. L. R., 21 Calc., 683

165.

Subsequent succe-

trix herself, the executors of both wills were entitled to

**COSTS—continued.****2. COSTS OUT OF ESTATE—concluded.**

their costs, to be paid out of the estate, but that, in so far as the costs would not be covered by the estate, each party must bear his own costs. *IN THE GOODS OF TARAMONI DAS* . . . **I. L. R., 25 Calo., 553**

**3. INTEREST ON COSTS.**

**186.** ———— **Discretion of Court—Execution of decree.**—The Court, in executing a decree, has no power to allow interests on costs when not mentioned in the decree. The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it. *ULFUTUNISSA v. MOHAN LAL SIKUL* . . . **8 B. L. R., Ap., 33**

**187.** ———— **Costs of translation and printing—Execution of decrees of Privy Council.**—When on appeal to the Privy Council it was ordered that the decree of the High Court be reversed with £276-12-2 costs, and that the decree of the Zilla Court be affirmed with costs in the Courts below, in execution of the decree it was held that the decree-holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council, and that he was entitled to interest upon these costs, but not to interest upon the said £276-12-2. *MADAN THAKUR v. LOPEZ* **[9 B. L. R., Ap., 23]**

*S. C. MUDDUN THAKOOR v. MORRISON* **[18 W. R., 253]**

**188.** ———— **Refund of costs paid under decree subsequently reversed—Money paid under good decree.**—Costs paid in compliance with a decree subsequently reversed may be ordered to be refunded by the Court which made the original decree. A party to a suit, whose case has been dismissed in both the lower Courts with costs, is entitled, when the decrees of the lower Courts are reversed by the Privy Council and the case remanded for re-trial, to apply for a refund of the costs already paid under the decrees of the lower Courts, but not for interest on such costs. Such an application need not be made to the Privy Council, but may be made to the Court in which the suit was instituted. *DOBAN ALLY KHAN v. ABDOL AZEEZ*

**[I. L. R., 4 Calc., 229; 3 C. L. R., 358]**

**189.** ———— **Where a decree under which costs were recovered is reversed, no express order is needed for refund of the costs; the party who recovered having no right to retain the same. Interest is awardable on costs to be so refunded.** *KEDAR NATH PAKRASEE v. DORA MOYEE DEBIA* . . . **20 W. R., 49**

**4. SCALE OF COSTS.**

**170.** ———— **Costs on highest scale.**—In the Court below a decree was passed in favour of the plaintiff with costs on scale No. 3. On appeal the decree as to costs was altered, it being ordered that each party should pay his own costs to be taxed on scale No. 2. *BULDEO NARAYAN v. SCRIMGEOUR* **[8 B. L. R., 581]**

See also *MILLER v. GOURIPORE COMPANY* **[8 B. L. R., 285]**

**COSTS—continued.****5. TAXATION OF COSTS.**

**171.** ———— **Appearance before taxing officer—Attorney—Appearance for several parties—Summons to attend taxation—Practice.**—Any work which an attorney does jointly for several parties together he can only make one charge for, and where he appears for any number of parties before the taxing officer at the taxation of the costs of a suit, he must be taken to represent them jointly. The taxing officer should not issue separate summonses to different parties who appear by one attorney. *KENNY v. ADMINISTRATOR GENERAL OF BENGAL* . . . **7 B. L. R., Ap., 50**

**172.** ———— **Accountants employed not under order of Court—Useful and necessary expense.**—In a suit to set aside a settlement, two accountants were employed at the plaintiff's instance, and not by order of Court, to examine the settler's books and give evidence. Held that the investigation being most useful to the Court, and adapted to the ends of justice, the taxing master was right in allowing their expenses. *MACNAIR v. HOGG* **[2 Hyde, 89]**

**173.** ———— **Costs of Government Solicitor where suit against Government has been dismissed with costs—Power of Taxing Officer.**—The Government solicitor, who receives a monthly salary as such, receives no further payment from Government in respect of any costs of litigation to which Government is a party, except "out fees" or actual payments made by him on behalf of Government, and pays no fees when he instructs the Advocate-General; but under his arrangement with Government, he is entitled to retain the costs decreed to Government, if recovered, and he then pays to the Advocate-General the fees of counsel allowed by the taxing officer. Held that, when a suit against Government is dismissed with costs, costs should be taxed in the usual way, and the taxing officer cannot enquire into the arrangement as to remuneration of its law officers by Government. *AZIMULLA SAHEB v. SECRETARY OF STATE FOR INDIA* . . . **I. L. R., 15 Mad., 405**

**174.** ———— **Suit against Secretary of State—Dismissal of suit with costs—Remuneration of law officers—Agreement between Government and Government Solicitor—Agreement not illegal nor contrary to public policy.**—Assuming that the arrangement between the Government and its solicitor is that the latter should receive a salary, and in addition the costs awarded to Government, this arrangement cannot affect a third party condemned in costs, and the taxing officer has no right to take such an arrangement into consideration; neither is it illegal or contrary to public policy. *MUHAMMED ALIM OOLLAH SAHIB v. SECRETARY OF STATE FOR INDIA* . . . **I. L. R., 17 Mad., 162**  
Affirming on appeal decision in *AZIMULLA SAHEB v. SECRETARY OF STATE FOR INDIA* **[I. L. R., 15 Mad., 405]**

**175.** ———— **Attorney and client—Trustees—Bills of costs paid by majority of trustees—Right of dissenting trustee to have bills**

**COSTS—concluded.****5. TAXATION OF COSTS—concluded.**

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they should be taxed. However, the other trustees paid the bills without taxation. He thereupon took out a summons calling upon his co-trustees and the attorney to show cause why the bills should not be taxed, and why they should not refund any sum which had been overpaid. Held that the dissenting trustee was entitled to have the bills taxed, although they had been paid, and that the High Court had jurisdiction to order taxation to be made. **JINIBHOY MUNCHERJI JINIBHOY v. BYRAMJI JINIBHOY**

[I. L. R., 18 Bom., 189]

ing the defendants from the possession of the property and for administration of the pro-

Held that where the

charge out of the trust fund. **OF BOMBAY v. ABDEL KADUR**

[I. L. R., 20 Bom., 301]

**177. — Costs of two Counsel—Discretion of taxing officer—Insolvency proceedings—Allegations of improper conduct—Purchaser—Practice.**—A rule was obtained in certain insolvency proceedings against the purchaser of property of the insolvent to show cause why such purchase should not be set aside, and alleging improper conduct on the part of the purchaser, who was represented by two counsel at the hearing of the rule. On taxation of costs of the purchaser, the other parties objected to the costs of two counsel on behalf of the purchaser being allowed. Held that, having regard to the allegations made, the taxing officer exercised a right discretion in allowing the costs of two counsel. **IN THE MATTER OF BEEB NURSING DUTT**

[I. L. R., 24 Calc., 891]

**COTTON FRAUDS ACT (BOMBAY ACT, IX OF 1863).**

See APPEAL IN CRIMINAL CASES—ACTS  
—BOMBAY COTTON FRAUDS ACT

[3 Bom., Cr., 12]

See MAGISTRATE, JURISDICTION OF.

[3 Bom., Cr., 12]

attached to such process. **REG. v. HANMANT GAYDA**

[I. L. R., 1 Bom., 228]

**2. — Mixing cotton.**—Ginning together two varieties of cotton which had been mixed before constitutes "mixing" within the meaning of s. 2 of Bombay Act IX of 1863. **REG. v. CHOUTHMAL LACHHIMAM**

[11 Bom., 144]

**3. — and s. 8—Offering adulterated cotton for compression—Fraudulent intention.**—To constitute the offence of offering adulterated cotton for compression under s. 8 of Bombay Act

Act. **REG. v. PREMJI BHAGVAN**

[10 Bom., 200]

ss. 6 and 14.

See JURISDICTION OF CRIMINAL COURT  
—OFFENCES COMMITTED ONLY PARTLY  
IN ONE DISTRICT—ADULTERATION.

[I. L. R., 3 Bom., 384]

**COTTON FRAUDS REGULATION (BOMBAY REG. III OF 1829).**

**s. 1, cl. 1—Charge under.**—Cotton having been sold subject to examination by an inspector, the mere fact of cotton of two different qualities being found in one of the bales was held to be not sufficient to support a charge under s. 1, cl. 1, of Regulation III of 1829 (Bombay). **REG. v. RATTANJI BHUKAN**

[1 Bom., 17]

**COUNSEL.**

See ADVOCATE . 14 B. L. R., Ap., 12  
[5 B. L. R., Ap., 70]

See CASES UNDER BARRISTER.

See COMMISSION—CIVIL CASES.

[8 B. L. R., Ap., 101]

Cor., 7

13 B. L. R., Ap., 4

See INSOLVENT ACT, s. 33.

[11 B. L. R., Ap., 33]

I. L. R., 3 Bom., 370

See PRACTICE—CIVIL CASES—MOTIONS.

[B. L. R., Sup. Vol., 609]

See RIGHT TO BEGIN . 9 B. L. R., 417

**"COURT," MEANING OF—*concluded.***

See CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY.

[I. L. R., 4 Calc., 483

See EVIDENCE ACT, 1872, s. 3.

[13 B. L. R., Ap., 40

See EVIDENCE ACT, 1872, s. 57.

[I. L. R., 14 Calc., 178

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 31 Bom., 279

Place of trial of criminal case—*Open Court—Pronouncing judgment in private house—Criminal Procedure Code, 1861, s. 279.*—Where a Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment, which he did at his private house,—*Held* that the procedure, being exceptional and in no way prejudicial to the prisoner, could not be quashed as illegal under s. 279 of the Criminal Procedure Code, 1861. *GOVERNMENT v. HOLAKKE SINGH* . . . 1 Agra, Cr., 17

**COURT OF WARDS.**

See LIMITATION ACT, 1877, s. 10.

[I. L. R., 5 Mad., 91

See LUNATIC . . . 8 B. L. R., Ap., 50

[I. L. R., 1 All., 478

I. L. R., 13 Calc., 81

L. R., 13 I. A., 44

I. L. R., 14 Mad., 289

See MINOR—REPRESENTATION OF MINOR IN SUITS . . . 31 W. R., 312

[I. L. R., 13 Mad., 187

I. L. R., 23 Calc., 374, 934

I. L. R., 24 Calc., 853

L. R., 24 I. A., 107

Agent of—

See ACT XX OF 1863, s. 5.

[I. L. R., 19 Mad., 285

See COLLECTOR . . . I. L. R., 3 All., 20

[I. L. R., 19 Mad., 255

Tenure created under—

See BENGAL ACT IV OF 1870.

[15 B. L. R., 343

1. ——— Position of Collector as manager of Court of Wards.—In the management of estates under the Court of Wards the Collector acts, not in his ordinary capacity as an officer of the executive Government, but as a ministerial officer of the Court of Wards, and for misfeasance in that capacity he is made personally responsible by the regulation constituting that Court. *SHEORAJ SINGH v. COLLECTOR OF MORADABAD* . . . 3 N. W., 379

2. ——— Right of suit—Recovery of land belonging to minor.—The Court of Wards has a perfect right to maintain a suit for the recovery of land belonging to a minor, which is in possession of a person not having a good title thereto. *BOLAKKE SAHOO v. COURT OF WARDS* . . . 14 W. R., 34

**COURT OF WARDS—*continued.***

3. ——— Right of female to surrender estate—*Consent of Court of Wards.*—A female whose estate is under the management of the Court of Wards cannot, without the consent of the Court of Wards, give up her rights in favour of the next heir. *GOVERNMENT v. MONOHAR DEO. KUSTOORA KOOMAREE v. MONOHAR DEO* . . . W. R., 1884, 39

4. ——— Appeal by ward of Court of Wards—*Order in execution of decree.*—A widow under the Court of Wards cannot, in the summary department, appeal from an order passed by the Judge in execution of a decree assented to by the Court of Wards. *KUSTOORA KOOMAREE v. BINODE-NARAI SINGH* . . . 4 W. R., 314, 5

5. ——— Liability of Court of Wards for personal debts of committed.—The obligation of the Collector on behalf of the Court of Wards properly to manage the estate of a lunatic does not include liability for his personal debts. *RHAZODERBY v. COLLECTOR OF CUTTACK* . . . 10 W. R., 175

6. ——— Act of Court of Wards in paying Government revenue to save estate.—*Admission.*—Where the Court of Wards, in order to save a minor's estate from sale, pays on his behalf not only his own share of the revenue due to Government, but also all that is not paid by the other shareholders, such payment does not constitute an admission on the part of the Court of Wards of the minor's liability for the excess revenue so paid. *RAM RUDJUN CHUCKERBUTTY v. BANEE MADHUB MOOKERJEE* [21 W. R., 253

7. ——— Power of Court of Wards—*Beng. Reg. X of 1793, s. 10—Remuneration to manager, Determination of.*—The Courts of Wards has authority, under s. 10, Regulation X of 1793, to determine the proper remuneration to be given to the manager of an estate under their charge, and the Civil Courts have no power to question the arrangements made by the Court of Wards. *SHUBUT SOONDERY DEBIA v. COLLECTOR OF MYMENSINGH* [7 W. R., 221

8. ——— Minor under Court of Wards—*Beng. Reg. X of 1793, s. 33—Power to adopt—Beng. Reg. XXVI of 1793, s. 2—Semble.*—The operation of s. 33, Regulation X of 1793, which, read together with s. 2, Regulation XXVI of 1793, prohibits a landholder under the age of eighteen from making an adoption without the consent of the Court of Wards, is confined to persons who are under the guardianship of the Court of Wards. *JUMONA DASSYA v. BAKASUNDARI DASSYA*

[I. L. R., 1 Calc., 289

25 W. R., 235

L. R., 3 I. A., 73

9. ——— Ward under Court of Wards—*How far incapacitated from contracting—Beng. Reg. X of 1793—Court of Wards Act (Beng. Act IX of 1879)—Contract Act (IX of 1872), s. 11.*—On a reasonable construction of the whole of Regulation X of 1793, a ward of Court, duly constituted as such, is not thereby absolutely incapacitated from contracting, but the power of the ward to contract is taken away so far as regards all property which,

## COURT OF WARDS—continued.

[I. L. R., 8 Calc., 620; 11 C. L. R., 285]

10. *Disqualification to contract—Beng. Reg. LII of 1803.*—On a consideration of the provisions of Regulation LII of 1803 (the provisions of Regulation X of 1793 are similar), it was held that the mere fact that the Court of Wards has charge of the estates of a female did not necessarily disqualify her from contracting debts.

female incapable of contracting debts. The man

[9 W. R., P. C., 8; 11 Moore's L. A., 478]

and thereupon the whole estate and effects, real and

purpose, there had not been such a holding out to the world of her competency as would have induced any

## COURT OF WARDS—continued.

reasonable person to suppose that she had power to make the contract on which this suit was brought.

BALAKRISHNA v. MASUMA BHOW

[I. L. R., 5 All., 142; L. R., 9 I. A., 183  
13 C. L. R., 233]12. *Beng. Reg. LII*

Necessity  
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dispute an adoption on the ground that the person making it was a "disqualified person" to show that all the procedures of law. ISHAI PRASAD v. KRSNAIAH  
All., 294

13. *The Court of Wards admr.*  
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MIDNAPORE

15. *sev.*—The meaning of the word "entitled to will or deed" JERUN C. C.

16. *Guardianship Act XL of 1850 to the jurisdiction of the Judge may, on direct him to direct of the still dis- tinuance of their as it is otherwise c. GNOLAN W*

17. *Provinces L. ss. 194-195, proprietor, to recover.*

**"COURT," MEANING OF—concluded.**

See CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY.

[I. L. R., 4 Calc., 483

See EVIDENCE ACT, 1872, s. 3.

[13 B. L. R., Ap., 40

See EVIDENCE ACT, 1872, s. 37.

[I. L. R., 14 Calc., 178

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 21 Bom., 370

Place of trial of criminal case.—*Open Court*.—*Pronouncing judgment in private house*.—*Criminal Procedure Code, 1861, s. 179*.—Where a Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment, which he did at his private house.—*Held* that the procedure, being exceptional and in no way prejudicial to the prisoner, could not be quashed as illegal under s. 279 of the Criminal Procedure Code, 1861. *GOVERNMENT v. HOLASHE SINGH* . . . 1 Agra, Cr., 17

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See LIMITATION ACT, 1877, s. 10.

[I. L. R., 5 Mad., 91

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[I. L. R., 1 All., 478

I. L. R., 13 Calc., 81

L. R., 13 I. A., 44

I. L. R., 14 Mad., 389

See MINOR—REPRESENTATION OF MINOR IN SUITS . . . 21 W. R., 312

[I. L. R., 13 Mad., 197

I. L. R., 23 Calc., 371, 934

I. L. R., 24 Calc., 853

L. R., 24 I. A., 107

Agent of—

See ACT XX OF 1863, s. 5.

[I. L. R., 19 Mad., 285

See COLLECTOR . . . I. L. R., 3 All., 20

[I. L. R., 19 Mad., 255

Tenure created under—

See BENGAL ACT IV OF 1870.

[15 B. L. R., 343

1. ——— Position of Collector as manager of Court of Wards.—In the management of estates under the Court of Wards the Collector acts, not in his ordinary capacity as an officer of the executive Government, but as a ministerial officer of the Court of Wards, and for misfeasance in that capacity he is made personally responsible by the regulation constituting that Court. *SHEQRAJ SINGH v. COLLECTOR OF MORADABAD* . . . 2 N. W., 379

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**COURT OF WARDS—continued.**

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4. ——— Appeal by ward of Court of Wards.—*Order in execution of decree*.—A widow under the Court of Wards cannot, in the summary department, appeal from an order passed by the Judge in execution of a decree assented to by the Court of Wards. *KUSTOORA KOOMAREE v. BINODE-NAM SEIN* . . . 4 W. R., Mis., 5

5. ——— Liability of Court of Wards for personal debts of committee.—The obligation of the Collector on behalf of the Court of Wards properly to manage the estate of a lunatic does not include liability for his personal debts. *REAZOOREN v. COLLECTOR OF CUTTACK* . . . 10 W. R., 175

6. ——— Act of Court of Wards in paying Government revenue to save estate.—*Admission*.—Where the Court of Wards, in order to save a minor's estate from sale, pays on his behalf not only his own share of the revenue due to Government, but also all that is not paid by the other shareholders, such payment does not constitute an admission on the part of the Court of Wards of the minor's liability for the excess revenue so paid. *RAM RUN-JUN CHUCKERBUTTY v. BANER MADHUB MOOKERJEE* [21 W. R., 253

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25 W. R., 235

L. R., 3 I. A., 72

9. ——— Ward under Court of Wards—*How far incapacitated from contracting*.—*Beng. Reg. X of 1793*.—*Court of Wards Act (Beng. Act IX of 1879)*.—*Contract Act (IX of 1872), s. 11*.—On a reasonable construction of the whole of Regulation X of 1793, a ward of Court, duly constituted as such, is not thereby absolutely incapacitated from contracting, but the power of the ward to contract is taken away so far as regards all property which,

## COURT OF WARDS—continued.

comes under the control and management of the Court of Wards. *Mahomed Zahoor Ali Khan v. Rutta Koer*, 11 Moore's I. A., 478, considered. *DHUNPUT SINGH v. SHODHDHANA KEMARI*

[I. L. R., 8 Calc., 620; 11 C. L. R., 285]

## 10. ————— Disqualification

disqualified her from contracting debts.

female incapable of contracting debts. The case having been framed incorrectly, it was, under the circumstances, remanded for trial by the High Court under special directions. *MAHOMED ZAHOR ALI KHAN v. RUTTA KOOREE*

[9 W. R., P. C., 8; 11 Moore's I. A., 478]

11. ————— *Beng. Reg. LII of 1803*—*Incompetency of disqualified proprietor to contract*.—Under s. 7 of Regulation LII of 1803, Muraj lands belonging to a disqualified proprietor may be committed by the Government (on its appearing that this will be for its interests and those of the proprietor) to the charge of the Court of Wards, and thereupon the whole estate and effects, real and

personal, was adjudged capable of contract. The Court of Wards was in possession. On the facts of this case it was held that the Court had given to this Act, under certain limitations of which it was empowered, to borrow money for a special purpose, such as would have induced any

## COURT OF WARDS—continued.

reasonable person to suppose that she had power to make the contract on which this suit was brought. *BALEKRISHNA v. MASUMA BIBI*

[I. L. R., 5 All., 142; I. L. R., 9 I. A., 182; 13 C. L. R., 232]

law. *ISHRI PRASAD SINGH v. LALLI JAS KUNWAR*

[I. L. R., 23 All., 294]

— "Person"—The

been granted by the Civil Court. The Court of Wards has a right to assume charge of the estate, although originally it may have refrained from acting. *MADRUSUDAN SINGH v. COLLECTOR OF MIDNAPORE*

[B. L. R., Sup. Vol., 189; 3 W. R., 82]

15. ————— Act XL of 1858, s. 7—"Person".—The Court of Wards is not "a person" within the meaning of s. 7, Act XL of 1858, and is not entitled to administer to an estate by virtue of a will or deed executed by a private person. *ROWSE v. JERUN v. COLLECTOR OF PUNE*

[4 W. R., 295]

16. ————— Act XL of 1858, s. 14—

as it is otherwise ordered. *SUPPEROONISSA BEBER v. GHOLAM HOSSEIN CHOWDHRY*

[W. R., 1864; Mis., 2]

17. ————— Release of property from superintendence of Collector—*North-West Provinces Land Revenue Act, XIX of 1873, ss. 194-195, and VIII of 1879, s. 20*—*Disqualified proprietor*.—M, a female proprietor, brought a suit to recover possession of certain lands, which were in

**COURT OF WARDS—continued.**

the hands of the Collector, as manager of the Court of Wards, on the allegations that she had placed the property in the hands of the Court some years previously, because she was not at that time in a position to manage it herself, but that she was now capable of managing it, and desired to get it back. The suit was dismissed, and the plaintiff appealed on the ground, *inter alia*, that inasmuch as she was not a "disqualified proprietor" within the meaning of Act XIX of 1873 (North-West Provinces Land Revenue Act), the Court of Wards had no jurisdiction to take the property, and that its possession was merely the result of an arrangement to which she was a consenting party, and which she now desired to terminate. *Held* that, with reference to the provisions of Act XIX of 1873 and Act VIII of 1879 (North-West Provinces Land Revenue Acts), the suit as brought was not maintainable, inasmuch as there was no evidence that the plaintiff had obtained the previous sanction of the local Government to the release of the property from the superintendence of the Court of Wards, as required by s. 20 of the latter Act. *Held*, also, that the plaintiff could not be allowed in appeal entirely to change the nature of the grounds upon which she alleged herself to be entitled to claim relief, and that hence she could not now raise the plea that the Court of Wards, in taking the property under its management, had acted without jurisdiction. The expression "local Government" in ss. 194 and 195 of Act XIX of 1873, and s. 20 of Act VIII of 1879, means the Lieutenant-Governor of the North-Western Provinces. *MASUMA BIBI v. COLLECTOR OF BAHIA*. I. L. R., 7 All., 687.

**18.** Beng. Act IV of 1870—*Death of minor—Right of suit.*—*Held* with reference as well to s. 79, Bengal Act IV of 1870, as to the justice and equity of the case, that the power of the Court of Wards to represent the estate or bring a suit on behalf of a minor does not cease with the death of the minor. *SOOMUNGU KOOBR v. COURT OF WARDS*. 17 W. R., 560.

**19.** *Minor—Irrregular procedure.*—On 27th July 1871, a disqualified proprietor, *B*, signed a duly attested document, the declaring he had adopted a boy, by name *D*, the next heir *R* signing a declaration of his approval of the adoption. Before sanction of the Lieutenant-Governor could be obtained under Bengal Act IV of 1870, s. 74, *B* died, and the sanction was subsequently refused on the ground of *B*'s death. On application made under Act XXVII of 1860, the Judge, on 28th March 1872, found the adoption good, and appointed one *P* to be guardian of the minor *D*, and directed the estate to be placed under the management of the Court of Wards. *M*, a judgment-creditor of *R*'s, failing to execute his decree against the estate of *B*, brought a suit to have it declared that *R*, as heir, had inherited all *B*'s property, and that he, *M*, was entitled to have that property attached and sold in satisfaction of his decree. The only defendants were *A*, *H*, manager under the Court of Wards, and *R*. The Subordinate Judge gave plaintiff a decree, declaring that *D* was not the legally adopted son of *B*. This was appealed from. *Held* that the

**COURT OF WARDS—concluded.**

Judge had no power to make any such order as that of the 28th March 1872 in regard to the Court of Wards. What he had power to do under Act XL of 1858, s. 12, was to direct the Collector to take charge of the estate, and it would then have become the duty of the Collector to appoint a manager and a guardian in the same manner, etc., as if the minor's property and person were subject to the Court of Wards. *Held* that the minor's interests were not properly represented before the Subordinate Judge, whose decree, therefore, could not stand so as to affect the minor, and that the minor must be made a party strictly in the manner prescribed by Bengal Act IV of 1870, s. 69. *ABDOOL HYE v. MITTERJEET SINGH*. 23 W. R., 348.

**20.** s. 75.—*Sale for arrears of rent—Power of Collector—Tenure created under Court of Wards—Previously existing tenure.*—The provisions of s. 75 of Bengal Act IV of 1870 apply only to tenures created by the Collector during the time the estate has been in the hands of the Court of Wards, and not to tenures created previously. A Collector, therefore, has no power to sell for arrears of rent a tenure created before he took charge of the estate without previously obtaining a decree for such arrears in the regular way. *COLLECTOR OF CHITTAGONG v. KALA BIBI*. 15 B. L. R., 343; 24 W. R., 149.

Upholding on appeal under Letters Patent the decision of *MARKBY, J.*, differing from *MITTEE, J.*, in *KALA BIBI v. COLLECTOR OF CHITTAGONG*. [20 W. R., 362.]

**COURT OF WARDS ACT (BENGAL ACT IX OF 1879).**

s. 20 and ss. 51-55—"Suit"—*Application for execution by Collector on behalf of ward, when manager of Ward's estate has been appointed.*—The word "suit" as used in ss. 51 to 55 of Bengal Act IX of 1879 is not limited to what is usually called a "regular suit," but covers miscellaneous proceedings in a suit, such as an application for execution of a decree in which the ward for the first time seeks to have the carriage of litigation instituted by his predecessor in title. When it appeared that a manager of a minor's property had been appointed by the Court of Wards under the provisions of s. 20 of Bengal Act IX of 1879, and during the absence of such manager on leave an application was made on behalf of the minor by the Collector of the district for execution of a decree,—*Held* that the office of manager did not become vacant because the manager obtained leave, and that, if it were not vacant, s. 51 of the Act did not enable the Collector to appear on behalf of the minor. *BHOOPENDRO NARAIN DUTT v. BARODA PRASAD ROY CHOWDHRY*. I. L. R., 18 Calc., 500.

s. 55.

See MAJORITY ACT, s. 3.

[I. L. R., 17 Bom., 944]

**1.** *Effect of claim preferred on behalf of a minor by the manager without the*

# COURT OF WARDS ACT (BENGAL ACT IX OF 1879)—concluded.

moner to whom the Court of Wards delegated its authority to grant such sanction. **RAM CHANDRA MURSEER v. RAJIT SINGH**

[I. L. R., 27 Calc., 242  
4 C. W. N., 405]

the claim which had been dismissed by the Court of

the date of its institution. The Judge dismissed the

after appeal did not have a retrospective effect. **DINESH CHUNDER ROY v. GOLAM MOSTAPHA. DINESH CHUNDER ROY v. PARAMIDUNNESSA BEGAM. DINESH CHUNDER ROY v. NISHI KANT GUNGO-PADHAYA**

[I. L. R., 18 Calc., 89]

3. ——— Suit rejected when filed on

[I. L. R., 17 Calc., 688  
L. R., 17 I. A., 5]

## COURT-FEES.

See CASES UNDER COURT FEES ACTS.

See CASES UNDER VALUATION OF SUIT.

## COURT-FEES—continued.

Dismissal of suit for non-payment of—

See RES JUDICATA—JUDGMENT ON PRELIMINARY POINTS . 4 Bom. A. C., 110  
[I. L. R., 9 Calc., 183  
I. L. R., 13 All., 44]

Order for Power to make—

See PAUPER SUIT—SUITS.

[I. L. R., 15 Bom., 77]

Payment of—

See CASES UNDER LIMITATION ACT, 1877.  
s. 4 . . . I. L. R., 13 All., 305

See PAUPER SUIT—APPEALS.

[I. L. R., 1 Bom., 75  
I. L. R., 8 Mad., 214  
I. L. R., 11 Calc., 735  
I. L. R., 18 Bom., 464]

See PAUPER SUIT—SUITS.

[I. L. R., 1 Bom., 7  
I. L. R., 1 All., 230, 598  
I. L. R., 20 Bom., 508  
I. L. R., 17 All., 526  
I. L. R., 18 All., 306]

Question as to sufficiency of—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—VALUATION OF SUIT.

[1 Bom., 63  
14 W. R., 198  
22 W. R., 433  
I. L. R., 19 All., 166]

See DECREE—FORM OF DECREE—GENERAL CASES . . . I. L. R., 18 Mad., 415

Recovery of, by Government.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREE.

[I. L. R., 20 Calc., 111]

See PAUPER SUIT—SUITS.

[2 B. L. R., Ap., 23  
I. L. R., 9 All., 64  
I. L. R., 18 All., 419  
I. L. R., 20 Calc., 111]

Remission of—

See PRACTICE—CIVIL CASES—COURT FEES.  
[I. L. R., 26 Calc., 134  
3 C. W. N., 82]

See PRACTICE—CIVIL CASES—LETTEES OF ADMINISTRATION.

[I. L. R., 20 Calc., 879]

**CHESPUTTY v. TARANATH GOONO** . 13 W. R., 440  
**DAWD ALI v. NADIR HOSSEN** . 18 W. R., 153.

2. ——— Mode of making up the duty—Case where one stamp of full value

**COURT-FEES—continued.**

is available.—When a stamp of the full value is available, parties ought to use as small a number of stamps as they can. *KHAJOORONISSA v. ROHM-ONISSA* . . . . . 16 W. R., 152

3. *Plaint—Insufficient stamp.*—There is no illegality in the reception of a plaint engrossed on insufficient stamp paper, if the full amount of the stamp duty has been paid at the time. *GOBIND KUMAR CHOWDHRY v. HARGOPAL NAG* . . . . . 3 B. L. R., Ap., 72: 11 W. R., 537

4. *Appeal presented before Act came into force, but returned for irregularity.*—Where, owing to an irregularity, a petition of appeal was returned before the Stamp Act, XXVI of 1867, came into force, and the appeal was not filed until after that Act came into force,—*Held* that the appeal must be filed on a stamp of the amount prescribed by the new law. *ARADHUN DEY v. GOLAM HOSSEIN MALOOM* . . . . . 7 W. R., 461

See *FAGAN v. CHUNDER KANT BANERJEE*  
[7 W. R., 452]

IN THE MATTER OF THE PETITION OF SREENATH ROY CHOWDHRY . . . . . 7 W. R., 462

5. *Copy of decree and order for execution—Certificate of amount remaining due.*—Act XXVI of 1867 required that copies of the decree and of the order for execution should be stamped; the certificate as to any sum remaining due under a decree required no stamp. *VENKATA SUBIA v. SIVARAMAPPA* . . . . . 4 Mad., 331

6. *Copies of documents for purpose of appeal in criminal case.*—The exemption of the Government of India, dated the 19th September 1870, cannot be extended to copies of the statement of evidence and grounds of conviction. Persons desirous of obtaining copies of such documents for the purpose of appeal must furnish stamped paper on which the copies are to be written. *ANONYMOUS* . . . . . 6 Mad., Ap., 12

sch. B, cl. 6, art. 10—*Applications for copies of decrees.*—Applications to the High Court for certified copies of the decree and judgment might be engrossed on a stamp of one anna, under cl. 6, art. 10, sch. B of Act XXVI of 1867. IN THE MATTER OF THE PETITION OF TURIP BISWAS  
[7 W. R., 455]

1. *Razinama admitting satisfaction of decree—Petition.*—After instituting a suit on a bond for Rs2 with interest, the plaintiff filed a razinama stating satisfaction of his claim and withdrawing the suit. *Held* the razinama was rather of the nature of a petition than of an agreement. *PUNCHANUN SIRCAR v. GUNESH MUNDUL MANICK CHUNDER ROY v. LALLEMON SHEIKH*  
[3 W. R., 214]

2. *Petition setting forth terms of parol agreement.*—A document in the shape of a petition to a Court setting forth an arrangement come to between the parties in a suit may be received in evidence in support of a fresh suit founded upon the agreement recited in such petition, although only stamped as a petition, it not appearing

**COURT-FEES—continued.**

that the agreement recited was made in writing. *RAMDYAL v. DHOODEY JHAUNNAN LAL*  
[3 N. W., 14]

cl. 11.

See CASES UNDER VALUATION ON SUIT.

1. *Petition of special appeal to High Court, appellate side.*—Petitions of special appeal to the High Court at Bombay, on its appellate side, had to be stamped according to the scale contained in cl. 11 of sch. B of Act XXVI of 1867. *EX PARTE DESAI KALYANRAI HAKUMATRAI*  
[4 Bom., A. C., 145]

2. *Notice of cross-appeal.*—Though a notice of a cross-appeal may be lodged with the Registrar of the High Court previously, the objection itself had, under s. 348, Act VIII of 1859, to be taken at the hearing of the appeal, and to bear the stamp required by s. 6, Act XXVI of 1867. *LULEET SINGH v. ALI REZA* . . . . . 8 W. R., 322

*RASHOMONEE DOSSEE v. CHOWDHRY JUNMOJOY MULLICK* . . . . . 9 W. R., 356

*ABDOOL GUNNEE v. GOUR MONEE DERIA*  
[9 W. R., 375]

3. *Notice of objections by respondent.*—When the appeal of an appellant was against the whole of the decision of the lower Court and upon the full value of the original suit, no additional stamp duty was required in respect of the respondent's objection under s. 348, Act VIII of 1859. *ANUND MOHUN CHATTERJEE v. SUTTO RAM MOZOOMDAR* . . . . . 8 W. R., 124

4. *art. 11, cl. (c)—Objections by respondent—Pauper respondent.*—Note (e) to art. 11; sch. B, Act XXVI of 1867, contained no reservation as to the stamp duty to be levied on a petition of objection under s. 348, Act VIII of 1859, filed by a pauper respondent. *RASHOMONEE DASSEE v. CHOWDHRY JUNMOJOY MULLICK*  
[9 W. R., 356]

5. *Plaint.*—The object of the note to art. 11, sch. B of Act XXVI of 1867, was to prevent applicants from merely where the question merely related to the amount of stamp to be impressed upon the petition. *COLLECTOR OF SYLHET v. KALI KUMAR*  
[7 B. L. R., F. B., 16 W. R., F. B., 10]

*Contra, MADHUSUDAN CHUCKERDUTTY v. RYMANI DASI*

[7 B. L. R., 664 note: 13 W. R., 415]

6. *Application under Act VIII of 1859, s. 230.*—A had been dispossessed of certain land, in execution of a decree, which B had obtained in a suit against C under s. 15, Act XIV of 1859. A applied under s. 230, Act VIII of 1859, to recover the land. *Held* no stamp was necessary on A's application. *BRABMA MAYI DEBI v. BARKAT SIRDAR* . . . . . 4 B. L. R., F. B., 94

7. *Act X of 1859, s. 25, Petition under.*—An application under s. 25, Act X of 1859, for the assistance of the Collector in ejecting a raiyat was not a suit; and therefore the

**COURT FEES—concluded.**

Revenue Courts could receive such petitions enclosed on a stamp paper of the value of 8 annas.  
**PIARI MOHAN MOOGERJEE v. KINA BEWA**  
 [3 B. L. R., A. C., 236]

**S. C. PSARY MOHUN MOOKERJEE v. KINA BEWA**  
 11 W. R., 90

8. ————— Document, Description of—*Civil Procedure Code, 1859, s. 40.*

[5 Bom., A. C., 101]

9. ————— Complaint preferred by Munsif under s. 108 of Criminal Procedure Code, 1861—A complaint preferred by a Munsif under s. 108 of the Criminal Procedure Code, 1861, need not, though it did not bear the seal of the Munsif's Court, be on stamped paper. **REG. v. SAJJAN VALAD VITHU**  
 5 Bom., Cr., 104

**COURT FEES ACT (VII OF 1870).**

See Cases UNDER VALUATION OF SUIT

1. ————— Copy of decrees made under old stamp laws.—Where a decree had been prepared while the old stamp laws were in operation, and Rs were awarded in it as the value of the stamps for a copy thereof, the Court allowed a copy to be taken for it by a party applying after Act VII of 1870 came into operation. **IN THE MATTER OF HUBERHUR MANTOON**  
 14 W. R., 187

2. ————— Practice—Petition of appeal—Making up stamp fee.—There is no illegality in making up the stamp fee chargeable in an appeal by means of any number of stamps of smaller values. **DAWD ALI v. NADIR HOSSEIN**  
 16 W. R., 153

**TARANER CHURN NALABACHUNPUTTY v. TARANATH GOORO**  
 12 W. R., 449

**HURO MOHEN v. KRISTO INDRO SHAHA**  
 17 W. R., 220

But when a stamp of the full value is available, parties should use as small a number of stamps as possible. **KHAJODROONISSA v. ROHINOOVISSA**  
 16 W. R., 152

1. ————— s. 5—Court fees on memorandum of appeal—Finality of taxing officers' decision—Mistake—*Civil Procedure Code Amendment Act (VI of 1892), s. 3.*—Where an appellant, whose memorandum of appeal had been declared by the taxing officer of the Court to be insufficiently stamped, applied for relief under s. 3 of Act No. VI of 1892, and it was found that the report of the taxing officer was erroneous, and that the correct stamp had as a matter of fact been put on the memorandum of appeal,—Held that the appellant was entitled to the relief sought notwithstanding the provisions of s. 5 of the Court Fees Act. VII of 1870. **BADRI PRASAD v. KUNDAN LAL**  
 I. L. R., 15 All., 117

**COURT FEES ACT (VII OF 1870)  
—continued.**

2. ————— Objection as to amount of Court-fee on petition of appeal—Decision of taxing officer—Appellate Court, Power of.—An objection taken on behalf of respondents at the hearing of an appeal as to the amount of the Court-fee stamp affixed to the petition of appeal to the High Court cannot be entertained, the decision of the officer on that point being final unless referred to the Chief Justice. **RANGA PAI v. RABA**  
 [I. L. R., 20 Mad., 398]

higher fee than he would have to pay if he were suing for possession of the land. Accordingly, in a suit for setting aside a summary attachment, under Bombay Act I of 1865, placed by the Collector on land held on a settlement, for a period not exceeding thirty years, the value was held to be five times the assessment, and the stamp duty calculated upon it, irrespective of the actual market value or the amount for which the land was attached. **COLLECTOR OF THANA v. DADABHAI DOMANJI**  
 [I. L. R., 1 Bom., 353]

4. ————— Where there has been no decision by the taxing officer under s. 5, it is open to the respondent to raise the objection on appeal at the hearing. **KASTURI CHETTI v. DEPUTY COLLECTOR, BELLARY**  
 I. L. R., 31 Mad., 269

a "question relating to valuation," and therefore is not declared by the section to be final. In both s. 5 and s. 12 "final" is used in its ordinary legal sense of unappealable. A decision under s. 5 of the Act is not open to appeal, revision, or review, and is

before presentation. **BALKARAN RAI v. GOBIND NATH TIWARI**  
 I. L. R., 12 All., 129

S. G.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—APPEAL I. L. R., 16 Mad., 29

COURT FEES ACT (VII OF 1870)  
—continued.

See APPELLATE COURT—REJECTION OR  
ADMISSION OF EVIDENCE ADMITTED OR  
REJECTED BY COURT BELOW—UN-  
STAMPED DOCUMENTS.

[I. L. R., 12 All., 57]

See CIVIL PROCEDURE CODE, 1852, s. 316.

[I. L. R., 13 Bom., 670]

See LIMITATION ACT, s. 4.

[I. L. R., 20 Mad., 319]

[I. L. R., 22 Mad., 494]

See LIMITATION ACT, s. 5.

[I. L. R., 12 All., 57]

1. ——— Applications not required to be in writing.—Applications to the Court, not required by the Civil Procedure Code to be in writing, do not fall within the 6th section of the Court Fees Act. The term “application” in sch. II of the Court Fees Act, when read with s. 6, must be construed to mean an application in writing. *TETLEY v. ADMINISTRATOR GENERAL OF BENGAL*.

[3 N. W., 418]

2. ——— Act XL of 1859, s. 3—Certificates of guardianship—Period from which authority of guardian dates.—S. 6 of the Court Fees Act (VII of 1870), which says that a certificate under Act XL of 1859 (among other documents) “shall not be filed, exhibited, or recorded in any Court of justice, or received or furnished by any public officer,” unless a certain fee be paid, means that such certificate cannot come into existence until the person who has the permission of the Court to obtain it deposits the requisite amount of stamp duty. *SAHAI NAND v. MUNGNIRAM MAHWARI*.

[I. L. R., 12 Calc., 542]

3. ——— Court-fee on set-off.—In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary, the defendant claimed a set-off as the price of cloth which he alleged the plaintiff had sold on his account on commission. Held that the Court-fee payable on the claim for set-off was the same as for a plaint in a suit. *AMIR ZAMA v. NATHU MAL*.

[I. L. R., 8 All., 398]

4. ——— Written statement—Set-off—Civil Procedure Code (Act XIV of 1882), ss. 111 and 216.—A written statement containing a claim of set-off is chargeable with the Court-fee which would be payable on a plaint of that nature. *BAI SHRI MAHARAJBAI v. NARORAM HARGOVAN*.

[I. L. R., 13 Bom., 672]

s. 7.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL . . . 18 W. R., 21

cls. 1 and 2, and s. 11—Suit for compensation for use and occupation.—The plaintiffs sued, by virtue of a deed of conditional sale which had been foreclosed, for, among other things, compensation in the nature of rent for the use

COURT FEES ACT (VII OF 1870)  
—continued.

and occupation of a house from the date of suit to the date on which possession of the house should be delivered to them, the defendants having purchased the house subsequently to the conditional sale, but before the foreclosure. *Held per SPANKIE, J.*—That cl. 2, s. 7 of the Court Fees Act, did not apply to the claim, nor was it one for money within the meaning of cl. 1 of that section, but one for which s. 11 of that Act provided. *Per O'DRISCOLL, J.*—That Court-fees were leviable in respect of the claim, with reference to cl. 1, s. 7, and s. 11 of the Court Fees Act. *CHEDI LAL v. KIRATH CHAND*.

[I. L. R., 2 All., 682]

1. ——— cl. 4 (c)—Suit for declaratory decree—Consequential relief.—In a suit for a declaratory decree to set aside a summary order under Act VIII of 1859, s. 246, where the plaintiff asked also for an order “confirming possession after declaration of title,” it was held that consequential relief was sought, and that the stamp fee leviable was the *ad valorem* fee prescribed by the Court Fees Act. *BOHURONISSA BIBEE v. KUREEMOONISSA KHATOON* . . . 19 W. R., 18

2. ——— Declaratory decree—Consequential relief—Suit to establish right to attached property—Court Fees Act, 1870, sch. II, art. 17.—In a suit, under s. 283 of Act X of 1877, for a declaration of her proprietary right to certain immoveable property attached in the execution of a decree, the plaintiff asked that the property might be “protected from sale.” Held that consequential relief was claimed in the suit, and Court-fees were therefore leviable under s. 7, cl. (c), and not under sch. II, art. 17 (iii) of Act VII of 1870. *RAM PRASAD v. SUREN DAI* . . . I. L. R., 2 All., 720

3. ——— Declaratory decree—Consequential relief—Court-fees.—In a suit for a declaration of proprietary right in respect of a house in which the removal of an attachment of such house in the execution of a decree was sought, the plaintiff did not, as s. 7 of the Court Fees Act directs, state in his plaint the amount at which he valued the relief sought, nor did the Court of first instance cause him to supply this defect. On appeal by the plaintiff from the decree of the Court of first instance dismissing his suit, the lower Appellate Court demanded from the plaintiff Court-fees in respect of his plaint and memorandum of appeal computed on the market value of such house, the plaintiff having only paid in respect of those documents respectively the Court-fees payable in a suit for a declaration of right where no consequential relief is prayed. Held that the market value of the property could not be taken by the lower Appellate Court to be the value of the relief sought, as the plaintiff did not seek possession of the property, and that, as the valuation of the relief sought rested with the plaintiff and not the Court, and as in this instance the declaration of right claimed necessarily carried with it the consequential relief sought, of which the value was merely nominal, further Court-fees could

## COURT FEES ACT (VII OF 1870)

—continued.

not be demanded by the lower Appellate Court from the plaintiff. *OSTOOR v. HARI DAS*

[I. L. R., 3 All., 889]

4. — *Suit to have a lease set aside and buildings erected by lessees demolished—*

... of a vil-  
... the joint  
undivided property of the co-sharers, which the other co-sharers had granted, set aside, and to have the buildings erected on such land by the lessees de-

HURST, and TYRELL, JJ., with reference to the first

[I. L. R., 4 All., 320]

BINDERSHI CHAUREY v. NANDU

[I. L. R., 4 All., 320]

5. — *Suit to set aside mortgage—Specific Relief Act (I of 1877), s. 39—Suit for declaratory decree.*—C's father mortgaged certain land to D. A purchased the instrument of mortgage and sued C, whose father had died, upon it, and obtained a decree enforcing the mortgage. C then mortgaged a moiety of the land to B, and subsequently sold the same moiety to A. A sued B for the cancellation of the instrument of mortgage to B. Held that the suit was in the nature of a simple declaratory suit. *KARAM KHAN v. DARYAL SINGH*

[I. L. R., 5 All., 331]

6. — *Suit to set aside a trust.*

[I. L. R., 10 Cal., 380]

7. — *Suit for a declaration and injunction—Stamp—Consequential relief.*—The plaintiff sued to obtain a declaration that he was entitled to the exclusive management of certain devasthan immovable and moveable property. His plaint, which bore a four-rupee stamp, contained a payer for an injunction. The Subordinate Judge

## COURT FEES ACT (VII OF 1870)

—continued.

be consequential relief, and cl. 4 (c) of s. 7 of the Court Fees Act, VII of 1870, was, therefore, appli-

DHAR BHUKAJI

[I. L. R., 10 Bom., 60]

[13 C. L. R. 160]

9. — *Appeal—Contract Act, s. 265.*—The stamp duty payable on an appeal from an order made by a District Judge on an application under s. 265 of the Contract Act (IX of 1872) should be an *ad valorem* fee as in a suit for accounts, under s. 7, cl. 4 (f) of the Court Fees Act, VII of 1870. *Javalji Ramraam v. Sakham Bakam, I. L. R., 1 Mad., 340, and Lachman Lall v. Ram Lall, I. L. R., 6 Cal., 321, approved. LADUBHAI v. REVICHAND*

[I. L. R., 6 Bom., 143]

ship should be an *ad valorem* fee under s. 7, cl. 4 (f) of the Court Fees Act (VII of 1870). *BHOGLAY v. POPATBHAI*

[I. L. R., 7 Bom., 125]

the first part of sub-division (a), cl. 5 of s. 7 of the Court Fees Act. *HURMUL HOSSAIN v. MAHOMED ENZA* [I. L. R., 8 Cal., 192; 10 C. L. R., 385]

2. — *Stamp—Construction and applicability of the proviso—Valuation of suits for land in a talukhdari village—Talukhdar's jumma—Remission.*—*Per WEST and NANABHAI, JJ.*—The proviso to art. 5 of s. 7 of the Court Fees Act (VII of 1870) was clearly intended to provide a standard of valuation in the Bombay Presidency, not only for the comparatively rare case of land forming part, but not a definite share, of an estate paying revenue to Government, but for all cases of suits for land. The theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the ap- praisement made in order to show the proper amount

## COURT FEES ACT (VII OF 1870)

—continued.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.

[I. L. R., 12 All., 57]

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## COURT FEES ACT (VII OF 1870)

—continued.

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1. ——— cl. 4 (c)—Suit for declaratory decree—Consequential relief.—In a suit for a declaratory decree to set aside a summary order under Act VIII of 1859, s. 246, where the plaintiff asked also for an order “confirming possession after declaration of title,” it was held that consequential relief was sought, and that the stamp fee leviable was the *ad valorem* fee prescribed by the Court Fees Act. *BOHURONISSA BHEE v. KUREEMOONISSA KHATOON . . . 19 W. R., 18*

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3. ——— Declaratory decree—Consequential relief—Court-fees.—In a suit for a declaration of proprietary right in respect of a house in which the removal of an attachment of such house in the execution of a decree was sought, the plaintiff did not, as s. 7 of the Court Fees Act directs, state in his plaint the amount at which he valued the relief sought, nor did the Court of first instance cause him to supply this defect. On appeal by the plaintiff from the decree of the Court of first instance dismissing his suit, the lower Appellate Court demanded from the plaintiff Court-fees in respect of his plaint and memorandum of appeal computed on the market value of such house, the plaintiff having only paid in respect of those documents respectively the Court-fees payable in a suit for a declaration of right where no consequential relief is prayed. Held that the market value of the property could not be taken by the lower Appellate Court to be the value of the relief sought, as the plaintiff did not seek possession of the property, and that, as the valuation of the relief sought rested with the plaintiff and not the Court, and as in this instance the declaration of right claimed necessarily carried with it the consequential relief sought, of which the value was merely nominal, further Court-fees could

## COURT FEES ACT (VII OF 1870)

—continued.

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*dition of decree—*

*of a vil-  
the joint*

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HURST, and TRELL, JJ., with reference to the first suit, that it was one for a declaratory decree in which consequential relief was prayed, and fell under s. 7, art. 4, cl. (c), Court Fees Act, 1870, and such relief being valued at Rs100, had been properly instituted in the Munsif's Court. *JOGAL KISHOR v. TALE SINGH*

[I. L. R., 4 All., 320]

BINDERSHI CHAUREY v. NANDU

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mortgaged a moiety of the land to B, and subsequently sold the same moiety to A. A sued B for the cancellation of the instrument of mortgage to B. Held that the suit was in the nature of a simple declaratory suit. *KARAM KHAN v. DARYAI SINGH*

[I. L. R., 5 All., 331]

6. ——— *Suit to set aside a trust—*

Rs250,000. A obtained a decree. B appealed and sought to add to his memorandum of appeal a ten-rupee stamp, under art. 17 (cl. 6) of sch. II of Act

7. ——— *Suit for a declaration and injunction—Stamp—Consequential relief.*—The plaintiff sued to obtain a declaration that he was entitled to the exclusive management of certain devasthan immovable and movable property. His plaint, which bore a ten-rupee stamp, contained a payer for an injunction. The Subordinate Judge

## COURT FEES ACT (VII OF 1870)

—continued.

DEAR BHIKAI . . . I. L. R., 10 Bom., 60

and should be stamped accordingly. *ABAD ALI PRADHAM v. JAMHURUDDIN MAHOMED*

[13 C. L. R. 180]

9. ——— *Appeal—Contract Act, s. 265.*—The stamp duty payable on an appeal from an order made by a District Judge on an application under s. 265 of the Contract Act (IX of 1872) should be an *ad valorem* fee as in a suit for accounts, under s. 7, cl. 4 (f) of the Court Fees Act, VII of 1870. *Javali Ramasami v. Satham Bakam*, I. L. R., 1 Mad., 340, and *Lachman Lall v. Ram Lall*, I. L. R., 6 Calc., 321, approved. *LADURAI v. BEVICHAND* . . . I. L. R., 6 Bom., 143

of the Court Fees Act (VII of 1870). *BROGILAL v. POPATRAI* . . . I. L. R., 7 Bom., 125

1. ——— s. 7, cl. 5—*Subordinate tenure-holder—Assessment of Court-fee in suit for possession of a fractional part of an estate.*—The assessment of the Court-fee in a suit by a subordinate tenure-holder to recover possession of a definite portion

(VII of 1870) was clearly intended to provide a standard of valuation in the Bombay Presidency, not only for the comparatively rare case of land forming part, but not a definite share, of an estate paying revenue to Government, but for all cases of suits for land. The theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the apportionment made in order to show the proper amount

# COURT FEES ACT (VII OF 1870)

—continued.

of the land-tax may be regarded as a remission. In the case of a talukhdari village, the proprietor of which had, under a settlement with Government for a period of twenty-two years, agreed to pay a fixed annual jumma or lump assessment, instead of the full survey assessment for the whole village. *Held* by a majority of the Full Bench that the difference in amount between the jumma and the full survey assessment was a remission, and therefore a suit for possession of lands in this village was to be valued according to cl. 3 of the proviso to art. 5 of s. 7 of the Court Fees Act (VII of 1870). *Per* BRIDGWOOD, J.—The remission contemplated by cl. (3) of the proviso "is an express remission, and not a mere difference in amount between the actual assessment payable by a talukhdar and the survey assessment." The three clauses of the proviso seem to apply only to lands which have been subjected to a survey settlement as ordinarily understood and legally provided for in the Bombay Presidency; the first clause being applicable to lands settled for a period not exceeding thirty years, the second to lands settled for a longer period or permanently, and the third to inam lands on which the whole or a part of the survey assessment has been expressly remitted. The talukhdars are not inamdars. They are land-holders liable to pay a land-tax, but not under a survey settlement, such as is applicable to lands for which provision seems to have been specially made in the proviso to art. 5 of s. 7 of the Court Fees Act. No part of the proviso, therefore, applies to a suit for the possession of lands in a talukhdari village. Such a suit should be valued according to cl. (d) of art. 5 of s. 7 of the Court Fees Act. *ALA CHELA v. OGHAD BHAI THAKERSI*. I. L. R., 11 Bom., 541

*BAYAJI MOHANJI v. PUNJABHAI HANUBHAI*  
[I. L. R., 11 Bom., 550 note

3. ————— *Paramba in Malabar*—*Valuation of suit for*.—On its appearing that a paramba in Malabar is not subject to land-tax, but that a tax is levied on trees of certain kinds which may grow on it,—*Held* that a paramba must be regarded for the purposes of the Court Fees Act as a garden or as land which pays no revenue, according to the circumstances of each case. *AUDATHODAN MOIDIN v. PULLAMBATH MAMALLY*

[I. L. R., 12 Mad., 301

————— s. 7, cl. 8.—*Suit to restore attachment*—*Civil Procedure Code, 1859, s. 246*.—A stamp of R10 is sufficient for the plaint or memorandum of appeal in a suit brought, under s. 246 of Act VIII of 1859, to restore an attachment upon a house which has been removed at the instance of an intervenient under that section. A person whose property was attached was not compelled to resort in the first instance to an application under s. 246 of the late Civil Procedure Code (Act VIII of 1859). There was nothing to prevent him from commencing his litigation by a regular suit, if such were his pleasure. Cl. 8 of s. 7 of the Court Fees Act (VII of 1870) would apply to such a suit. The language of that section is not limited to suits to set aside any special kind of attachments on land. It is large enough to

# COURT FEES ACT (VII OF 1870)

—continued.

include suits brought, in pursuance of the permission given by s. 246 of Act VIII of 1859, to set aside attachments on land, as well as other suits for that purpose brought independently of that section. The term "land" in cl. 8, s. 7 of the Court Fees Act, does not include a house. *Quere*—Whether that clause includes all suits to set aside attachments upon land, or all such suits, except where the result of setting aside the attachment would be to alter or set aside a summary decision or order of any Civil Court not established by Letters Patent or of Revenue Court. *DAYA CHAND NIM CHAND v. HEM CHAND DHARAM CHAND* [I. L. R., 4 Bom., 515

1. ————— s. 7, cl. 9.—*Suit against a mortgagee for the recovery of a portion of property mortgaged*.—In cases in which it is competent to the mortgagor to sue to recover a portion of the mortgaged property, the debt must be regarded as distributed over the whole property; and as regards the portion of the property sued for, "the principal money," expressed to be secured, must be taken to be the proportionate amount of the debt for which such portion of the property is liable. *BAKRISHNA v. NAGYEKAR*. I. L. R., 6 Bom., 324

2. ————— *Redemption suit*—*Separate memorandum of appeal presented by each of two appellants, Proper fees chargeable on*.—A decree having been given by the lower Courts in a redemption suit, directing that the mortgaged property should be redeemable on payment of the amount expressed to be secured by the mortgage deed, viz., R1,152-15-4, to the defendants,—viz., R568-9-8 to the defendant Umarmkhan and R584-5-8 to the defendant Moro and two others,—appeals were preferred to the High Court by Umarmkhan and Moro, each of them presenting a separate memorandum of appeal. A question arose as to what Court-fees should be levied on them. On reference by the taxing officer of the Court,—*Held* that the Court-fees to be computed upon each memorandum of appeal was, under s. 7, cl. 9, of the Court Fees Act, VII of 1870, to be according to the principal money expressed to be secured by the deed of mortgage, viz., R1,152-15-4. *UMARKHAN v. MAHOMED KHAN* [I. L. R., 10 Bom., 41

————— s. 10.

*See RES JUDICATA*—*JUDGMENTS ON PRELIMINARY POINTS* I. L. R., 8 All., 282

1. ————— *Civil Procedure Code, 1877, s. 54—Rejection of plaint*.—S. 54 of Act X of 1877, which directs that a plaint shall be rejected in certain cases, applies only to the initial stages of a suit before a plaint has been registered, whereas the application of s. 10 of the Court Fees Act, which directs that a suit shall be dismissed in a certain case, is not susceptible of restriction to any particular stage. *VALIYA KESAVA VADHYAR v. SUPPEN NAIR* [I. L. R., 2 Mad., 308

2. ————— *Dismissal of suit—Civil Procedure Code, 1882, ss. 54, 56—Court Fees Act, s. 11*.—The "dismissal" of a suit under s. 10 or s. 11

## COURT FEES ACT (VII OF 1870)

—continued.

of the Court Fees Act has the same effect as that provided by s. 56 of the Code in the case of "rejection" of a plaint under s. 54. **BALKARAN RAI v. GOVIND NATH TEWARI** I. L. R., 13 All., 129

3. — *Suit insufficiently valued—Order for payment of additional Court-fees—Power of Court to enlarge time for payment.—Held that it is competent to a Court which has made an order under s. 10, cl. ii, of Act VII of 1870, for the payment of an additional Court-fee to enlarge, either before or after its expiration, the time limited for the payment of such additional fee.* **Badri Narain v. Sheo Koer**, I. L. R., 17 Cal., 512. I. L. R., 17 I. A., 1, and **Bhugwandas Bagla v. Abu Ahmad**, I. L. R., 16 Bom., 263, referred to. **CHUNNI LAL v. AUDHIA PRASAD** I. L. R., 19 All., 240

4. — *Court-fee—Procedure—Se-*

such time as the additional Court-fee due by him might be paid. **NARAIN SINGH v. CHATTERJEE SINGH** I. L. R., 20 All., 382

5. — *Order requiring additional Court-fee on claim passed subsequent to decree—Decree prepared so as to give effect to subsequent*

" " " " " Judge, after 1883, again directed the appellant to pay additional Court-fees on her memorandum of appeal. On the 2nd May 1883, the appellant paid the additional Court-fees under protest, and a decree was then prepared, bearing date the 1st March 1883, but it referred to and carried into effect the subsequent order of the 21st March and the 2nd May. *Per MAHMOOD, J.*, that as soon as the Judge had passed the decree of the 1st March 1883, he ceased to have any power over it, and was not competent to introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May, whether right or wrong, were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883; and that the decree was *ultra vires* to that extent and was therefore liable to correction in second appeal under s. 53 of the Civil Procedure Code. The powers conferred by ss. 54 (a) and (c) and 55, read with s. 582 of the Civil Procedure Code, or

## COURT FEES ACT (VII OF 1870)

—continued.

The powers conferred by s. 28 of the Court Fees Act cannot be exercised by an order passed after the decision of the case to which the question of the

Judge could exercise his power of ordering documents to be stamped, and seemed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt, filing, or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped. **MAHADEO v. RAM KISHEN DAS** I. L. R., 7 All., 628

an account, but simply an action for money lent. **KRISHNABAI v. ANTAJI VIRUPAKSHA**

[12 Bom., 227]

2. — *Execution of part of decree—Payment of full amount of Court-fees not necessary for such part execution—Construction of Act—Court Fees Act, s. 17—The plaintiff sued the*

under s. 11 of the Court Fees Act (VII of 1870), the plaintiff was not entitled to execution of any part of the decree until he paid the proper Court-fees on the sum awarded as *meane profits*, viz., Rs. 349 13-3. *Held* that the plaintiff might obtain execution of that part of the decree which ordered delivery of the house and books and documents without paying the fees payable on the amount awarded for *meane profits*. Ss. 11 and s. 17 of the Court Fees Act (VII of 1870) ought to be similarly construed; and the language of the latter section, which deals with multifarious suits, shows that for the purposes of the stamp revenue such suits are deemed to be a collection of distinct suits relating to the several causes of action combined in them. In applying s. 11 to such suits, in order to

( 1875 )

( 1876 )

**COURT FEES ACT (VII OF 1870)**  
—continued.

give a harmonious construction to the Act as a whole, the term "suit" in that section should be construed as confined to that part of the suit in question which related to mesne profits. **FULOHAND v. BAI IOHIA** [I. L. R., 12 Bom., 98]

3. **Suit for possession and mesne profits—Code of Civil Procedure (1882), s. 212—Assessment of mesne profits—Dismissal of suit—Application for execution of decree.**—Where, upon the application of the decree-holder, the Court executing the decree has assessed the amount of mesne profits, but the necessary Court-fees have not been deposited within the time fixed by the Court as provided by s. 11 of the Court Fees Act (VII of 1870), the suit, that is, the claim in respect of those mesne profits, must be dismissed; after such dismissal, no application for execution of the decree for mesne profits can be entertained, as no such decree is in existence. The word "suit" in the last part of para. 2 of s. 11 of the Court Fees Act does not mean the entire suit; it means the claim in respect of the mesne profits. **KEWAL KISHAN SINGH v. SOOK-HARI** [I. L. R., 24 Calc., 173] [C. W. N., 243]

s. 12.  
See **APPEAL—ACTS—COURT FEES ACT, 1870** [19 W. R., 214] [23 W. R., 296]  
**I. L. R., 2 Bom., 145, 219**  
**I. L. R., 6 Calc., 249**  
**I. L. R., 14 Mad., 169**

See **APPEAL—DECREES.**

[I. L. R., 11 All., 91]  
See **APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—VALUATION OF SUIT.** [1 Bom., 62]  
**14 W. R., 196**  
**22 W. R., 433**  
**I. L. R., 19 All., 165**

See **CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT, ERROR IN.**

See **COSTS—SPECIAL CASES—VALUATION OF SUIT** [20 W. R., 206]

and s. 28—**Finality of decision of Court on question of Court-fee.**—The decision of the Court on a question of the Court-fee payable on a plaint or memorandum of appeal which is to be "final as between the parties to the suit" must be a decision made between the parties on the record and after they had an opportunity of being heard, and not a mere decision based upon the report of a Munsarim before the plaint or memorandum of appeal is filed, and therefore before any parties are before the Court. Hence where a Court of first instance held on the report of the Munsarim that a plaint presented to it had been insufficiently stamped, but subsequently, both parties being before the Court and arguments having been heard, decided that the

**COURT FEES ACT (VII OF 1870)**  
—continued.

Court-fee originally paid was sufficient, it was held that the latter decision was the decision which was final as between the parties within the meaning of s. 12 of the Court Fees Act, 1870. **AMJAD ALI v. MUHAMMAD ISMAIL** [I. L. R., 20 All., 11]

s. 14 and sch. I, art. 5—**Application for review filed after time.**—An application for a review of judgment having been made on the first day after the vacation, after the ninetieth day from the date of the judgment which it was sought to review, it appeared that the ninetieth day fell during the vacation when the High Court was closed. Held that the full fee leviable on the memorandum of appeal must be paid in the first instance, but that the Court, if satisfied that the delay was not caused by the laches of the applicant, might direct a refund of one-half of such fee. **IN THE MATTER OF DOORGA PROSUNNO GHOSE** [9 C. L. R., 479]

s. 16.

See **PAUPER SUIT—APPEALS.**

[I. L. R., 1 Bom., 75]  
**Alteration in form of decree on appeal.**—Where plaintiff prayed for a separation into two equal shares of the whole property to which she and the defendant were jointly entitled, and the lower Court decreed to her joint and undivided possession of her half share, and she also succeeded in the whole of her claim as before the High Court in special appeal, Held that, as the separate possession by partition is a form of decree at the option of the plaintiff, the Court was in justice bound to grant her request, that the decree should be re-framed in such a manner as to award possession to her in severalty, without regard to any stamp fee. S. 16 of the Court Fees Act refers to a case where a party losing substantially a portion of his claim is precluded from re-asserting it before the Appellate Court without paying the proper stamp fee. **BISSONATH CHATTERJEE v. MADHUBMONEE DABER** [15 W. R., 511]

s. 17—**"Distinct subjects"—Distinct causes of action.**—Held (SPANKIE, J., dissenting) that the words "distinct subjects" in s. 17 of Act VII of 1870 mean distinct causes of action or distinct kinds of relief. Per SPANKIE, J.—Such words mean every separate matter distinctly forming a subject of the claim. **CHAMAILI RANI v. RAM DAI** [I. L. R., 1 All., 552]

2. **Civil Procedure Code (1859), s. 9 (1877, ss. 44, 45)—Multifarious suit—"Distinct subjects"—Plaint—Memorandum of appeal.**—Held that the words "distinct subjects" in s. 17 of the Court Fees Act, 1870, mean distinct and separate causes of action. **Chamaili Rani v. Ram Dai**, I. L. R., 1 All., 552, observed on. The plaintiff sued his brothers and a nephew for his share, according to the Hindu law of inheritance, and under a will, of the moveable and immoveable property of his deceased uncle, by the cancellation of a deed of gift of the immoveable property in favour of the nephew. Held, per STUART, C.J., and

## COURT FEES ACT (VII OF 1870)

—continued.

STRAIGHT, J., that, under s. 17 of the Court Fees Act, 1870, the plaint and memorandum of appeal in the suit were chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in separate suits for the moveable and immoveable property would have been liable under that Act. *Per* ODFIELD, J., that Court-fees were leviable on the plaint and memorandum of appeal on the total value of the claim, the suit not being one of the nature to which s. 17 of the Court Fees Act referred. *MUL CHAND v. SHIB CHARAN LAL*. . . . . I. L. R., 2 All., 678

## COURT FEES ACT (VII OF 1870)

—continued.

subjects would be liable under the Court Fees Act. *PARNHOTAN LAL v. LACHMAN DAS*

[I. L. R., 9 All., 252]

6. ————— Suit for possession of

REFERENCE UNDER THE COURT FEES ACT, 1870,  
s. 5 . . . . . I. L. R., 16 All., 401

7. ————— Multifarious suit — Court

claim. *Chedi Lal v. Kirath Chand*, I. L. R., 2 All., 682, dissented from. *KISHORI LAL ROY v. SHARU CHUNDER MOZOOMDAR*

[I. L. R., 8 Calc., 593  
10 C. L. R., 359]

s. 19.

See WRITTEN STATEMENT.

[I. L. R., 5 Bom., 400  
12 C. L. R., 367]

1. ————— Stamp on memorandum of  
appeal by judgment-debtor in custody from order

the claim. *AMAR NATH v. THAKURDAS*  
[I. L. R., 3 All., 131]

5. ————— Suit on hundis—Distinct  
causes of action—"Distinct subjects."—In a suit  
upon three different hundis executed on the same  
date by one of the defendants in favour of  
the other three defendants and by them assigned to  
the plaintiff, and not paid on maturity,—*Held* that  
each hundi afforded a separate cause of action, that  
the suit embraced three separate and distinct subjects,  
and that the memorandum of appeal by the first  
defendant was chargeable with the aggregate amount  
of the Court-fees to which the memorandum of  
appeal in suits embracing separately each of such

LESS NO COURT-FEE WAS LEVIED ON MEMORANDUM  
of the Court Fees Act. *KALI PRASAD BANERJI v.  
GISHORNE & Co*

[I. L. R., 10 Calc., 61; 13 C. L. R., 153]

2. ————— Complaints made by muni-

[I. L. R., 16 Mad., 423]

## DIGEST OF CASES.

( 1879 )

COURT FEES ACT (VII OF 1870)  
—continued.s. 19D—Act XIII of 1875, s. 6—  
Exemption from probate duty—Joint family—  
Conveyance to four members of a joint family—  
governed by the Mitakshara law as tenants-in-

common—Survivorship.—The deceased, who was a member of a joint Hindu family governed by Mitakshara law, left a will, of which he appointed his brothers the executors and trustees. The brothers as executors applied for probate, but claimed exemption from the payment of probate duty on the ground that the property was "joint ancestral property which would pass by survivorship." The petition stated that in the lifetime of the testator he and his brothers, out of the income of the ancestral estate, purchased from the Corporation of Calcutta some plots of land which were conveyed to them as tenants-in-common; that the effect of this was to vest an undivided one-fourth share in the remaining coparceners under the rule of survivorship, but to his legal representatives; and that, in order that effect might be given to the rule of survivorship, it was necessary to obtain probate. Held that the property, though conveyed to the brothers as tenants-in-common, vested in them as trustees for the benefit of all the coparceners, and consequently was not liable to duty. IN THE GOODS OF POKURNULL AUGURWALLAH  
[I. L. R., 23 Cal., 980  
1 C. W. N., 31

s. 20, cl. 1—Rules under that section framed by the High Court in 1878—Process—Commission issued to ameen to fix mesne profits.—A commission issued to an ameen to hold a local investigation for the purpose of ascertaining the amount of mesne profits is not a process within the meaning of cl. 1 of s. 20 of the Court Fees Act; and art. 3, part II of the rules, promulgated in 1878, framed under that section, is therefore *ultra vires*, and cannot be enforced. JAGAT KISHORE ACHAR-JEA CHOWDREY v. DINA NATH CHUCKERBUTTY CHOWDREY  
[I. L. R., 17 Cal., 281

s. 22.  
See PENAL CODE, s. 186.  
[I. L. R., 22 Cal., 596

s. 25.  
See LIMITATION ACT, 1877, s. 4.  
[I. L. R., 12 All., 129

s. 26—Certificate of heirship—Succession Certificate Act (VII of 1889), ss. 17 and 20—Notification of Governor General, No. 361, dated 18th April 1883, Irregularity in observing directions of—Effect of, on validity of stamp.—A certificate having been granted on an ordinary stamp of requisite value, it was contended that it was not properly stamped in accordance with s. 17 of the Act (VII of 1870) as required by s. 17 of the Succession Certificate Act (VII of 1889), because it did not bear upon it the words "Court-fees" as directed in the notification of the Governor General, No. 361, dated 18th April 1883. Held that, though s. 26 of the Court Fees Act (VII of 1870) provides that the stamp used to denote the fee chargeable under the Act shall be of such particular

COURT FEES ACT (VII OF 1870)  
—continued.

kind as the Governor General of India in Council may by notification from time to time direct, and that, though the Governor-General had issued such notification, still the direction in the notification that the stamp should bear the words "Court-fees" was not a matter on which he had authority to give any direction under the terms of s. 20 of the Court Fees Act, and therefore could only be regarded as a departmental order; the non-observance of which could not invalidate the stamp for the purpose of the Act. ANNAPURNA BAI v. LAKSHMAN BHIKAJI VAKHARKE  
I. L. R., 19 Bom., 145

s. 28.  
See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—APPEAL.  
[I. L. R., 15 Mad., 29

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.  
[I. L. R., 2 All., 683  
I. L. R., 12 All., 57

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT, ERROR IN.  
[I. L. R., 7 All., 528

See LIMITATION ACT, 1877, s. 4.  
[I. L. R., 19 Cal., 747  
I. L. R., 12 All., 129  
I. L. R., 15 All., 65  
I. L. R., 20 Mad., 319  
I. L. R., 22 Mad., 494

See LIMITATION ACT, 1877, s. 5.  
[I. L. R., 12 All., 57

Civil Procedure Code, 1882, ss. 54, 56—Dismissal of suit—Rejection of plaint—Court Fees Act, ss. 9, 10, 11.—When a memorandum of appeal, which, when tendered, was insufficiently stamped, has subsequently been sufficiently stamped, the affixing of the full stamps cannot have a retrospective effect so as to validate the original presentation, unless it has been done by order made under the second paragraph of s. 28 of the Court Fees Act. In the case of a High Court, such an order can be made only by a Judge, and by him only, in cases "of mistake or inadvertence." These words mean mistake or inadvertence on the part of the Court or its officers, and not on the part of the appellant or his advisers. The expression "head of the office" in s. 28 does not refer to the head of the office of a Court, or at all events to the head of the office of a High Court, acting not as such, but as a taxing officer; but it refers to the head of a public office, such as the Board of Revenue. Ss. 9, 10, and 11 of the Court Fees Act are not in conflict with s. 28, nor are ss. 9, 10, 11, and 28 read together in conflict with s. 54 of the Civil Procedure Code. Cases within s. 10 or s. 11 of the Act would arise only where, through mistake or inadvertence of the

## COURT FEES ACT (VII OF 1870)

—continued.

4. Proriso—Appeal and/or

the Court Fees Act, may be admitted on a 6-anna stamp. PURNAG BHUGGUT v. DOZZELLE

[14 W. R. 21

### sch. I, art. 3.

\_\_\_\_\_ \$ 30.

See REGISTRATION ACT, 1871, s. 2.

See LIMITATION ACT, 1877, s. 4.

[6 Md., 35]

— 8. 31.

1. ——— sch. I, arts. 4 and 5—*Application for review.*—An application for review of judg-

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[L. L. R., 20 Calc., 687

*See* COMPENSATION—CRIMINAL CASES—  
FOR LOSS OR INJURY CAUSED BY  
OFFENCE . I. L. R., 7 Mad., 345

114 W. R. 249

2. Application for review of judgment in pauper suit—Court-Fees—Act No. VII of 1870 (Court Fees Act), sch. I, clause—Civil Procedure Code, s. 410.—Held that, when an application for review is presented in a suit *in forma pauperis*, that application, like the plaint in the suit, is not liable to any Court-Fee. UMDA BIR v. NAINA BIBI . . . I. L. R., 30 All. 410

I. L. R., 20 ALL. 410

3. ———— *Stamp—Petition of review.*  
—When a plaint or memorandum of appeal comprises

SEN-EMPRESS & TANGAVELU CHETTI

[I. L. R., 22 *Mad.*, 153

other plant for an account extending to a  
 amount of valuation. EREKSAH DHANJESTH  
 JAI DORANI . I. L. R., 7 Bom., 535  
 ABAD ALI PRADHAM v. JAMIRUDDIN MAHO-  
 13 C. L. R., 180

(T. L. R., 4 Bom., 26

17 Mad., Ap. 1

of the Court-fee upon a plaint. **VIJAYAN**  
ET AL. MONOPOLY BRUGUT

[L. L. R., 10 Cal., 11

<sup>1</sup> PAULT ВНЕШНТ & МОНОПРИ ВНЕШНТ

513 C. L. R. 171

Memorandum of appeal  
in order under s. 331 of the Civil Procedure

may be presented on payment of half the fee leviable on the plaint or memorandum of appeal (under art. 5 of sch. I of the Court Fees Act, 1870), the time during which the Court is closed for vacation cannot be excluded. **IN RE KOTA**

[L. R., 9 Mad., 134

3. \_\_\_\_\_ Application for review—  
Whether Court-fee payable is on the value of the

(L. L. R., 10 Bom., 238)

( 1883 )

COURT FEES ACT (VII OF 1870)  
—continued.

costs. The petitioner paid stamp duty on the relief asked for, i.e., for the entire amount of costs. The lower Court ordered that the petitioner to pay stamp duty on the entire value of the suit, and the petitioner not complying with this order, his application was rejected. *Held* that, having regard to the language of art. 5, sch. I of the Court Fees Act, the Munsif did not come to an erroneous conclusion. In *re Manohar G. Tambekar, I. L. R., 1 Bom., 26*, distinguished. *NOMIN CHANDRA CHUCKERBUTTY v. MOHAMMED UZIR ALI SARKAR*. 3 C. W. N., 202

4. — *Fee payable on application to review appellate decree under Letters Patent, s. 10.*—For the purpose of ascertaining the Court-fee to be paid under sch. I, art. 5, of the Court Fees Act (VII of 1870), upon an application to review an appellate decree, the fee to be considered is the fee leviable on the memorandum of the appeal in which the decree sought to be reviewed was passed, and not the fee which was leviable on the plaint, nor—where the decree sought to be reviewed was passed on appeal under s. 10 of the Letters Patent—from an appellate judgment of a Division Bench—the fee which was leviable on the memorandum of the appeal before such bench. *HUSAINI BEGAM v. COLLECTOR OF MUZAFFARNAGAR* [I. L. R., 11 All., 178]

—sch. I, art. 7—*Notes of judgment furnished to parties—Copies of decrees.*—Notes of judgment furnished to parties under the Rules of Practice for the guidance of Small Cause Courts are copies of decrees which require a stamp under art. 7, sch. I of Act VII of 1870. ANONYMOUS [8 Mad., Ap., 24]

See ANONYMOUS CASE

—sch. I, art. 8—*Stamp Act, 1879, sch. I, art. 1—Copies of originals returned to party—Liability of such copies to stamp duty.*—In the course of a suit the plaintiff put in evidence certain entries from his day-books and ledger. The books had been produced in Court, and had been returned to the plaintiff as usual on his furnishing copies of the said entries. The Subordinate Judge, feeling doubt as to whether such copies should be furnished on stamped paper, referred the question to the High Court. *Held* that the original entries, not having been in the handwriting of the debtor, were not liable to stamp duty under sch. I, art. 1, of the Stamp Act, I of 1879, and that, therefore, the copies of them were not chargeable with any Court-fees under sch. I, art. 8, of the Court Fees Act (VII of 1870). *HARICHAND v. JIVNA SUKHANA* [I. L. R., 11 Bom., 528]

1. —sch. I, art. 11—*Ad valorem fee*—*Property subject to a mortgage—Stamp duty found insufficient on taking account.*—By cl. 11, sch. I, Act VII of 1870, "The Court Fees Act, 1870," an *ad valorem* duty of two per cent. on the amount or value of the estate is chargeable for probate of a will, where the amount or value of the property, in respect of which probate is granted,

COURT FEES ACT (VII OF 1870)  
—continued.

exceeds Rs. 1,000. The term "value" in the Act apparently means market value, and the market value of mortgaged property is the equity of redemption. An executor having applied for probate in respect of property which was alleged to be charged and mortgaged in excess of its value, no fee was charged for the probate of the will. In such a case, however, if it be found, when the accounts are filed, that sufficient stamp duty has not been paid, payment of any deficiency can be enforced. *IN THE GOODS OF MACLEAN* 8 N. W., 214

2. — *Probate granted to second executor when leave has been reserved to him to take out probate.*—No stamp duty is payable under the Court Fees Act, 1870, on probate granted to a second executor, to whom leave was reserved to take out probate when the first probate was granted. *IN THE GOODS OF AMERBUN* 15 W. R., 496

3. — *Letters of administration.*—Before the passing of the Court Fees Act, the Administrator General obtained letters of administration to a certain estate, limited until the will should be proved; and the fixed duty prescribed by the Succession Act was paid in respect of such letters of administration. The will was proved, and a petition presented for general letters of administration with the will annexed, after the passing of the Court Fees Act. *Held* that the fee therein prescribed must be paid on the amount of the property irrespective of the duty paid on the grant of the former letters of administration. *IN THE GOODS OF CHALMERS* [8 B. L. R., Ap., 137: 21 W. R., 248 note]

4. — *Letters of administration with will annexed.*—The Administrator General obtained letters of administration with a copy of, exemplification of probate of the will annexed, and the full *ad valorem* duty prescribed by sch. I, cl. 11, of the Court Fees Act was paid on the amount of the property. Subsequently, the Administrator General produced a document referred to in the will of the testator, and obtained an order for letters of administration with a copy of the exemplification of probate of the will annexed, and of the document produced as part of the will, in lieu of the former letters of administration. *Held* that he was not liable to pay a second *ad valorem* duty. *IN THE GOODS OF MOSSON* 8 B. L. R., Ap., 139

5. — *Property subject to a trust.*—Where property was conveyed by T to L on trust to pay the income to T for her life, and after her death to hold the property for her children in such manner or form as she should by will appoint, and T afterwards intermarried with G and shortly afterwards made a will of which she appointed her husband and the trustee of the settlement executors, *Held* that the *ad valorem* duty prescribed by sch. I, cl. 11, of the Court Fees Act was not payable in respect of such trust property. The words of that clause mean property which the deceased was

## COURT FEES ACT (VII OF 1870)

—continued.

possessed of or entitled to. IN THE GOODS OF GEORGE

[8 B. L. R., Ap., 133; 15 W. R., 457 note

ting to "property which a deceased person was possessed of as a trustee for any other person." *Held* that B's half share should be treated as trust property, and exempted from the 2 per cent. *ad valorem* fee. IN THE GOODS OF BRINDABUN GHOSE

[11 B. L. R., Ap., 39; 19 W. R., 230

7. ——— Letters of administration—  
Estate of Hindu in hands of deceased daughter's

mortgage, the value of the property for the purpose of estimating the *ad valorem* duty payable under the Court Fees Act is the value of the entire pro-

tration. IN THE GOODS OF INNES

[8 B. L. R., Ap., 43; 16 W. R., 253

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the terms  
e receivers

who had been appointed *pendente lite* endorsed and transferred certain securities and shares to one of the parties, D, pursuant to the decree. The Bank of Bengal Account Department and the companies concerned having refused to recognize the transfer, D applied for letters of administration in respect of the securities and shares in question, claiming exemption from the duty prescribed by the Court Fees Act, sch. I, cl. 11, on the ground that she ought not to have been required to obtain such letters, her right having been declared by a decree of the High Court. *Held* that the prescribed duty must be paid, and

## COURT FEES ACT (VII OF 1870)

—continued.

that there was no ground of exemption from it. IN THE GOODS OF SRINATH DASS

20 W. R., 440

IN THE GOODS OF RAM CHANDRA DAS

[9 B. L. R., 30

18 W. R., 153

11. ——— Appointment by will—

the Court Fees Act. IN THE GOODS OF ORAM

[12 B. L. R., Ap., 21

21 W. R., 245

12. ——— Letters of administration—

to such estate. IN THE GOODS OF BEAKE

[13 B. L. R., Ap., 24

21 W. R., 397

the probate fee charged on the balance. IN RE WILL OF RAMCHANDRA LAKSHMANJI

[1 L. R., 1 Bom., 113

14. ——— Executors obtaining second

GOODS OF GASPER

1 L. R., 3 Calc., 733

[2 C. L. R., 438

## DIGEST OF CASES.

( 1891 )

COURT FEES ACT (VII OF 1870)  
—continued.

intervention of a Court to be filed, should be treated as an application for a miscellaneous special appeal. Such an application may be made on a stamp of the value of two rupees, under sch. II, art. 11, of the Court Fees Act (VII of 1870). **8 Bom., A. C., 17 v. RAMA ESTU**

2. — *Appeal from order under s. 331 of the Civil Procedure Code (Act X of 1877), as amended by s. 52 of Act XII of 1879.*—Appeals from orders under s. 331 of Act X of 1877, as amended by s. 52 of Act XII of 1879, are chargeable with the same Court-fee as is required in the case of appeals from decrees. **MAHBUBAN v. UMRAO BEGUM. SHAYAMA SUNDURI DAS v. WATSON & CO. [I. L. R., 8 Calc., 720; 11 C. L. R., 98]**

3. — *Memorandum of appeal from order under Companies Act (VI of 1882), s. 214—Decree—Valuation of appeal.*—An order under s. 214 of Act VI of 1882 (Indian Companies Act) is not a decree or an appeal having the force of a decree, and consequently an appeal from such an order to a High Court is properly stamped, with reference to the Court Fees Act (VII of 1870), sch. II, art. 11 (b), with a Court-fee stamp of Rs. 2. **REFERENCE UNDER COURT FEES ACT [I. L. R., 17 All., 238]**

4. — *Appeal under cl. 10, Letters Patent, High Court, N.-W. P., from an order of remand under s. 562 of the Code of Civil Procedure—Court-fee.*—Held, that in an appeal, under s. 10 of the Letters Patent, from an order of a single Judge of the Court remanding a case under s. 562 of the Code of Civil Procedure the proper Court-fee is Rs. 2. **BALMI RAI v. MAHABIR RAI [I. L. R., 21 All., 178]**

1. — *sch. II, art. 17, cl. 1—Suit to contest award of Settlement Officer—Mad. Act XXVIII of 1860, s. 25.*—A suit under (Madras) Act XXVIII of 1860, s. 25, to contest the award of a settlement officer falls within the terms of art. 17 (1) of sch. II of the Court Fees Act. **ANNAMALAI CHETTI v. CLOETE [I. L. R., 4 Mad., 204]**

2. — *Suit to set aside order under Act VIII of 1859, s. 246—Stamp.*—A suit brought under the provisions of s. 246 of Act VIII of 1859 to set aside an order allowing a claim to attached property and releasing the property from attachment is a suit to try the title and establish the right of the person who brings the suit: and such a suit must be valued according to the value of the property, and cannot be brought upon a stamp of Rs. 10, under art. 17 of sch. II of the Court Fees Act. **MUFTI JALAUDDIN MAHOMED v. SHOHORULLAH [15 B. L. R., Ap., 1: 22 W. R., 422]**

3. — *Suit after rejection of claim to attached property—Ad valorem stamp.*—In execution of a decree by the defendant, certain property was attached as being that of the judgment-debtor. The plaintiff preferred a claim, but his claim was disallowed, and the property ordered to be sold. In a suit to have it declared that the property

COURT FEES ACT (VII OF 1870)  
—continued.

belonged to the plaintiff.—Held, it was a suit in which consequential relief was asked for, and that the *ad valorem* duty prescribed by sch. I of the Court Fees Act was payable on the plaint, and not that provided by sch. II, art. 17. **Jalaluddin Mahomed v. Shohorullah, 15 B. L. R., Ap., 1: 22 W. R., 422, followed. AHMED MIRZA SAKIB v. THOMAS [I. L. R., 13 Calc., 182]**

4. — *Suits brought to set aside or restore attachment—Civil Procedure Code, 1859, s. 246—Summary decision—Limitation Act, 1871, art. 15 (1877, art. 13)—Interpretation of Acts—Valuation of suits.*—Suits brought to set aside or to restore an attachment upon a house in pursuance of the permission given in s. 246 of the Civil Procedure Code may be regarded either as "suits to obtain a declaratory decree or order where consequential relief is prayed" so as to fall within s. 1, cl. 4, art. (c), of the Court Fees Act (VII of 1870), or as suits to obtain or set aside a summary decision or order, in which case the stamp duty payable would be that prescribed by art. 17, cl. 1, sch. II of the Court Fees Act. The Court Fees Act being a fiscal enactment, it is the duty of the Courts to treat such suits as belonging to the latter class (it being the more favourable for the suitor), and to impose fees accordingly. Decisions under s. 246 of Act VIII of 1859 as to the removal or retention of attachments are "summary decisions or orders" within the meaning of art. 17, cl. 1, sch. II of the Court Fees Act (VII of 1870). The words "summary decision or order" in this clause of the Court Fees Act mean decision or order not made in a regular suit or appeal. The construction which has been given to these words, or nearly similar words, in the Limitation Acts (e.g., Act IX of 1871, sch. II, art. 15, and Act XV of 1877, sch. II, art. 13) affords no guide to their construction in the Court Fees Act. When Acts are in *pari materia*, they may be treated as forming a Code, and may be read together; but when this is not so, the construction which has been put upon one cannot be relied upon as a guide to the construction of another. The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore Court Fees Acts, which are fiscal enactments which fix the valuation of suits for the purpose of determining jurisdiction. **Motichand Jaichand v. Dadabhai Pestonjee, 11 Bom., 186, explained. Ravlaji Tamaji v. Dholapa Raghu, I. L. R., 4 Bom., 123, dissented from by WESTROP; C. J. DAYACHAND NEMCHAND v. RAMCHAND DHU- RAMCHAND [I. L. R., 4 Bom., 515]**

5. — *Stamp—Valuation of suit—Summary decision.*—The plaintiff had attached certain immoveable property in execution of a decree against a third party. The attachment was removed on application by the defendant under s. 246 of Act VIII of 1859, whereupon the plaintiff sued for a declaration that the property in dispute belonged to his judgment-debtor, and was liable to be attached and sold under his decree. The plaint,

## COURT FEES ACT (VII OF 1870)

—continued.

Letters Patent. **SADASHIV YASHWANT v. ATMARAM SAKHARAM** . . . **I L. R., 4 Bom., 535**

8. — *Suit for a declaration of right—Suit to set aside an order under s. 248 of Act VIII of 1859 disallowing a claim to property under attachment—Consequential relief.—Held that a suit for a declaration of the plaintiff's proprietary right to certain moveable property attached in the execution of a decree while in the possession of the plaintiff, and for the cancellation of the order of the Court executing the decree, made under s. 248 of Act VIII of 1859, disallowing his claim to the property, could be brought on a stamp of Rs. 20, and need not be valued according to the value of the property under attachment. **Chunia v. Ram Dial**, **I. L. R., 1 All., 360**, followed. **Jalal-ud-din Mahomed v. Shohorulla**, **15 B. L. R., Ap. 1**, dissented from. **Motchand Jatechand v. Dadabhai Pestany**, **11 Bom., 186**, and **Chakalingapeshaw Naiker v. Achiyar**, **I. L. R., 1 Mad., 40**, distinguished. **GULZARI LAL v. JADAVUN RAI** [**I L. R., 2 All., 63**]*

previously come into her possession under a transfer by sale in lieu of her dower-debt. The plaintiff's

first instance held that this was not sufficient, and that the Court-fee should be calculated on the amount of the decree in execution of which the property had been attached. *Held* that, looking at the nature of the reliefs sought, cl. i, art. 17, sch. II of the Court Fees Act, 1870, was applicable, and that a Rs. 10 stamp in respect of each order sought to be set aside was payable. **Dayachand Nemchand v. Remchand Dharumchand**, **I. L. R., 4 Bom., 515**, and **Gulzari Lal v. Jadavun Rai**, **I. L. R., 2 All., 63**, followed. **FACIMA BILGAM v. SUREN RAM** [**I L. R., 6 All., 341**]

## COURT FEES ACT (VII OF 1870)

—continued.

decree, the wife of the judgment-debtor, under s. 178 of the North-Western Provinces Rent Act (XII of 1881), objected to the attachment on the ground that the property had previously been conveyed to her by her husband under a deed of gift. The objection was disallowed, and she thereupon brought a suit with reference to the provisions of

6 All., 341, followed. **MANEJ KUARI v. RADHA PRASAD SINGH** . . . **I L. R., 6 All., 466**

— sch. II, art. 17, cl. 2.

See DECLARATORY DECREE, SUIT FOR—ADOPTIONS . . . **I L. R., 1 Bom., 348**

1. — cl. 3—*Suit for declaration of right to have doors closed.*—A right or interest in the subject-matter of a suit for the purpose of closing a new door alleged to have been opened with a design to assert (injunctively) rights over adjacent lands may be shown without paying the stamp necessary in a suit directly for the land itself. **CHITENDUN v. TALUKATI** . . . **2 N. W., 41**

2. — *Suit for declaratory decree.*—In a suit for possession and waslat, plaintiff obtained a decree declaring his right to possession upon the death of his father. Defendant appealed.

bear an *ad valorem* stamp duty. **MILLER v. AKHOREE RAM** . . . **15 W. R., 413**

party of deceased, and asked for "confirmation of right and possession by enforcement of the will, in reversal of the summary order of the High Court." *Held* that cl. 3, art. 17, sch. II of Act VII of 1870, did not apply. This was not a suit to obtain a declaratory decree where no consequential relief was prayed. **DINABANDHU CHOWDHURY v. RAJMOHINI CHOWDHRAIN** . . . **8 B. L. R., Ap. 32**

**S. C. DINOBUNDROO CHOWDHURY v. RAJMOHINI CHOWDHRAIS** . . . **10 W. R., 213**

4. — *Valuation of suit for declaratory decree—Consequential relief—Court*

# COURT FEES ACT (VII OF 1870) —continued.

*Fees Act, 1870, s. 7, cl. 4, and s. 17.*—A suit praying merely for a declaration that the plaintiff is entitled to require the defendants to account to him, and to permit him to inspect their books, is simply a suit for a declaratory decree without consequential relief, and falls within art. 17, cl. 3, of sch. II of Act VII of 1870. A suit praying for such a declaration as the above, and also for a positive order in the nature of a mandatory injunction for the production of the defendants' books and property in their hands, or a suit praying for such declaration as the above, and also for a positive decree for an account to be taken by the Court, and for the production of the books and property, would range under s. 7, cl. 4, art. (c) of Act VII of 1870, as being a suit "to obtain a declaratory decree or order where consequential relief is prayed," and also within art. (d) of the same section, as being a suit "to obtain an injunction;" and a suit of the third species described above would fall under art. (f) of the same clause, as being a suit "for accounts." *Quere*—Whether, in the case of a suit for a declaration of the right of the plaintiff to an account and to inspection of the defendants' books, and for a mandatory injunction for the production of these books, or of a suit for such declaration and for a positive decree for the taking of an account by the Court and the production of the defendants' books, the plaintiff would, by virtue of s. 17 of Act VII of 1870, require separate stamps under arts. (d) and (f) of cl. 4, s. 7, or be sufficiently covered by the stamp under art. (c) of the same clause; and whether, assuming the declaration and the account each to require a stamp, the prayer for an injunction or order for the production of books is not merely ancillary to, and not a distinct subject from, the taking of an account. *Quere*—Whether the provision in s. 7, cl. 4, of Act VII of 1870, that the amount of the fee payable in suits falling within that clause shall be computed "according to the amount at which the relief sought is valued in the plaint," is so inconsistent with that portion of s. 31 of Act VIII of 1859 which permits the Court receiving the plaint to revise the valuation of the claim as to render that portion of s. 31 of Act VIII of 1859 inoperative in suits within s. 7, cl. 4, of Act VII of 1870, notwithstanding the concluding passage in that clause. *Quere*—Whether the concluding passage in cl. 4, s. 7 of Act VII of 1870, is too express to admit of a limitation of the power of the Judge, and leaves him the right to revise the valuation placed on suits under cl. 4 by the plaintiff. But, assuming this to be so, it would, generally, not be advisable that the Judge should enhance the valuation on the reception of the plaint. The fee payable under s. 7, cl. 4, of Act VII of 1870 is according to the amount at which the relief sought is valued in the plaint, and not the value of the subject-matter of the plaint. *MANOHAR GANESH v. BAWA RAM-CHARAN DAS*. . . I. L. R., 2 Bom., 219

5. ——— *Stamp—Declaratory decree—Substantial relief.*—Where the plaintiffs sued for a declaration that a mutwalli had been guilty of misfeasance, and asked to have her removed from the mutwalliship and themselves appointed in her place,

# COURT FEES ACT (VII OF 1870) —continued.

whereby they would have been entitled to a share in the profits of the wuqf,—*Held* that the fixed stamp fee of ₹10 required by cl. 3, art. 17, sch. II of Act VII of 1870, was not sufficient; but the plaint should bear a stamp of a value proportionate to the subject-matter of the suit. *DELROOS BANOO BEGUM v. ASHGUR ALLY KHAN*

[15 B. L. R., 167: 23 W. R., 453]

6. ——— *Valuation of suit—Mahomedan law—Wuqf—Endowment—Removal of trustee—Court Fees Act, Act VII of 1870, s. 7, cl. (3), and sub-cl. (f).*—In a suit for the removal of the defendant from the management of certain trust funds on the ground of misconduct, the plaintiff stamped his plaint with a Court-fee stamp of ₹10, and valued the suit at ₹7,000 "for the purpose of jurisdiction." *Held* that the ₹7,000 must be taken, under the circumstances, to be the plaintiff's interest in the subject-matter of the suit, and that the Court-fee must be estimated upon that sum. *Delroos Banoo Begum v. Ashgur Ali Khan, 15 B. L. R., 167, followed, OMRAO MIEZA v. JONES.*

[E. L. R., 10 Cal., 598]

7. ——— *Stamp—Suit to set aside a deed or will—Declaratory decree—Consequential relief.*—In a suit for confirmation of possession by declaration of proprietary right, and also to set aside a forged and invalid will,—*Held* that the plaintiff sought consequential relief over and above the declaratory decree prayed for, and therefore the petition of appeal ought to be engrossed on a stamp of proportionate value to the subject-matter of the suit. *JOY NARAIN GIREE v. GREESH CHUNDER MYTER*

[15 B. L. R., 172: 22 W. R., 438]

See *THAKOOR DEEN TEWARRY v. ALI HOSSEIN KHAN*. . . 13 B. L. R., 427: 21 W. R., 84

L. R., 1 I. A., 192

8. ——— *Declaratory suit.*—Where a suit was brought against the holder of an impartible palaiyapat and others, to whom portions of the estate had been alienated, by the son of the palaiyakar, entitled to succeed to the estate on his father's demise, for a decree declaring that the alienations made by his father did not affect his rights,—*Held* that the Court-fee leviable on the plaint was ₹10 under art. 17 (3) of sch. II of the Court Fees Act, 1870, and not an *ad valorem* fee calculated upon the amount for which the alienations had been made. *SANKARA NARAINA v. VIJAYA RAGHUNADHA MAT-TAYAN PANNIKONDAR*. . . I. L. R., 7 Mad., 134

9. ——— *Suit for declaratory decree—Consequential relief.*—A suit in which plaintiff seeks an account of his father's estate from the executor appointed under his father's will, and in which he claims damages to the extent of ₹35,000 in default of his obtaining the accounts, should be filed on the stamp required for a suit for the recovery of ₹35,000, and not on a stamp of ₹10, which, under cl. 3, s. 17, sch. II of the Court Fees Act, 1870, is the stamp laid down for a declaratory suit in which no consequential

**COURT FEES ACT (VII OF 1870)***—concluded.*

relief is sought and which cannot be valued. *RAM DOOLAL SINGH v. GOPAL KRISTO SINGH*

[16 W. R., 156]

Court Fees Act, was not sufficient for the plaint. *MOXHODA DASSEN v. NOBIN CHUNDER MITTER*

[18 W. R., 259]

11. *Suit for declaratory decree.*—The plaintiff recognized the validity of a mortgage for a term of twenty years of her deceased

in due course of time, the share in the estate which devolved upon her by inheritance from her father and brothers, the sale deed of 1863 notwithstanding. The Court was of opinion that the suit was one for declaration of right only, and that the fee of ₹10, which was paid by her in respect of the memorandum of special appeal, was the fee properly payable. *INAMAN v. LALTA BAKSH*

[7 N. W., 343]

*app*  
*Reg*  
*pay*  
*out*

Act of 1877 is a fee of ten rupees, irrespective of the value of the suit. *JANTOO v. RADHA CANTO Doss*

[I. L. R., 8 Calc., 515]

**COURT FEES ACT AMENDMENT ACT (XI OF 1899).**

*See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION.*

[I. L. R., 26 Calc., 404, 407]

**COURTS (COLONIAL) JURISDICTION ACT, 1874 (37 & 38 Vic., c. 27).**

*See OFFENCE COMMITTED ON THE HIGH SEAS* . . . I. L. R., 21 Calc., 782

**COUSINS.**

*See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—COUSINS.*

**COVENANT.**

*See BUILDING LEASE.*

[I. L. R., 6 Bom., 526]

*See CONTRACT—CONDITIONS PRECEDENT.*

[3 Mad., 125]

**COVENANT—concluded.**

*See REGISTER OF HIGH COURT.*

[I. L. R., 16 Calc., 330]

*Breach of—*

*See CASES UNDER LANDLORD AND TENANT—FOREFEITURE—BREACH OF CONDITIONS*

*See REGISTRATION ACT, 1877, s. 49.*

[I. L. R., 2 Bom., 273]

*See CASES UNDER VENDOR AND PURCHASER—BREACH OF COVENANT.*

*—in restraint of trade.*

*See CASES UNDER CONTRACT ACT, s. 27.*

*—not to alienate.*

*See CASES UNDER MORTGAGE—FORM OF MORTGAGE.*

**COVENANT RUNNING WITH LAND.**

1. *Transfer of the land.—S, by*

in a suit by *A* against *L* and *R* for the arrears of the allowance, that *A* was not affected by an agreement between *L* and *R* as to the payment of the allowance, and *R* being in possession of the land was bound to pay the allowance. *ABADI BEGAM v. ASA RAM*

[I. L. R., 2 All., 162]

mortgage, and mortgagee by deed of sale ceased. The representatives of the vendor

gross negligence in such a case, he could not be treated as a *bond fide* mortgagee without notice, and that, being in receipt of the profits of the property, he was liable for the annual

**COVENANT RUNNING WITH LAND**

—concluded.

payment of the Rs 25 from the date when he took possession as mortgagee. *Agra Bank v. Barry*, L. R., 7 H. L., 135, and *Pitcher v. Rawlins*, L. R., 7 Ch. App., 259, distinguished. *Abadi Begam v. Asa Ram*, L. R., 2 All., 162, referred to. The definition of the word "notice" in s. 3 of the Transfer of Property Act (IV of 1882) correctly codifies the law as to notice which existed prior to the passing of the Act. *CHURAMAN v. BALJI*

[I. L. R., 9 All., 591]

**COVENANT TO RENEW.**

Settlement—*Amalnama*.—A, a zamindar, entered into negotiations with Government for settlement of certain lands. Pending the settlement, A sublet to B and granted him an amalnama for one year, and covenanted therein that whatever term of settlement he might obtain from Government, he would grant to B a pottah for the corresponding term. The negotiations with A were broken off, and Government settled with C on condition that he should abide by the above amalnama. Held that C was bound by the covenant to renew; the amalnama did not require to be registered. *RADIKA PRASAD CHUNDER v. RAMSUNDER KUR*

[I. B. L. R., A. C., 7]

**COVERTURE, PLEA OF—**

See APPELLATE COURT—OBJECTIONS  
TAKEN FOR FIRST TIME ON APPEAL—  
SPECIAL CASES.

[I. N. W., Ed. 1873, 243]

See HUSBAND AND WIFE.

[8 B. L. R., 372]

**COW, DEFINITION OF—**

See PENAL CODE, s. 429.

[I. L. R., 22 Calc., 457]

**CO-WIDOWS.**

See HINDU LAW—ADOPTION—WHO MAY  
OR MAY NOT ADOPT.

[I. L. R., 13 Bom., 160]

I. L. R., 22 Bom., 416

I. L. R., 23 Bom., 250, 327

See HINDU LAW—INHERITANCE—SPECIAL  
HEIRS—FEMALES—WIDOW.

[I. L. R., 1 Mad., 290]

L. R., 4 I. A., 212

1 Bom., 66

3 Mad., 268, 424

1 Ind. Jur., O. S., 59

I. L. R., 2 Mad., 194

I. L. R., 7 All., 114

See HINDU LAW—PARTITION—RIGHT TO  
PARTITION—WIDOW.

[I. L. R., 1 Mad., 290]

L. R., 4 I. A., 212

I. L. R., 2 Mad., 194

3 Mad., 424

6 B. L. R., 134

I. L. R., 12 All., 51

L. R., 16 I. A., 186

L. R., 22 Mad., 522

**CO-WIDOWS—concluded.**

See HINDU LAW—WIDOW—POWER OF  
DISPOSITION—ALIENATION.

[I. L. R., 9 Calc., 580]

I. L. R., 18 Mad., 1

L. R., 19 I. A., 184

I. L. R., 22 Mad., 522

**COWRIE.**

See GAMBLING . . . I. L. R., 18 All., 23

[I. L. R., 19 All., 311]

I. L. R., 25 Calc., 432

**CRABS.**

See PREVENTION OF CRUELTY TO ANIMALS  
ACT . . . I. L. R., 24 Calc., 881

**CREDITOR.**

See DEBTOR AND CREDITOR.

See CASES UNDER MAHOMEDAN LAW—  
DEBTS.

See PROBATE—OPPOSITION TO, AND REVO-  
CATION OF, GRANT.

[I. L. R., 2 Calc., 208]

I. L. R., 6 Calc., 429, 460

I. L. R., 10 Calc., 19, 413

L. R., 10 I. A., 80

I. L. R., 17 Mad., 373

I. L. R., 19 Calc., 48

Removal by, of debtor's property.

See THEFT.

[I. L. R., 22 Calc., 669, 1017]

[I. L. R., 18 All., 88]

Suit by—

See ADMINISTRATION 15 B. L. R., 296

[I. L. R., 10 Calc., 731]

See CASES UNDER REPRESENTATIVE OF  
DECEASED PERSON.

**CREMATION.**

See NUISANCE—UNDER CRIMINAL PROCE-  
DURE CODE . . . I. L. R., 25 Calc., 425

[2 C. W. N., 113]

See NUISANCE—PUBLIC NUISANCE UNDER  
PENAL CODE I. L. R., 19 Mad., 464

**CRIMINAL BREACH OF CONTRACT.**

See CASES UNDER ACT XIII OF 1859.

See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY IN  
ONE DISTRICT—CRIMINAL BREACH OF  
CONTRACT . . . I. L. R., 7 Mad., 354

[I. L. R., 10 Mad., 21]

# CRIMINAL BREACH OF CONTRACT

—concluded.

1. ————— Penal Code, s. 490—*Contract of service to convey indigo to the rats*.—An agreement for personal service in conveying indigo from the field to the rats is not a contract the breach of which is punishable by s. 490 of the Penal Code. *RE NOWA TEWAREE* . 6 W. R., Cr., 80

2. ————— *Offences against travellers*—*Quere*—Whether the words “during a voyage or journey” in s. 490 of the Penal Code do not limit the offences made under that section to offences against travellers. That section, however, does not apply to a contract to place the defendant’s carts at the complainant’s disposal for a specified time to convey a thing from where he pleases to where he pleases. *SAGE v. NIRUNJUN CHATTERJEE* [9 W. R., Cr., 12]

# CRIMINAL BREACH OF TRUST

See ABETMENT . 4 C W. N., 309

See BANKERS . I. L. R., 16 All., 88

See CHARGE—FORM OF CHARGE—CRIMINAL BREACH OF TRUST.

[8 Bom., Cr., 115  
I. L. R., 17 All., 153  
I. L. R., 18 All., 116  
I. L. R., 24 Calc., 193]

See COMPOUNDING OFFENCE.  
[I. L. R., 1 Mad., 191  
6 C. L. R., 392]

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.  
[I. L. R., 1 Mad., 55]

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST . I. L. R., 13 Bom., 147  
[I. L. R., 19 All., 111]

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R., 19 Bom., 749]

2 ————— Requisites for offence.—To

# CRIMINAL BREACH OF TRUST

—continued

breach of trust is charged. *ISSUR CHUNDER GHOSH v. PEARI MOHUN PALIT* . 16 W. R., Cr., 39

of trust cannot be committed in respect of immoveable property. *Reg. v. Girdhar Dharamdas*, 6 Bom. H. C., Cr., 33, followed. *JUGDOWN SINHA v. QUEEN-EMPRESS* . I. L. R., 23 Calc., 372

*MOUS* . 6 Mad., Ap., 28

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r wearing  
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*MOUS* . 3 Mad., Ap., 6

6. ————— *Missappropriation of pay of thanna police*—*Penal Code*, ss. 405, 409.—A constable who dishonestly misappropriates to his own use the pay of his thanna police entrusted to him is guilty of criminal breach of trust. *QUEEN v. SUBBAR MENAH* . 3 W. R., Cr., 44

*FEB NAIK* . 2 Bom., 133 2nd Ed., 127

to be punished . . . . . s. 405 of the Penal Code. *RAM MANICK SHAH v. BRINDABUN CHUNDER POTDAR* . 5 W. R., 230

9 ————— *Cheating*—*Penal Code*, ss. 405,

*REG. v. BABAJI BEN BHAV* . 4 Bom., Cr., 18

A pony was brought to the pound at the police station

( 1903 )

CRIMINAL  
—continued.

## BREACH OF TRUST

## DIGEST OF CASES.

and confined there under Act I of 1871. The books kept at the station showed that the pony had been sold by auction under the Act and purchased by one Gopinath. After some time the pony had eventually been purchased by the accused from a vendor from Gopinath. The Magistrate found on the evidence that there had been no sale under Act I of 1871, and convicted the accused of criminal breach of trust, and sentenced him under s. 406 of the Penal Code. *Held* the conviction was illegal. There must be an entrusting of the accused with the property, and that he dishonestly misappropriated it; there must be an intention on the part of the accused to cause wrongful gain or wrongful loss. *QUEEN v. RAJ KRISHNA BISWAS* 8 B. L. R., Ap., 1

S. C. IN MATTER OF RAM KISTO BISWAS  
[16 W. R., Cr., 52]

11. Failure to account—*Penal Code*, ss. 406, 407, 408.—The prisoner, a gomastah, took from his employers, between 15th April and 30th June, sums amounting to Rs 600, for the purchase of wood. During that period he supplied wood to the value of Rs 234, but the prosecutor alleged that most of that was to be set off against balance to the debit of the prisoner for the year before, and that the value of the firewood was, as a fact, only Rs 34. The prisoner was charged with criminal breach of trust as a servant. The defence was that he had purchased wood and made advances on that account; but this defence was proved to be false. The Magistrate convicted him, but the Judge held it was merely a failure to account, and acquitted the prisoner. *Held* the prisoner was guilty of criminal breach of trust. *WATSON v. GOLAB KHAN* [1 B. L. R., S. N., 21: 10 W. R., Cr., 28]

12. Penal Code, s. 405.—Where a complaint only amounted to a statement that the accused had, in consequence of certain arrangements made with the complainant's father, received certain moneys and had refused to render accounts, but contained no allegation that he had, in fact, realized and dishonestly misappropriated any particular sum, and obviously was made for the purpose of forcing him to render accounts,—*Held* that the Magistrate was right in dismissing it, since the facts alleged did not constitute criminal breach of trust. *QUEEN-EM-PRESS v. MURPHY* I. L. R., 9 All., 686

13. Partner—*Master and servant*.—The accused was convicted of criminal breach of trust in respect of the value of goods which had been entrusted to him to sell. It was urged before the High Court that the conviction could not be sustained. *Held* by JACKSON, J., that the finding of the Magistrate and Sessions Judge on the evidence was to the effect that the prisoner was not a partner, but a servant; that such finding could not be interfered with by the High Court as a Court of revision, unless there was a mistake in law; that the finding was correct in law; that the defence of the prisoner could not be taken to mean to say that he was a partner, but merely that he claimed a small share in the

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CRIMINAL  
—continued.

## BREACH OF TRUST

profits, and that such claim did not make him a partner, an agent's remuneration being a share in the profits not constituting the agent a partner. *Held* by KEMP and MITTAR, JJ. (releasing the prisoner), that, though the allowance of a portion of the profits or goods does not destroy the relation of master and servant, the accused in this case distinctly pleaded he was a partner, and not only that he was entitled to a share in the profits; that the lower Courts did not specifically decide that the accused was a servant; and that the prosecutor's remedy was a civil suit for an account. IN THE MATTER OF LALL CHAND ROY [9 W. R., Cr., 37]

14. Public servant—*Penal Code*, s. 409.—A village shroff whose duty it was to assist in collecting the public revenue received grain from raiyats and gave receipts as if for money received by virtue of a private arrangement. *Held* that he could not be convicted of criminal breach of trust by a public servant under s. 409 of the Penal Code, as he was not authorized to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue. ANONYMOUS 4 Mad., Ap., 32

15. Sentence, Mitigation of.—*Penal Code*, ss. 408, 409.—Where a Court inspector improperly delegated to a constable the custody, etc., of Government moneys (taking from him private security to save himself from loss in case of defalcation), and the constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under s. 408, and not s. 409, of the Penal Code, and the sentence reduced from ten years' transportation and a fine of Rs 500 to one year's rigorous imprisonment without fine. *QUEEN v. BANEE MADHUB GHOSH* [8 W. R., Cr., 1]

16. Penal Code, s. 409.—To constitute an offence under s. 409, it is not necessary that the property should be that of Government, but that it should have been entrusted to a public servant in that capacity. IN THE MATTER OF RAM SOONDER PODDAR 2 C. L. R., 515

17. Naib Nazir.—The Naib Nazir is a public servant within the meaning of s. 409 of the Penal Code, and not the mere private servant of the Nazir. *QUEEN v. MAHMOOD HOSSEIN* 2 N. W., 298

18. Absence of dishonest intention.—*Penal Code*, s. 409.—Where the accused in his capacity of revenue patel received from the Government treasury small sums of money on account of certain temple allowances, and did not at once pay over the same to the persons entitled to receive them, as he was bound to do, but it appeared that such persons were willing to trust him, and had actually passed receipts which the accused forwarded to the revenue authorities,—*Held* that the accused fulfilled the trust reposed in him by Government, and that his mere retention of the money

## CRIMINAL BREACH OF TRUST

—continued.

(I. L. R., 10 Bom., 356)

19. ——— Master and servant.—Servant entrusted with moneys for payment to tradesman of account settled with master for a specific sum—Gratuity of tradesman to servant—Right of master to benefit of gratuity—Act XLV of 1860, ss. 405, 409.—When a master entrusts his servant with money for the payment of an open account, i. e., an account of which the items have never been checked or settled, and the tradesman makes the servant a present, and the transaction amounts to a taxation of the bill and a reduction of the price by the servant, the latter obtains the reduction for his master's benefit, the money in his hands always remains the master's property, and, if he appropriates it, he commits criminal breach of trust. But where the master himself has settled the account with the tradesman for a specific sum, and sends the servant with money, and the servant, after making the payment, accepts a present from the tradesman, in that case the servant does not commit criminal breach of trust, inasmuch as the money is given to him by a person whom he believes to have a right to give it, though it may be that, according to the strict equitable doctrines of the Court of Chancery, he is bound to account to the master for the money. *Hay's case, In re Canadian Oil Works Corporation, L. R., 10 Ch. App., 593*, referred to. *QUEEN-EMPRESS v. IMPAD KRAN*. I. L. R., 8 All., 120

20. ——— Penal Code, s. 408.—Criminal breach of trust by a servant.—Criminal misappropriation.—An accused person who was in the service of zamindars, and whose duty it was to pay into the Collectorate Government revenue due in respect of their estates, immediately before the

and the amount shown to have been paid in by the altered challan. The accused was convicted on all the charges. It was contended that the charge under s. 408 was not sustainable, inasmuch as the money was not alleged to have been sent to the accused for the specific purpose of paying the Government revenue, and that the accounts between him and his employers

## CRIMINAL BREACH OF TRUST

—concluded.

(I. L. R., 22 Calc., 313)

21. ——— Penal Code, s. 409.—Rice condemned and ordered to be destroyed.—Property according to the Penal Code.—Sale of the

offence of criminal breach of trust as public servants. *Semble*—The accused committed no offence punishable under the Penal Code, though they may have been guilty of infringing a departmental rule. *EMPRESS v. WILKINSON*. 2 C. W. N., 216

## CRIMINAL CASE.

See ACT XIII of 1859.

(I. L. R., 27 Calc., 131  
4 C. W. N., 201)

See INSOLVENT ACT, s. 50.

(I. L. R., 19 Calc., 805)

See LETTERS PATENT, HIGH COURT, CL. 15.

(I. L. R., 17 Mad., 106)

## CRIMINAL COURT.

——— Disposal of property by—

See CRIMINAL PROCEDURE CODES, ss. 517,  
523See CASES UNDER STOLEN PROPERTY—  
DISPOSAL OF, BY THE COURT.

——— Proceedings in—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT, PROCEEDINGS IN.

See CASES UNDER RES JUDICATA—COMPETENT COURT—CRIMINAL COURTS.

## CRIMINAL FORCE.

See UNLAWFUL COMPLETION.

[I. L. R., 10 Calc., 572]

Dispossession by—

See CASES UNDER POSSESSION, ORDER OF  
CRIMINAL COURT AS TO—DISPOSSESSION

BY CRIMINAL FORCE 23 W. R., Cr., 54

[I. L. R., 23 Bom., 494]

## CRIMINAL INTIMIDATION.

See RECOGNIZANCE TO KEEP PEACE—  
WHEN RECOGNIZANCE MAY BE TAKEN.

[I. L. R., 3 All., 351]

1. ——— Threat of injury.—*Penal Code, s. 503.* Where the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkar and would get him six months' imprisonment if he (the complainant) did not let his sister go.—*Held* that these words did not constitute either criminal intimidation within the meaning of s. 503 of the Penal Code (there having been no threat of an injury in the sense of the Code) or any other offence known to the law. *REG. v. MORCHA BHASHAKARI*. 8 Bom., Cr., 101

2. ——— Threatening to obtain dismissal of police constable.—*Penal Code (Act XLV of 1860), ss. 503 and 506.*—A threat of getting a police constable dismissed from the police service is not such a threat of injury as is punishable under s. 506 of the Indian Penal Code (XLV of 1860). *Reg. v. Morcha Bhashakari*, 8 Bom., 101, followed. *QUEEN-EMPERESS v. DADA HASMANT DANI*

[I. L. R., 20 Bom., 704]

3. ——— Ex-communication by Roman Catholic priest.—*Penal Code, ss. 190, 503, 598—Criminal proceedings stayed until complainant established the illegality of the priest's acts in a Civil Court.*—Where the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unauthorised by the ordinances of a religious society, or where such ordinances contravert the general law, and, in either case, consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. A Roman Catholic complained to a Magistrate that he had been threatened with an illegal sentence of ex-communication and had been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit concerning the property of a church. *Held* that, under the circumstances, the proper course was for the Magistrate to postpone the trial till the complainant proved in a Civil Court the illegality of the action of the ecclesiastical authorities. *IN RE DECHIZ*. I. L. R., 8 Mad., 140

4. ——— Attempt to commit offence.—*Penal Code (Act XLV of 1860), ss. 503, 507, 511.*—The accused sent a fabricated petition to the Revenue Commissioner, S D, containing a threat that, if a certain forest officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (XLV of 1860). The Sessions

## CRIMINAL INTIMIDATION—concluded.

Judge found that the Commissioner had neither official nor personal interest in the forest officer. He therefore acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under s. 507, and sentenced him to four months' simple imprisonment. *Held*, reversing the conviction and sentence, that, as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. *Per WEST, J.*—"The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence." *Per BIRNWOOD, J.*—"No criminal liability can be incurred, under the Penal Code, by an attempt to do an act which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he could not be guilty of an attempt at that offence." *QUEEN-EMPERESS v. MANGESH JIVAJI*

[I. L. R., 11 Bom., 376]

5. ——— *Penal Code (Act XLV of 1860), s. 503.*—The threat referred to in s. 503 of the Penal Code must be a threat communicated, or uttered with the intention of its being communicated, to the person threatened for the purpose of influencing his mind. *GUNGA CHUNDER SEN v. GOUB CHUNDER BANIKYA*

[I. L. R., 15 Calc., 671]

## CRIMINAL MISAPPROPRIATION.

See CHARGE—SPECIAL CASES—CRIMINAL  
MISAPPROPRIATION. 2 C. W. N., 341

See COMPOUNDING OFFENCE.

[7 Mad., Ap., 34]

See CRIMINAL BREACH OF TRUST.

[3 W. R., Cr., 44]

8 B. L. R., Ap., 1

I. L. R., 22 Calc., 313

I. L. R., 9 All., 66

See PARTNERSHIP PROPERTY.

[6 B. L. R., Ap., 133]

13 B. L. R., 307, 308 note, 310 note

See POST OFFICE ACT, s. 48.

[I. L. R., 14 Mad., 229]

See THEFT.

[I. L. R., 15 Calc., 388, 390, 392 note]

I. L. R., 17 Calc., 852

**CRIMINAL MISAPPROPRIATION***—continued.*

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R., 19 Bom., 749]

1. ———— Immoveable property—*Penal Code, s. 404.*—Held that s. 404 of the Penal Code (relating to the misappropriating or conversion of "property" left by a deceased person) does not apply to immoveable property. *REG v. GIRDHAR DHARAMDAS*. . . . . 6 Bom., Cr., 33

*v. NALLA*. . . . . I. L. R., 11 Mad., 145

3. ———— Intention, Proof of—*Penal Code, s. 403.*—*R* was a Government servant,—whose duty it was to receive certain money and to pay them into the treasury on receipt. He admitted

was right. *QUEEN-EMPRESS v. RAMAKRISHNA*  
[I. L. R., 12 Mad., 49]

[I. L. R., 18 Bom., 212]

5. ———— Chowkidar obtaining money from person fraudulently—*Penal Code, ss. 393, 403, 417.*—A chowkidar who obtains money from any person, either by fraudulent inducement or dishonesty, or by putting that person in fear of injury, is punishable under s. 417 of the Penal Code (cheating), or ss. 393 and 384 (extortion), but not for criminal misappropriation of public money entrusted to him as a public servant. *QUEEN v. RAMNARAIN*. . . . . 3 W. R., Cr., 32

**CRIMINAL MISAPPROPRIATION***—continued.*

the money, he is guilty of criminal misappropriation, but he is not guilty of cheating. *QUEEN v. SHAM-SOONDUR*. . . . . 2 N. W., 475

own use, he is amenable to a criminal prosecution. And where a landowner permits the agent to mix the collections with his own moneys, if the agent applies the moneys so collected to his own use fraudulently and dishonestly, and falsifies the amount so as to conceal his fraud, there is evidence of a criminal misappropriation. *QUEEN v. KAREEM BUX*  
[3 N. W., 30]

8. ———— Conversion—*Penal Code, s. 403.*—To bring a prisoner within s. 403 of the Penal Code, there must be actual conversion of the

*QUEEN v. ABDOL*. . . . . 10 W. R., Cr., 23

*BISSESSUR ROY*. . . . . 11 W. R., Cr., 61

s. 404 of the Penal Code, that the accused misappropriated it to his own use. *QUEEN v. NOBIN CHUNDER SIKHAR*. . . . . 12 W. R., Cr., 39

IN THE MATTER OF THE PETITION OF ENAYET HOSSAIN. . . . . 11 W. R., Cr., 1

would be required to constitute criminal misappropriation in respect of a person who is alive. *QUEEN v. NOBIN CHUNDER SIKHAR*  
[12 W. R., Cr., 39]

s. 403 of the Penal Code, and brought the person to whom the property belonged. Where

*v. LAKSHMI*. . . . . [14 W. R., Cr., 13]

## CRIMINAL FORCE.

See UNLAWFUL COMPELSION.

[I. L. R., 19 Calc., 572]

Dispossession by —

See CASES UNDER POSSESSION, ORDER OF  
CRIMINAL COURT AS TO DISPOSSESSION  
BY CRIMINAL FORCE 23 W. R., Cr., 54

[I. L. R., 23 Bom., 494]

## CRIMINAL INTIMIDATION.

See RESISTANCE TO LEGAL PROCESS—  
WHICH REASSURANCE MAY BE TAKEN.

[I. L. R., 2 All., 351]

1. ———— Threat of injury *Penal Code*, s. 507. Where the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkar and would get him 500 rupees' worth of money if he (the complainant) did not let him do so. *Held* that these words did not constitute either criminal intimidation within the meaning of s. 507 of the Penal Code (there having been no threat of an injury in the case of the Code) or any other offence known to the law. *Reg. v. Moghna Bhattachary*. S Bom., Cr., 101

2. ———— Threatening to obtain dismissal of police constable. *Penal Code (Act XLV of 1860), s. 507*.—A threat of getting a police constable dismissed from the police service is not such a threat of injury as is punishable under s. 507 of the Indian Penal Code (XLV of 1860). *Reg. v. Mochi Bhatkar*. S Bom., 101, followed. *QUEEN-EMRESS v. DADA HANMANT DANI*

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4. ———— Attempt to commit offence. *Penal Code (Act XLV of 1860), ss. 503, 507, 511*. The accused sent a fabricated petition to the Revenue Commissioner, S D., containing a threat that, if a certain forest officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (XLV of 1860). The Sessions

## CRIMINAL INTIMIDATION—concluded.

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[I. L. R., 11 Bom., 376]

5. ———— *Penal Code (Act XLV of 1860), s. 503*.—The threat referred to in s. 503 of the Penal Code must be a threat communicated, or uttered with the intention of its being communicated, to the person threatened for the purpose of influencing his mind. *GUNGA CHENDER SEN v. GORE CHENDER BANIKYA*

[I. L. R., 15 Calc., 671]

## CRIMINAL MISAPPROPRIATION.

See CHARGE—SPECIAL CASES—CRIMINAL  
MISAPPROPRIATION. 2 C. W. N., 341

See COMPOUNDING OFFENCE.

[7 Mad., Ap., 34]

See CRIMINAL BREACH OF TRUST.

[3 W. R., Cr., 44]

8 B. L. R., Ap., 1

I. L. R., 22 Calc., 313

I. L. R., 9 All., 66

See PARTNERSHIP PROPERTY.

[6 B. L. R., Ap., 133]

13 B. L. R., 307, 308 note, 310 note

See POST OFFICE ACT, s. 48.

[I. L. R., 14 Mad., 229]

See THEFT.

[I. L. R., 15 Calc., 388, 390, 392 note]

I. L. R., 17 Calc., 852

# CRIMINAL MISAPPROPRIATION

—continued.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS

[I. L. R., 19 Bom., 749]

DEHARAMDAS . . . . . 6 Bom., Cr., 33

2. ——— Bull dedicated to an idol—

theft or criminal misappropriation. QUEEN-EMPRESS v. NALLA . . . . . I. L. R., 11 Mad., 145

3. ——— Intention, Proof of—*Penal Code, s. 403*.—R was a Government servant,—whose duty it was to receive certain money and to pay them into the treasury on receipt. He admitted that he had retained two sums of money in his

was right QUEEN-EMPRESS v. RAMAKRISHNA . . . . . [I. L. R., 12 Mad., 49]

proceeds. Held that, in the absence of any infor-

misappropriation under s. 403 of the Penal Code. QUEEN-EMPRESS v. SITA . . . . .

[I. L. R., 18 Bom., 212]

5. ——— Chowkidar obtaining money from person fraudulently—*Penal Code, ss. 383, 403, 417*.—A chowkidar who obtains money from any person, either by fraudulent inducement or dishonesty, or by putting that person in fear of injury, is punishable under s. 417 of the Penal Code (cheating), or ss. 383 and 384 (extortion), but not for criminal misappropriation of public money entrusted to him as a public servant. QUEEN v. RAMNARAIN . . . . . 3 W. R., Cr., 32

6. ——— Use of money paid by mistake, with knowledge of mistake—*Cheating*.—Where money is paid to a person by mistake, and such person, either at the time of the receipt of the money or at any time subsequently before its refund, discovers the mistake and determines to appropriate

# CRIMINAL MISAPPROPRIATION

—continued.

the money, he is guilty of criminal misappropriation, but he is not guilty of cheating. QUEEN v. SHAM-SOONDER . . . . . 2 N. W., 476

moneys, expending thereout moneys on his master's behalf, and handing over the balance to his master, and if he, in breach of this trust, converts the money to his own use, he is amenable to a criminal prosecution. And

conceal his fraud, there is evidence of a criminal misappropriation. QUEEN v. KAREEM BUX . . . . . [3 N. W., 30]

9. ——— Retaining by servant of money due as wages.—A servant who retains in his hands money which he was authorized to collect, and which he did collect, from the debtor of his master, because money is due to him as wages, is guilty of criminal misappropriation. QUEEN v. BISSESSUR ROY . . . . . 11 W. R., Cr., 51

10. ——— Misappropriation of property of deceased person—*Penal Code, s. 404*.—Held that it is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of his death, under s. 404 of the Penal Code, that the accused should misappropriate it to his own use. QUEEN v. NOBIN CHUNDER SIKKAR . . . . . 12 W. R., Cr., 39

IN THE MATTER OF THE PETITION OF ENAYET HOSSEIN . . . . . 11 W. R., Cr., 1

11. ——— *Penal Code, s. 404*.—Held by MARKBY, J., that under s. 404 all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive. QUEEN v. NOBIN CHUNDER SIKKAR . . . . . [12 W. R., Cr., 39]

[14 W. R., Cr., 13]

**CRIMINAL MISAPPROPRIATION**

—concluded.

13. ——— Trust arising from duty of public servant—*Penal Code, s. 409.*—S. 409 of the Penal Code does not limit the mode in which a trust arises, whether by specific order or by reason of its being part of the proper duty of a public functionary. Where, therefore, it was proved that the head clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant, within the meaning of s. 409, when he made away with the stamps. *QUEEN v. RAM DUN DEX* . . . 13 W. R., Cr., 77

14. ——— Separate items of money—*Charge, Form of.*—The misappropriation of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form the subject of a separate enquiry. The duty of a committing officer in such a case is to select certain distinct items, to frame his charges upon them and to adduce evidence specially upon those items. *CHETTER v. QUEEN* 15 W. R., Cr., 5

15. ——— Refusal to pay for goods purchased—*Penal Code, s. 403.*—The prisoner who took certain hides from the prosecutrix, but refused to pay for them, was held not on that account guilty of dishonest misappropriation under s. 403 of the Penal Code. *QUEEN v. BOYSTUM MOGONZE* [17 W. R., Cr., 11

16. ——— Removal of property claimed by accused—*Penal Code, s. 403.*—A person having made a hole in the wall of his own house broke open a box and removed the contents to which he believed himself entitled, but as to which there was a dispute making the removal appear to have been the act of thieves from the outside; and entrusting the property to another person,—*Held* not guilty of criminal misappropriation. *TREWA RAM v. EMPRESS* . . . 10 C. L. R., 187

17. ——— Harvesting crops under attachment—*Penal Code (Act XLV of 1860), ss. 206, 403, 424.*—A judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force and was convicted of theft. *Held* that the accused was not guilty of theft, but of the offence of dishonestly removing the property under Penal Code, s. 424. *Per BENSON, J.*—The offence was also criminal misappropriation within the meaning of Indian Penal Code, s. 403. *QUEEN-EMPRESS v. OBAYYA*

[I. L. R., 22 Mad., 151]

**CRIMINAL PROCEDURE CODE, 1882.**

See CRIMINAL PROCEDURE CODES.

**CRIMINAL PROCEDURE CODE, 1882, AMENDMENT ACT (III OF 1884), s. 8, cl. 6.**

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R., 9 All., 420]

**CRIMINAL PROCEDURE CODE, 1883, AMENDMENT ACT (III OF 1884), s. 8, cl. 6—concluded.**

s. 12.

See CRIMINAL PROCEDURE CODES, s. 526A.  
[I. L. R., 15 Calc., 455]**CRIMINAL PROCEDURE CODE, 1882, AMENDMENT ACT (IV OF 1891), s. 2.**

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT . . . I. L. R., 20 Calc., 491

**CRIMINAL PROCEDURE CODES (ACT V OF 1838: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869).**

s. 1.

See BOMBAY VILLAGE POLICE ACT.  
[I. L. R., 19 Bom., 312]See CRIMINAL PROCEEDINGS.  
[I. L. R., 13 Mad., 353]See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.  
[I. L. R., 10 Bom., 181  
I. L. R., 1 Mad., 55]See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.  
[I. L. R., 23 Calc., 300]See MUNSHI, JURISDICTION OF.  
[I. L. R., 15 Mad., 131]See OFFENCE COMMITTED ON HIGH SEAS.  
[I. L. R., 21 Calc., 782]

s. 2.

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL.  
[I. L. R., 14 Mad., 121]

s. 8.

See REFORMATORY SCHOOLS ACT, s. 2.  
[I. L. R., 25 Calc., 333  
2 C. W. N., 11]

s. 4.

See CATTLE TRESPASS ACT.  
[I. L. R., 23 Calc., 248]See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.  
[I. L. R., 11 Mad., 443  
I. L. R., 10 All., 39]See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE.  
[I. L. R., 27 Calc., 144]See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.  
[I. L. R., 12 Bom., 561]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1893; ACT X OF 1872; ACTS XXV OF 1881 AND VIII OF 1869)—continued.**

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO I. L. R., 17 Mad., 260 [I. L. R., 20 Mad., 470]

See REFORMATORY SCHOOLS ACT, s. 8. [I. L. R., 14 Bom., 381]

s. 7.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER. [I. L. R., 10 Bom., 258, 263]

s. 11.

See SENTENCE—GENERAL CASES. [I. L. R., 20 Mad., 444]

s. 12.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATES. [I. L. R., 19 All., 114]

ss. 15, 16.

See BENCH OF MAGISTRATES. [I. L. R., 16 Mad., 410  
I. L. R., 20 Calc., 870  
I. L. R., 18 Mad., 394  
I. L. R., 23 Calc., 194  
I. L. R., 31 Mad., 248]

s. 17.

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES. [I. L. R., 14 Mad., 389]

s. 28.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT [I. L. R., 23 Calc., 442]

See SESSIONS JUDGE, JURISDICTION OF. [I. L. R., 8 All., 685]

s. 29 (1872, s. 8, para. 1).

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865. [I. L. R., 2 Mad., 161]

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—OPION ACT. [I. L. R., 19 All., 465]

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACTS. [I. L. R., 7 Mad., 347]

s. 30 (1872, s. 36).

See DEPUTY COMMISSIONER. [5 N. W., 219]

s. 32.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT. [I. L. R., 20 Calc., 676]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1893; ACT X OF 1872; ACTS XXV OF 1881 AND VIII OF 1869)—continued.**

ss. 32, 33 (1872, s. 309; 1881-89, s. 45), s. 34 (1872, s. 38), s. 35 (1872, s. 314; 1881-89, s. 48).

See CASES UNDER SENTENCE.

s. 35.

See WHIPPING.

[B. L. R., Sup., Vol., 951: 9 W. R., Cr., 41  
7 B. L. R., 185: 15 W. R., Cr., 89]

s. 40 (1872, s. 56).

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL. I. L. R., 2 Calc., 117 [I. L. R., 15 Mad., 132]

s. 45 (1872, s. 90).

See INFORMATION OR COMMISSION OF OFFENCE.

village munsif's peon had been convicted under s. 217 of the Penal Code of having disobeyed the direction of law contained in s. 90 of the Criminal Procedure Code.—*Held* that they were wrongfully convicted as not bearing the character which raises the obligation under the latter section. IN THE MATTER OF RAMANIK NAYAR

[I. L. R., 1 Mad., 236]

2. — *Duty to report sudden death—Owner of house distinguished from owner of land.*—Under s. 45 of the Code of Criminal Procedure, every owner or occupier of land is bound to report the occurrence thereon of any sudden death. The head of a Nayar family was convicted and fined under s. 176 of the Penal Code for not reporting a

3. — *Omission to give information of offence—Agent—Khazanchi—Dewan—*

EMPRESS v. ACHIRAJ LALL [I. L. R., 4 Calc., 603; 3 C. L. R., 87]

4. — *Omission to give information of offence.*—The provisions of s. 93 of the Criminal Procedure Code should not be put in force

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

against one who has omitted to give information to the police of an offence having been committed in cases where the police have actually obtained such information from other sources. *EMPRESS v. SASHI BHUSAN CHUCKRABUTTY*. IN THE MATTER OF THE PETITION OF SHASHI BHUSAN CHUCKRABUTTY

[I. L. R., 4 Calc., 623]

5. ———— *Penal Code (Act XLV of 1860), s. 176—Omission to give information to police of offence.*—Where one of several persons bound to give information to the police under s. 45 of the Criminal Procedure Code gave such information as to the commission of a murder, in consequence of which a police officer arrived in the village shortly after the occurrence, —Held that the fact that other persons who might possibly also be bound to give that information had omitted to do so was no ground for their prosecution and conviction of an offence under s. 176 of the Penal Code. In the matter of the petition of *Sashi Bhushan Chackrabutty, I. L. R., 4 Calc., 623*, relied on. *QUEEN-EMPRESS v. GOPAL SINGH* . . . I. L. R., 20 Calc., 316

6. ———— *Omission to give information of offence—Order to assist the police—Illegal order.*—A Magistrate directed a landholder to "find a clue" in a case of theft "within 15 days and to assist the police." Held that such order was not authorized by ss. 90 and 91 of Act X of 1872, and the conviction of the landholder for disobedience of such order was not maintainable. *EMPRESS v. BAKSHUN RAM* . . . I. L. R., 3 All., 201

7. ———— *Omission to give information of offence—Specification of offence.*—In a case in which the accused are charged with having omitted to give information which they were legally bound to give under s. 90 of the Criminal Procedure Code, it should appear what the offence is as to the commission of which the accused wilfully omitted to give information, that the specified offence was in fact committed by some one, and that the accused knew of its having been committed. *QUEEN v. AHMED ALI* . . . 22 W. R., Cr., 42

8. ———— *Omission to give information of offence—Residence—Liability of resident agent.*—The duty imposed by Act X of 1872, s. 90, upon village headmen, etc., of giving information as to the occurrence of any sudden or unnatural death is intended to apply only when such occurrence takes place at or near the village of which he is headman, or in which he owns or occupies land, etc. Residence in a dwelling-house belonging to another is not occupation of land within the meaning of the section. The liability of the resident agent of an owner under the section arises when the owner is not resident and has no personal knowledge of the fact required to be reported; where the owner has such knowledge, the liability attaches to him. IN THE MATTER OF THE PETITION OF MUDHOOSOODUN CHUCKRABUTTY

[23 W. R., Cr., 60]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

ss. 54, 55, 56 (1872, s. 102; 1861-69, s. 140), s. 57 (1872, s. 93; 1861-69, s. 108).

See CASES UNDER ARREST—CRIMINAL ARREST.

s. 54.

See WRONGFUL CONFINEMENT,

[I. L. R., 19 Bom., 72]

See WRONGFUL RESTRAINT.

[I. L. R., 12 Bom., 377]

ss. 55, 56.

See PENAL CODE, s. 332.

[I. L. R., 18 All., 246]

s. 59.

See ESCAPE FROM CUSTODY.

[I. L. R., 11 Mad., 441, 480]

I. L. R., 27 Calc., 366

4 C. W. N., 252

s. 61 (1872, s. 124; 1861-69, s. 152).

See DETENTION OF ACCUSED BY POLICE.

[I. W. R., Cr., 5]

See ESCAPE FROM CUSTODY.

[I. L. R., 6 All., 129]

See POLICE INQUIRY . . . 3 N. W., 275

See WRONGFUL DETENTION.

[19 W. R., Cr., 36]

ss. 69, 71.

See PENAL CODE, ss. 173 and 180.

[I. L. R., 20 Calc., 358]

ss. 75, 76.

See PENAL CODE, s. 186.

[I. L. R., 23 Calc., 896]

I. L. R., 24 Calc., 320

1 C. W. N., 154

s. 77, para. 1 (1872, s. 161; 1861-69, s. 77).

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 B. L. R., 274

ss. 77, 78.

See ESCAPE FROM CUSTODY.

[I. L. R., 21 Mad., 296]

s. 79.

See ARREST—CRIMINAL ARREST.

[I. L. R., 27 Calc., 457]

See ESCAPE FROM CUSTODY.

[4 C. W. N., 85]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1893; ACT X OF 1872; ACTS XXV OF 1891 AND VIII OF 1889)—continued.**

s. 80.

See ESCAPE FROM CUSTODY.

[I. L. R., 28 Calc., 748

3 C. W. N., 741

I. L. R., 27 Calc., 320

ss. 80, 81.

See PENAL CODE, s. 186.

[I. L. R., 23 Calc., 896

I. L. R., 24 Calc., 320

1 C. W. N., 154

s. 81.

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[I. L. R., 24 Calc., 320

1 C. W. N., 154

s. 83.

See WARRANT OF ARREST—CRIMINAL CASES I. L. R., 20 Mad., 235, 457

[I. L. R., 20 All., 124

ss. 87, 88 (1872, ss. 171, 172; 1891-99, ss. 183, 184).

See INFORMATION OF COMMISSION OF OFFENCE I. L. R., 7 Mad., 436

ss. 87, 88, 89 (1872, ss. 171, 172, 173; 1891-99, ss. 183, 184, 185).

See CASES UNDER ABSCONDING OFFENDER.

s. 88.

See FORFEITURE OF PROPERTY.

[8 W. R., Cr., 61

ss. 88, 89.

See REVIEW—CRIMINAL CASES.

[9 B. L. R., 342

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE 8 W. R., 207

s. 90 (1872, s. 352; 1891-99, s. 189).

See PENAL CODE, s. 186.

[I. L. R., 24 Calc., 320

1 C. W. N., 154

See WITNESS—CRIMINAL CASES—AVOIDING SERVICE 6 B. L. R., Ap., 1

s. 92 (Presidency Magistrate's Act, 1877, s. 124).

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

[I. L. R., 6 Calc., 523

ss. 94-99.

See INSPECTION OF DOCUMENTS—CRIMINAL CASES.

[I. L. R., 15 Calc., 109

I. L. R., 13 Calc., 52

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1893; ACT X OF 1872; ACTS XXV OF 1891 AND VIII OF 1889)—continued.**

ss. 90, 97 (1872, s. 368; 1891-99, s. 114) to s. 105.

See CASES UNDER WARRANT—SEARCH WARRANT.

s. 103—Search by police for stolen property.—Selection of witnesses to search by police.—Criminal Procedure Code, s. 103, does not justify the view that the persons called upon to witness a search are to be selected by any person other than the officer conducting the search. QUEEN-EMPRESS v. RAMAN I. L. R., 21 Mad., 83

s. 106 (1872, s. 480), s. 107 (1872, s. 481; 1891-99, s. 282), ss. 108, 109, 110 (1872, ss. 505, 506), ss. 111, 113 (1872, s. 492), ss. 113-122 (1872, s. 510), s. 123 (1872, ss. 489, 499, 507; 1891-99, ss. 290, 295).

See CASES UNDER RECOGNIZANCE TO KEEP PEACE

See CASES UNDER SECURITY FOR GOOD BEHAVIOUR.

ss. 107, 112.

See CRIMINAL PROCEEDINGS.

[I. L. R., 9 All., 452

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.

[I. L. R., 8 Calc., 851

s. 110.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT.

[I. L. R., 18 All., 395

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY.

[I. L. R., 1 All., 600

s. 114.

See PENAL CODE, s. 332.

[I. L. R., 19 All., 240

s. 117.

See EVIDENCE—CRIMINAL CASES—CHARACTER.

[I. L. R., 23 Calc., 631

ss. 117, 118.

See CRIMINAL PROCEEDINGS.

[I. L. R., 9 All., 452

ss. 118, 123.

See REFERENCE TO HIGH COURT—CRIMINAL CASES.

[I. L. R., 23 Calc., 240

s. 123.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R., 9 Calc., 678

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

s. 127 (1872, s. 480).

See UNLAWFUL ASSEMBLY.

[I. L. R., 7 Bom., 42

s. 133 (1872, s. 521 : 1861-69, s. 308), ss. 134, 135, 133, 137, 138, 139, 140, 141 (1872, ss. 522, 523, 524, 525 : 1861-69, ss. 309, 310, 311).

See CASES UNDER NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

See JUDICIAL OFFICERS, LIABILITY OF.

[2 Bom., 407

4 Bom., A. C., 150

5 Mad., 345

4 B. L. R., A. C., 37

13 W. R., 13

7 B. L. R., 449

16 W. R., 63

See CASES UNDER JURISDICTION OF CIVIL COURT—MAGISTRATE'S ORDERS, INTERFERENCE WITH.

See JURY—JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.

[I. L. R., 16 All., 158

s. 133.

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURTS.

[6 B. L. R., 643

I. L. R., 17 Bom., 298

See PENAL CODE, s. 188.

[10 C. L. R., 193

12 C. L. R., 231

I. L. R., 13 All., 577

I. L. R., 16 Calc., 9

I. L. R., 12 Mad., 475

ss. 136, 140 (1872, s. 525: 1861-69, s. 311).

See RIGHT OF SUIT—JUDICIAL OFFICERS SUITS AGAINST

8 Bom., A. C., 94

s. 137.

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[I. L. R., 15 Calc., 460

s. 140.

See PENAL CODE, s. 188.

[I. L. R., 13 All., 377

s. 144 (1872, s. 518; 1861-69, ss. 62, 63).

See FINE . . . 7 W. R., Cr., 37

See JUDICIAL OFFICERS, LIABILITY OF.

[4 B. L. R., A. C., 37: 13 W. R., 13

7 B. L. R., 449: 16 W. R., 63

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

See JURISDICTION OF CIVIL COURT—PUBLIC WAYS, OBSTRUCTION OF.

[I. L. R., 3 Calc., 20

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R., 17 All., 485

See CASES UNDER NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[I. L. R., 8 All., 99

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R., 18 Mad., 402

Proceeding under—

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[I. L. R., 19 Mad., 18

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CRIMINAL CASES.

[21 W. R., Cr., 26

22 W. R., Cr., 24, 78

23 W. R., Cr., 34

24 W. R., 30

I. L. R., 2 Calc., 293

I. L. R., 8 Calc., 580

I. L. R., 16 Calc., 80

s. 145 (1872, s. 530; 1861-69, s. 318).

See BENCH OF MAGISTRATES.

[I. L. R., 3 Calc., 754

See EJECTMENT, SUIT FOR.

[I. L. R., 4 Calc., 339

See LIMITATION ACT, 1877, ART. 47 (1859; s. 1, CL. 7)

8 W. R., 490

[9 W. R., 480

3 N. W., 171

6 C. L. R., 93

I. L. R., 6 Calc., 709

I. L. R., 19 Calc., 648

I. L. R., 23 Calc., 731

See POSSESSION—NATURE OF POSSESSION [I. L. R., 4 Calc., 378

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO.

s. 146 (1872, s. 531; 1861-69, s. 319).

See DAMAGES—REMOVEDNESS OF DAMAGES. [I. L. R., 6 Mad., 426

See LIMITATION ACT (1877, ART. 47; 1871, ART. 46)

7 N. W., 35

[I. L. R., 20 All., 120

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1881 AND VIII OF 1889)—continued.**

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—ATTACHMENT OF PROPERTY.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION.

[I. L. R., 22 Calc., 297

I. L. R., 18 Mad., 41

3 C. W. N., 329

s. 147 (1872, s. 532; 1861-69, s. 320).

See EASEMENT I. L. R., 23 Calc., 55

See ONUS OF PROOF—EASEMENTS.

[21 W. R., 140

I. L. R., 11 Calc., 52

2 C. L. R., 555

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, USER, ETC.

s. 148 (1872, s. 533).

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—LOCAL INQUIRY.

ss. 155 and 156 (1872, ss. 108, 110; 1861-69, s. 133).

See OPIUM ACT, s. 9.

[I. L. R., 24 Calc., 691

See POLICE INQUIRY.

[2 B. L. R., S. N., 8; 10 W. R., Cr., 49

ss. 156, 157, 159 (1872, ss. 114, 115; 1861-69, s. 135).

See PRIVATE DEFENCE, RIGHT OF

[7 Bom., Cr., 50

s. 157.

See ACCUSED PERSON, RIGHT OF.

[I. L. R., 20 Mad., 189

See EVIDENCE ACT, s. 74.

[I. L. R., 20 Mad., 169

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.

[2 C. W. N., 702

I. L. R., 22 Bom., 586

s. 160 (1872, s. 118).

See FALSE EVIDENCE—GENERALLY.

[I. L. R., 7 Calc., 121; 8 C. L. R., 300

See POLICE INQUIRY.

[I. L. R., 7 Mad., 274

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[I. L. R., 24 Calc., 320

1 C. W. N., 154

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1881 AND VIII OF 1889)—continued.**

s. 161 (1872, ss. 118, 119).

See ACCUSED PERSON, RIGHT OF.

[I. L. R., 19 Mad., 14

I. L. R., 19 All., 390

See FALSE EVIDENCE—CONTRADICTORY STATEMENT I. L. R., 18 Calc., 349

See FALSE EVIDENCE—GENERALLY.

[I. L. R., 8 Bom., 216

I. L. R., 7 Calc., 121

I. L. R., 15 All., 11

I. L. R., 23 Mad., 544

ss. 161, 162 (1872, s. 119).

See CASES UNDER EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.

s. 162.

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R., 22 Calc., 50

s. 163.

See CONFESSION—CONFESSIONS UNDER THREAT OR PRESSURE.

[I. L. R., 10 Calc., 775

s. 164 (1872, s. 122).

See CASES UNDER CONFESSION—CONFESSIONS TO MAGISTRATE.

See FALSE EVIDENCE.

[I. L. R., 18 Mad., 421

I. L. R., 22 All., 115

1. Power of Magistrate—

EMPRESS v. MALKA I. L. R., 2 Bom., 643

2. Refusal to sign statement—Penal Code, s. 180, 4-S. 180 of the Penal Code does not apply to statements made under this section. EMPRESS v. SERIATA

[I. L. R., 4 Bom., 15

s. 165.

See OPIUM ACT, s. 9

[I. L. R., 24 Calc., 691

s. 167 (1872, s. 124; 1861-69, s. 152).

See DETENTION OF ACCUSED BY POLICE.

[1 W. R., Cr., 5

I. L. R., 11 Mad., 98

I. L. R., 23 Bom., 32

See ESCAPE FROM CUSTODY.

[I. L. R., 6 All., 123

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE-OFFICERS.

[I. L. R., 19 All., 390

See POLICE INQUIRY . . . 3 N. W., 275

See WRONGFUL DETENTION.

[19 W. R., Cr., 38

ss. 168, 170 (1872, s. 123).

See ACCUSED PERSON, RIGHT OF.

[I. L. R., 20 Mad., 189

See EVIDENCE ACT, s. 74.

[I. L. R., 20 Mad., 189

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[10 Bom., 70

ss. 169, 173, para. 2 (1872, s. 126; 1861-69, s. 154).

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCES, DIARIES, PAPERS, ETC.

[8 W. R., Cr., 87

13 W. R., Cr., 22

s. 173.

See ACCUSED PERSON, RIGHT OF.

[I. L. R., 19 All., 390

I. L. R., 19 Mad., 14

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE-OFFICERS.

[I. L. R., 16 Calc., 610, 612 note

I. L. R., 20 Calc., 642

I. L. R., 19 All., 390

s. 173.

See ACCUSED PERSON, RIGHT OF.

[I. L. R., 20 Mad., 189

See EVIDENCE ACT, s. 74.

[I. L. R., 20 Mad., 189

s. 176 (1872, s. 135)—*Enquiry into cause of death—Report by Magistrate—Judicial proceeding—Power of High Court under s. 296, Criminal Procedure Code—Coroner's inquest.*—Where the Magistrate of a division held an enquiry, under s. 135 of the Criminal Procedure Code, into the cause of the death of a person found dead under suspicious circumstances, and, without making a specific charge against any person, drew up a report embodying the result of his enquiry, and sent the report to the Magistrate of the district, and subsequently proceedings were taken against one of the witnesses, which ultimately resulted in an acquittal,—*Held* by the High Court that, there being nothing in the language of s. 135 requiring the Magistrate holding such an enquiry either to make a report or to come to a finding, the report actually sent could not be considered as part of a judicial proceeding, and that therefore the High Court had no power to send for it under s. 296 of the Criminal Procedure Code. No analogy exists between a Coroner's inquest and an enquiry into the cause of death under the Criminal

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

Procedure Code. IN THE MATTER OF TROYLOKH-NATH BISWAS . . . I. L. R., 3 Calc., 742

s. 177 (1872, s. 63).

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[I. L. R., 24 Calc., 638

1 C. W. N., 577

s. 178 (1872, s. 63).

See CRIMINAL PROCEEDINGS.

[I. L. R., 3 All., 258

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.

[I. L. R., 10 Calc., 643

s. 179.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST . . . I. L. R., 19 All., 111

s. 180 (1872, s. 66; 1861-69, ss. 31, 31A).

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—DACOITY.

[I. L. R., 9 All., 523

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPING.

[I. L. R., 18 All., 350

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—RECEIVING STOLEN PROPERTY . . . 4 Bom., Cr., 38

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.

[I. L. R., 6 Calc., 307

s. 182 (1872, s. 67).

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[I. L. R., 16 Calc., 667

I. L. R., 25 Calc., 858

2 C. W. N., 577

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED DURING JOURNEY.

[13 B. L. R., Ap., 4

25 W. R., Cr., 45

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—DACOITY.

[I. L. R., 1 Bom., 50

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.

[I. L. R., 1 Mad., 171

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

1. ———— "*Local area*," meaning of  
— *Criminal Procedure Code, 1882, s. 531*.—The words "*local area*" used in s. 182 only apply to a "*local area*" over which the Criminal Procedure Code applies, and not to a local area in a foreign country or in other portions of the British Empire to which the Code has no application; and similarly s. 531 only refers to districts, divisions, sub-divisions, and local areas governed by the Code of Criminal Procedure. IN THE MATTER OF BICHITRANUND DASS v. BHUGGUT PERAI. IN THE MATTER OF BICHITRANUND DASS v. DUKHIA JANA

[I. L. R., 18 Calc., 667

2. ———— "*Local area*," meaning of.  
— The expression "*local area*" includes, and was intended to include, a "*district*." PUNABDRO NARAIN SINGH v. RAM SARUP ROY

[I. L. R., 25 Calc., 858

2 C. W. N., 577

3. ———— *Offence punishable by law*

[3 C. W. N., 148

s. 185 (1872, s. 69).

See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY IN  
ONE DISTRICT—CRIMINAL BREACH OF  
TRUST . . . I. L. R., 19 All, 111

See TRANSFER OF CRIMINAL CASE—  
GROUND FOR TRANSFER.

[22 W. R., Cr., 6

s. 186 (1872, s. 157).

See WARRANT OF ARREST—CRIMINAL  
CASES . . . I. L. R., 1 Bom., 340

s. 188.

See JURISDICTION OF CRIMINAL COURT—  
GENERAL JURISDICTION.

[I. L. R., 13 Mad., 423

See JURISDICTION OF CRIMINAL COURT  
—NATIVE INDIAN SUBJECTS.

[I. L. R., 16 Bom., 178

See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY  
IN ONE DISTRICT—ABETMENT.

[I. L. R., 19 Bom., 105

I. L. R., 24 Bom., 287

See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY  
IN ONE DISTRICT—CRIMINAL BREACH  
OF TRUST . . . I. L. R., 13 Bom., 147

See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY  
IN ONE DISTRICT—KIDNAPING.

[I. L. R., 19 All, 109

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

s. 190.

See COMPLAINT—INSTITUTION OF COM-  
PLAINT AND NECESSARY PRELIMINARIES.

[I. L. R., 21 All., 109

I. L. R., 22 Mad., 148

I. L. R., 26 Calc., 788

3 C. W. N., 65, 491

4 C. W. N., 367, 560

s. 191.

See COMPLAINT—INSTITUTION OF COM-  
PLAINT AND NECESSARY PRELIMINARIES.

[I. L. R., 13 Calc., 334

I. L. R., 14 Calc., 707

I. L. R., 18 All., 465

I. L. R., 21 All., 109

I. L. R., 22 Mad., 148

I. L. R., 26 Calc., 788: 3 C. W. N., 65, 491

See FALSE CHARGE.

[I. L. R., 14 Calc., 707

I. L. R., 19 Bom., 51

See MAGISTRATE, JURISDICTION OF—  
POWERS OF MAGISTRATES.

[I. L. R., 13 All., 345

I. L. R., 22 Mad., 148

I. L. R., 26 Calc., 788: 3 C. W. N., 491

I. L. R., 21 All., 109

I. L. R., 22 Mad., 148

ss. 191, 198 (1872, s. 142; 1861-69,  
s. 68)

See COMPLAINANT

[I. L. R., 10 Bom., 340

I. L. R., 26 Calc., 338

I. L. R., 14 Mad., 379

See COMPLAINT—INSTITUTION OF COM-  
PLAINT AND NECESSARY PRELIM-  
INARIES.

8 W. R., Cr., 9

[11 W. R., Cr., 1

19 W. R., Cr., 4

1 C. L. R., 523

5 B. L. R., 274: 13 W. R., Cr., 27

4 B. L. R., Ap., 1: 13 W. R., Cr., 1

I. L. R., 14 Mad., 379

I. L. R., 18 All., 465

I. L. R., 26 Calc., 338

See JUDICIAL OFFICERS, LIABILITY OF.

[3 Bom., A. C., 38

See SANCTION FOR PROSECUTION—NON-  
COMPLIANCE WITH SANCTION.

[I. L. R., 4 Calc., 712

See WARRANT OF ARREST—CRIMINAL  
CASES . . . 16 W. R., Cr., 50

[8 Bom., Cr., 113

4 B. L. R., Ap., 1

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DIGEST OF CASES.

CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1881 AND VIII OF 1889)—*continued*.

s. 102 (1872, s. 44; 1881-89, s. 273).

See CRIMINAL PROCEEDINGS.  
[I. L. R., 14 All., 318]

See MAGISTRATE, JURISDICTION OF—  
POWERS OF MAGISTRATES.

[2 N. W., 21, 401  
8 Mad., Ap., 41  
7 Mad., Ap., 2  
1 N. W., Ed. 1873, 308  
4 Mad., Ap., 10  
3 N. W., 120  
5 Bom., Cr., 89  
4 C. W. N., 831  
I. L. R., 27 Calc., 793]

See MAGISTRATE, JURISDICTION OF—  
REFERENCE BY OTHER MAGISTRATES.

See MAGISTRATE, JURISDICTION OF—  
SPECIAL ACTS—CATTLE TRESPASS ACT.  
[I. L. R., 23 Calc., 300, 442]

See POSSESSION, ORDER OF CRIMINAL  
COURT AS TO—TRANSFER OR WITH-  
DRAWAL OF PROCEEDINGS.

[I. L. R., 22 Calc., 893]  
See TRANSFER OF CRIMINAL CASE—GEN-  
ERAL CASES . I. L. R., 19 All., 249

s. 103 (1872, s. 231; 1881-89,  
s. 359).

See SESSIONS JUDGE, JURISDICTION OF.  
[W. R., 1884, Cr., 3  
13 W. R., Cr., 17  
19 W. R., Cr., 43  
I. L. R., 3 Mad., 351  
I. L. R., 4 Calc., 570  
I. L. R., 9 Bom., 352  
I. L. R., 15 Mad., 352  
I. L. R., 22 Calc., 50]

s. 105 (1872, ss. 467, 468, 469,  
470; 1881-89, ss. 168, 169, 170; Presidency  
Magistrate's Act, 1877, s. 41).

See APPEAL IN CRIMINAL CASES—ACTS—  
PRESIDENCY MAGISTRATE'S ACT.

[I. L. R., 2 Calc., 468]  
See APPEAL IN CRIMINAL CASES—CRIMI-  
NAL PROCEDURE CODES 8 N. W., 124  
[I. L. R., 15 All., 81  
I. L. R., 23 Bom., 50]

See CRIMINAL PROCEEDINGS.  
[13 C. L. R., 117]

See FALSE EVIDENCE—GENERALLY.  
[W. R., 1884, Cr., 15  
I. L. R., 23 Mad., 223]

See LETTERS PATENT, HIGH COURT, CL. 15.  
[I. L. R., 17 Mad., 105]

( 1928 )

CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1881 AND VIII OF 1889)—*continued*.

See LIMITATION ACT, 1877, ART. 178.  
[I. L. R., 10 All., 350]

See MAGISTRATE, JURISDICTION OF—  
POWERS OF MAGISTRATES.

[I. L. R., 15 Mad., 131]  
See MAGISTRATE, JURISDICTION OF—RE-  
FERENCE BY OTHER MAGISTRATES.

[I. L. R., 16 Mad., 461]  
See MALICIOUS PROSECUTION.  
[I. L. R., 9 All., 59]

See REVISION—CRIMINAL CASES—MIS-  
CELLANEOUS CASES.

[I. L. R., 18 Calc., 730  
I. L. R., 20 Calc., 349  
I. L. R., 16 All., 80  
I. L. R., 21 Mad., 124]

See CASES UNDER SANCTION FOR PROSE-  
CUTION.

See SESSIONS JUDGE, JURISDICTION OF.  
[I. L. R., 18 Calc., 766  
I. L. R., 23 Bom., 50  
I. L. R., 23 Mad., 205]

s. 187 (1872, s. 466; 1881-89,  
s. 39).

See FALSE CHARGE.  
[I. L. R., 19 Bom., 51]

See HIGH COURT, JURISDICTION OF—  
BOMBAY—CRIMINAL.

[I. L. R., 9 Bom., 288]  
See REFERENCE TO HIGH COURT—  
CRIMINAL CASES.

[I. L. R., 15 Mad., 36]  
See CASES UNDER SANCTION FOR PROSE-  
CUTION.

(1872, s. 466)—*Acts done by public servant—Sanction to prosecution—Mahalkari.*—S. 466 of the Code of Criminal Procedure extends to all acts ostensibly done by a public servant, i.e., to acts which would have no special signification except as acts done by a public servant; therefore, a mahalkari charged with fabricating the proceedings of a case decided before himself could not be tried on that charge except with the sanction specified in that section. Para. 1 of s. 466, which mentions a sanction by Government or its deputy, is intended to apply, at least chiefly, to the cases of persons specially responsible to Government, such as accountants who have failed in their duty; and para. 2, which speaks of sanction by Government alone, to persons professing to exercise certain authority, and with that pretext doing an act which is impeached by a subject, on the ground of its being wholly unwarranted, or of an excess or impropriety of some kind. A mahalkari falls within the class of public servants contemplated in para. 1

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1893: ACT X OF 1872: ACTS XXV OF 1861 AND VII OF 1860)—continued.**

of s. 466; a sanction for his prosecution by the District Magistrate is, therefore, sufficient. *EXPRESS v. LUKSHMAN SAKHARAM*

[I. L. R., 2 Bom., 491]

s. 189.

See COMPLAINT INSTITUTION OF COMPLAINT, ETC. I. L. R., 10 All., 39  
[I. L. R., 14 Mad., 379  
I. L. R., 28 Calc., 338]

s. 189 (1872, s. 478).

See ADULTERY. 24 W. R., Cr., 18  
[I. L. R., 5 All., 233]

s. 200 (1872, ss. 44, 144; 1861-60,

s. 273).

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL.  
[2 B. L. R., S. N., 6: 10 W. R., Cr., 40  
7 Mad., Ap., 31  
I. L. R., 14 Calc., 141]

See COMPLAINT INSTITUTION OF COMPLAINT, ETC. I. L. R., 10 All., 39  
[I. L. R., 18 All., 231  
3 C. W. N., 17]

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS.  
[3 B. L. R., A. Cr., 87  
8 B. L. R., 19  
9 B. L. R., F. B., 148]

See CRIMINAL PROCEEDINGS.  
[7 Mad., Ap., 25]

s. 202 (1872, s. 146; 1861-60,

s. 180).

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL.  
[I. L. R., 14 Calc., 141]

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.  
[21 W. R., Cr., 44  
I. L. R., 13 Calc., 334  
1 C. W. N., 17]

See COMPLAINT—POWER TO REFER TO

4 C. W. N., 305

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R., 24 Calc., 187  
4 C. W. N., 804]

See PLEADER—APPOINTMENT AND APPEARANCE. 8 Bom., A. C., 202

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1893: ACT X OF 1872: ACTS XXV OF 1861 AND VII OF 1860)—continued.**

See POLICE INQUIRY.

[2 B. L. R., S. N., 6: 10 W. R., Cr., 49  
I. L. R., 12 Bom., 181]

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

[I. L. R., 24 Calc., 187]

s. 203.

See CASES UNDER COMPLAINT—DISMISSAL OF COMPLAINT.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.  
[I. L. R., 13 Calc., 334  
I. L. R., 13 Bom., 800  
3 C. W. N., 17]

See CASES UNDER COMPLAINT—REVIVAL OF COMPLAINT.

See DEFAMATION.

[I. L. R., 12 Bom., 187]

ss. 203, 204 (1872, s. 147).

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

[24 W. R., Cr., 75]

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL. 4 C. L. R., 534

[2 B. L. R., S. N., 6: 10 W. R., Cr., 49  
10 B. L. R., Ap., 28]

See COMPLAINT—REVIVAL OF COMPLAINT.  
[I. L. R., 5 Bom., 405  
7 Mad., Ap., 18]

s. 204 (1872, s. 148).

See POLICE ACT, 1861, s. 20.

[25 W. R., Cr., 20]

ss. 204, 205.

See PARDANASHIN WOMEN.

[I. L. R., 31 Calc., 588]

s. 206 (1872, s. 143).

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[I. L. R., 4 Bom., 240]

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R., 6 All., 477]

s. 209 (1872, ss. 190, 357, 382; 1861-60, ss. 103, 207).

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL.

[18 W. R., Cr., 48]

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[I. L. R., 20 All., 204]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

*See* WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . 19 W. R., Cr., 53

*See* WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[4 B. L. R., Ap., 1

23 W. R., Cr., 9

I. L. R., 3 All., 392

I. L. R., 4 Mad., 329

— s. 209 (1872, s. 195: Presidency Magistrate's Act, 1877, s. 87).

*See* DISCHARGE OF ACCUSED.

[I. L. R., 5 All., 161

*See* EXAMINATION OF ACCUSED PERSON.

[I. L. R., 23 Mad., 636

*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[I. L. R., 5 All., 161

I. L. R., 11 Bom., 372

*See* MALICIOUS PROSECUTION.

[I. L. R., 6 Bom., 376

*See* WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.

[I. L. R., 5 Calc., 121: 4 C. L. R., 305

— s. 210.

*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[I. L. R., 11 Bom., 372

*See* WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . I. L. R., 21 Calc., 642

— ss. 210, 211 (1872, ss. 199, 200; 1861-69, s. 227).

*See* WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[4 B. L. R., Ap., 1

I. L. R., 19 All., 502

— ss. 210, 212.

*See* WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.

[I. L. R., 18 All., 380

— ss. 214, 215 (1872, s. 197).

*See* CASES UNDER COMMITMENT.

— s. 216 (1872, s. 359; 1861-69, s. 228).

*See* MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—WITNESS 6 Mad., Ap., 9

*See* WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[4 B. L. R., Ap., 1

I. L. R., 3 Calc., 573

I. L. R., 4 All., 53

I. L. R., 8 All., 668

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

— s. 221 (1872, s. 439), ss. 222, 223, 224, 225, 226 (1872, s. 446), s. 227 (1872, s. 245), s. 228 (1872, s. 447), ss. 229, 230 (1872, s. 450), ss. 231 and 232.

*See* CASES UNDER CHARGE.

— s. 221.

*See* PRISONER . . . I. L. R., 11 Calc., 106

— ss. 221 and 222.

*See* CRIMINAL TRESPASS.

[I. L. R., 22 Calc., 391

— s. 222A.

*See* OFFENCE RELATING TO DOCUMENTS.

[I. L. R., 26 Calc., 560

3 C. W. N., 412

— s. 225.

*See* UNLAWFUL ASSEMBLY.

[I. L. R., 22 Calc., 276

— s. 233 (1872, s. 452).

*See* CRIMINAL PROCEEDINGS.

[I. L. R., 12 Mad., 273

I. L. R., 14 Calc., 128

I. L. R., 20 Calc., 537

1 C. W. N., 35

4 C. W. N., 656

— ss. 233, 234 (1872, s. 453), and s. 235 (1872, s. 454).

*See* CASES UNDER JOINDER OF CHARGES.

*See* CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

— s. 236 (1872, s. 455).

*See* AUTREPOIS ACQUIT.

[I. L. R., 22 Calc., 377

*See* CHARGE—FORM OF CHARGE—SPECIAL CASES—RIOTING.

[I. L. R., 21 Calc., 955

*See* FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

[3 B. L. R., 324, 325 note

— *Alternative charges.*—S. 455 of Act X of 1872 applies to cases in which not the facts are doubtful, but the application of the law to the facts is doubtful. *QUEEN v. JAMURHA*

[7 N. W., 137

— ss. 236, 237 (1872, s. 456), and 238 (1872, s. 457).

*See* CHARGE—ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R., 8 All., 665

I. L. R., 8 Bom., 200

I. L. R., 17 Bom., 369

I. L. R., 23 Calc., 863: 3 C. W. N., 653

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1881 AND VIII OF 1869)—continued.**

s. 238 (1872, s. 457).

See CONVICTION . . . 11 Bom., 240  
[12 Bom., 1]

See VERDICT OF JURY—GENERAL CASES.  
[I. L. R., 5 Calc., 571  
I. L. R., 20 Bom., 315]

“Minor offence,” Convic-

**BANERJEE, J.**—The words “minor offence” have not been defined by law; they are to be taken not in any technical sense, but in their ordinary sense.  
**QUEEN-EMPERESS v. SITANATH MANDAL**

[I. L. R., 22 Calc., 1006]

2. —  
1860).

Crimin  
away n

where situated . . .  
The complainant charged the accused with an offence under s. 306 of the Penal Code in respect of his wife. The Deputy Magistrate convicted the accused of an offence under s. 498 of the Penal Code, and sentenced him to one month's rigorous imprisonment. The

tion for the minor offence, and for . . .  
conviction for the graver one. **JATRA SHEKH v. BRAZAT SHEKH** . . . I. L. R., 20 Calc., 483

s. 239.

See BANKERS . . . I. L. R., 16 All., 88

See CRIMINAL PROCEEDINGS.

[I. L. R., 9 All., 452  
I. L. R., 20 Calc., 537]

See JOINDER OF CHARGES.

[I. L. R., 15 Bom., 491  
1 C. W. N., 35]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1881 AND VIII OF 1869)—continued.**

s. 243 (1872, s. 208).

See COMPLAINT—DISMISSAL OF COM-  
PLAINT—EFFECT OF DISMISSAL.  
[23 W. R., Cr., 63]

See COMPLAINT—DISMISSAL OF COM-  
PLAINT—GROUND FOR DISMISSAL.  
[22 W. R., Cr., 40]

s. 244 (1872, ss. 207, 361; 1881-69,  
ss. 282, 286).

See COMPLAINT—DISMISSAL OF COM-  
PLAINT—GROUND FOR DISMISSAL.  
[I. L. R., 5 Mad., 160]

See WITNESS—CRIMINAL CASES—EXAMI-  
NATION OF WITNESSES—GENERALLY.  
[4 Mad., Ap., 29  
4 B. L. R., Ap., 77  
7 B. L. R., 588 note  
13 W. R., Cr., 63]

s. 245 (1872, s. 221).

See COMPENSATION—CRIMINAL CASES—  
TO ACCUSED ON DISMISSAL OF COM-  
PLAINT . . . 22 W. R., Cr., 12  
[I. L. R., 6 Calc., 581  
I. L. R., 10 Bom., 199]

s. 247 (1872, ss. 205, 212; 1881-69,  
s. 259).

See COMPLAINT—DISMISSAL OF COM-  
PLAINT—EFFECT OF DISMISSAL.  
[19 W. R., Cr., 52  
23 W. R., Cr., 63  
24 W. R., Cr., 64  
25 W. R., Cr., 63  
4 C. W. N., 346]

See COMPLAINT—DISMISSAL OF COM-  
PLAINT—GROUND OF DISMISSAL.  
[4 Mad., Ap., 41  
I. L. R., 5 Mad., 160  
13 C. L. R., 303  
I. L. R., 7 Mad., 356  
4 C. W. N., 23]

ss. 247, 253.

See JOINDER OF CHARGES.  
[I. L. R., 11 Calc., 91]

s. 248 (1872, s. 210).

See COMPLAINANT.  
[I. L. R., 2 Bom., 653]

See COMPLAINT—REVIVAL OF COMPLAINT.  
[I. L. R., 23 Bom., 711]

See COMPLAINT—WITHDRAWAL OF COM-  
PLAINT AND OBLIGATION OF MAGIS-  
TRATE TO HEAR IT.  
[4 B. L. R., F. B., 41  
I. L. R., 5 Mad., 378  
I. L. R., 13 Bom., 600]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

See COMPOUNDING OFFENCE.

[I. L. R., 10 Calc., 551

s. 250 (1872, s. 209; 1861-69, s. 270).

See CASES UNDER COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT.

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL.

[3 B. L. R., S. N., 15

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT.

[4 B. L. R., F. B., 41

ss. 253, 259 (1872, s. 215; 1861-69, s. 250).

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL.

[8 Mad., Ap., 5

[I. L. R., 3 Calc., 389

I. L. R., 2 All., 447

I. L. R., 4 Mad., 329

23 W. R., Cr., 9

See COMPLAINT—REVIVAL OF COMPLAINT.

[I. L. R., 1 Bom., 64

See CASES UNDER DISCHARGE OF ACCUSED.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[I. L. R., 21 All., 285

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R., 10 Calc., 67

s. 254 (1872, s. 216; 1861-69, s. 250).

See CASES UNDER DISCHARGE OF ACCUSED.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[I. L. R., 24 Calc., 429

1 C. W. N., 414

s. 255 (1872, s. 217), s. 256 (1872, s. 218), and s. 257 (1872, s. 362).

See CASES UNDER WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.

See CASES UNDER WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

s. 256 (1872, s. 220; 1861-69, s. 255).

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

[5 C. L. R., 35

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

(1872, s. 220)—Conviction or acquittal—Magistrate, Powers of.—Although the explanation to s. 220 provides that, if a charge is drawn up, the prisoner must be either convicted or acquitted, it does not require that the conviction or acquittal should be by the Magistrate who drew the charge. *EMPRESS v. KUDRUTOOLAH*

[I. L. R., 3 Calc., 495; 2 C. L. R., 2

s. 259 (1872, s. 215, expl. 1).

See COMPOUNDING OFFENCE.

[I. L. R., 10 Calc., 551

s. 260 (1872, s. 222).

See BENCH OF MAGISTRATES.

[21 W. R., Cr., 12

See CATTLE TRESPASS ACT, s. 20.

[I. L. R., 23 Calc., 248

See CRIMINAL PROCEEDINGS.

[I. L. R., 19 Mad., 269

I. L. R., 22 Mad., 459

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R., 15 Mad., 83

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL.

[I. L. R., 2 Calc., 117

See CASES UNDER SUMMARY TRIALS.

s. 261.

See BENCH OF MAGISTRATES.

[I. L. R., 13 Mad., 142

s. 262 (1872, s. 226).

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[I. L. R., 6 All., 61

See SENTENCE—SOLITARY CONFINEMENT.

[I. L. R., 6 All., 83

1. s. 263 (1872, s. 227), cl. (h)—Recording reasons for conviction—Practice of High Court on revision.—Under cl. (h) of s. 227 of the Criminal Procedure Code, although a Magistrate is not required to record any evidence, he should, in recording his reasons for the conviction, state them, so that the High Court, on revision, may judge whether there were sufficient materials before him to support the conviction. Where they were not so stated, the High Court on motion set the conviction aside. IN THE MATTER OF THE PETITION OF PANJAB SINGH. *EMPRESS v. PANJAB SINGH*

[I. L. R., 6 Calc., 579

2. Summary trial, Nature of—Magistrate's statement of the reason for a conviction.—Under s. 263 (h) of the Code of Criminal Procedure (Act X of 1882), a Magistrate in recording his reasons for a conviction must state them so that the High Court on revision may judge whether there were sufficient materials before him to support

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1892: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

the conviction. *Empress v. Panjab Singh*, I. L. R. 6 Calc., 579, followed. *Queen-Empress v. Shid-GAUDA*, I. L. R., 18 Bom., 97

*LALIT MOHAN SAHA v. CHUNDER MOHAN ROY*  
[3 C. W. N., 281]

3. ——— *Reasons for finding of Magistrate in case of conviction to be recorded—Criminal Procedure Code (Act X of 1872), s. 227, cl. (A).*—A Magistrate, in cases where no appeal lies, is bound to record a brief statement of his reasons for convicting an accused. *IN THE MATTER OF THE PETITION OF RADONATH SHAHA*. *EMPRESS v. RADONATH SHAHA*, I. L. R., 8 Calc., 195

4. ——— *Summary trial.*—A summary trial under s. 227, Criminal Procedure Code,

[25 W. R., Cr., 65]

cl. (A) of s. 227 of the Code of Criminal Procedure, in case of conviction, he ought to enter, in the register to be kept under that section, a brief statement of the reasons for such conviction; but an omission to do so may, under some circumstances, be remedied at a subsequent time. *IN THE MATTER OF DOWLAT SINGH*, 6 C. L. R., 273

s. 264 (1872, s. 228).

*See REVISION—CRIMINAL CASES—JUDGMENT, DEFECTS IN.*

[I. L. R., 1 All., 680]

*Record of evidence in appealable cases.*—Under Act X of 1872, s. 223, Magistrates are not bound to record the substance of

s. 267 (Act X of 1875, s. 32).

*See JURY—JURY UNDER HIGH COURT'S CRIMINAL PROCEDURE.*

[I. L. R., 1 Bom., 232]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1892: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

s. 268 (1872, s. 232).

*See ASSESSORS.*

[I. L. R., 15 Bom., 514  
I. L. R., 13 All., 337]

*See CRIMINAL PROCEEDINGS.*

[I. L. R., 15 All., 198]

*See INSANITY*, 10 B. L. R., Ap., 10

s. 269 (1872, s. 233).

*See JURY—JURY IN SESSIONS CASES.*

[24 W. R., Cr., 18  
4 C. L. R., 405  
I. L. R., 23 Mad., 632]

*See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.*

[I. L. R., 9 Mad., 42]

s. 270 (1872, s. 235; 1861-60,

s. 360).

*See COMPLAINANT*, 5 Bom., Cr., 85

*See COUNSEL*, 11 Bom., 102

s. 272, prov. (1872, s. 265).

*See ASSESSORS*, 22 W. R., Cr., 34

[I. L. R., 15 Bom., 514]

s. 273.

*See PENAL CODE, s. 372.*

[I. L. R., 21 Calc., 97]

ss. 274, 276 (Act X of 1875, s. 33).

*See JURY—JURY UNDER HIGH COURT'S CRIMINAL PROCEDURE.*

[I. L. R., 1 Bom., 462]

s. 278 (1872, s. 244; 1861-60,

s. 344)

*See JURY—JURY IN SESSIONS CASES.*

[16 W. R., Cr., 66]

ss. 284, 285.

*See ASSESSORS.*

[I. L. R., 15 Bom., 514  
I. L. R., 13 All., 337  
I. L. R., 21 All., 106]

s. 287 (1872, s. 248; 1861-60,

s. 360).

*See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.*

[14 W. R., Cr., 10  
15 W. R., Cr., 83  
I. L. R., 15 Mad., 352]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES.

[3 B. L. R., A. Cr., 59

s. 288 (1872, s. 249).

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED.

[I. L. R., 12 Mad., 123

I. L. R., 27 Calc., 295; 4 C. W. N., 129

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

I. L. R., 12 Mad., 123

[I. L. R., 23 Calc., 361

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R., 15 Mad., 352

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.

[I. L. R., 7 All., 862

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . I. L. R., 21 Calc., 842

1. ———— *Deposition taken before Magistrate—Evidence before Sessions Judge—Discretion of Sessions Judge.*—The purpose of s. 249 of the Code of Criminal Procedure, as amended by s. 20 of Act XI of 1874, is to make depositions given before Magistrates in the preliminary inquiry evidence in the trial before the Court of Session, only when the Sessions Judge determines, in the exercise of his discretion, that they are to be used in this way. But the exercise of this discretion, considering it as a matter of fact or law, is open to review by the Appellate Court. *REG. v. ARJUN MEGHA*

[11 Bom., 281

2. ———— *Former deposition of witness—Evidence Act, s. 80.*—The confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by s. 249, Criminal Procedure Code, 1872,—that is, it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession in order to afford *prima facie* evidence, under s. 80 of the Evidence Act, of the circumstances mentioned in it relative to the taking of the statement ought to give the facts necessary to render the deposition admissible under s. 249. *QUEEN v. NUSSRUDDIN*

[21 W. R., Cr., 5

3. ———— *Depositions taken before Magistrate.*—A Court of Session is not at liberty, under Act X of 1872, s. 249, to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh. *QUEEN v. MAJOHUR ROY*

. 24 W. R., Cr., 11

4. ———— *Witnesses before committing Magistrate.*—On the trial of a prisoner for the murder of his wife and child, the witnesses for the prosecution gave evidence contradicting the evidence

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

given by them before the committing Magistrate; and the Sessions Judge, purporting to act under s. 249, Act X of 1872, discarded the evidence taken before himself, and grounded his judgment on the evidence given before the Magistrate, and on this evidence convicted the prisoner and sentenced him to death. On appeal by the prisoner,—*Held* that s. 249 did not warrant such a course of proceeding. That section merely authorizes the Court to take a particular statement, made by a witness before the Magistrate as the true statement, notwithstanding that it is denied, or a statement inconsistent with it was made by the witness before the Judge, only if the Judge should see that the original statement was worthy of belief, and does not mean that the Court should discard wholly the testimony of witnesses before it and have recourse to the testimony of the same persons given before another officer. *QUEEN v. AMANULLA*

[12 B. L. R., Ap., 15; 21 W. R., Cr., 49

See *QUEEN-EMPERESS v. JADUB DASS*

[I. L. R., 27 Calc., 295

5. ———— *Use in Sessions Court of evidence taken before the committing Magistrate.*—Although under certain circumstances a Court of Session may use evidence given before the committing Magistrate as if it had been given before itself, it is not proper for a Court of Session to base a conviction solely upon such evidence, there being no other evidence on the record to corroborate it. *Queen v. Amanulla*, 12 B. L. R., Ap., 15, *Queen-Emperess v. Bharamappa*, I. L. R., 12 Mad., 123, and *Queen-Emperess v. Dhan Sahai*, I. L. R., 7 All., 862, referred to. *QUEEN-EMPERESS v. JEOCHI* . I. L. R., 21 All., 111

6. ———— *Duty of Sessions Judge as to evidence taken before the Magistrate.*—Sessions Judges should act with great caution in exercising the discretion given to them by s. 288, Code of Criminal Procedure, in admitting evidence given by a witness before the committing Magistrate. Where at a Sessions trial the Sessions Judge admitted, under s. 288, Code of Criminal Procedure, such evidence, without any inquiry as to the allegation made by the witness that her statement before the Magistrate was made under pressure and threat by the police,—*Held* that the District Judge should not have placed reliance on the evidence as given before the Magistrate, and that he would have shown a better discretion if he had first made some inquiry by examining the police officer as to the restraint and pressure under which the statement was alleged to have been made. A witness was not examined in the Sessions Court with regard to the particular statements made by him before the committing Magistrate, and he did not repeat those statements before the Sessions Court. *Held* that the Sessions Judge could not properly admit such statements in evidence under s. 288, Criminal Procedure Code. Where a witness was examined in the Sessions Court and had shown no disposition in any way to refile from any statement he had made before the committing Magistrate,

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

police to keep the witness under such restraint, and that statements so obtained can hardly be regarded as voluntary. *BAJRANGI LAL v. EMPRESS*

[4 C. W. N., 49

Session, the statement made before the committing Magistrate can be used under s. 288 of the Code of Criminal Procedure to contradict the witness; but

*EMPRESS v. NIRMAL DAS* . I L. R., 22 All., 445

**S. ——— Admissibility of evidence**

him for dacoity. The pardon was accepted, and the person to whom it was tendered made a statement

of s. 288 of the Code of Criminal Procedure. *QUEEN-EMPRESS v. SONJEV*

[I. L. R., 21 All., 175

**S. ——— Depositions in former case**

—*Refusal to allow cross-examination of witnesses.*  
—A, B, and C having been charged with murder before a Magistrate, two vakils presented their vakalatnamas, and applied to be allowed to conduct the defence of the accused. The Magistrate refused permission, and, after recording the depositions of the witnesses, committed the accused to take their trial before the Sessions Court. In the Court of the Magistrate the only material evidence for the prosecution was that of three witnesses, who, on being examined in the Sessions Court, denied all

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

knowledge of the facts to which they had deposed before the Magistrate. Two of them denied having made the statements recorded, while the third admit-

been used as evidence in the case, as the Magistrate

**s. 289.**

*See CASES UNDER RIGHT OF REPLY.*

on the facts. It is only in the absence of any evidence as to the commission of the offence by the tal ing can

to return a verdict of not guilty. *Queen-Empress v. Munna Lal*, I. L. R., 10 All., 414, approved. *QUEEN-EMPRESS v. VAJIRAM*

[I. L. R., 16 Bom., 414

**ss. 289, 290 (1872, s. 251).**

*See COUNSEL* . . . 11 Bom., 102

*See CRIMINAL PROCEEDINGS.*

[I. L. R., 10 All., 414

I. L. R., 23 Cal., 252

*See SESSIONS JUDGE, POWER OF.*

[I. L. R., 10 All., 414

the case. *QUEEN v. JUMRUDDIN*

[23 W. R., Cr., 58

**s. 290.**

*See CASES UNDER RIGHT OF REPLY.*

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES.

[3 B. L. R., A. Cr., 59

— s. 238 (1872, s. 249).

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED.

[I. L. R., 12 Mad., 123

I. L. R., 27 Calc., 295; 4 C. W. N., 129

See EVIDENCE CRIMINAL CASES—DEPOSITIONS.

I. L. R., 12 Mad., 123

[I. L. R., 23 Calc., 361

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R., 15 Mad., 352

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.

[I. L. R., 7 All., 862

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION

I. L. R., 21 Calc., 642

1. ———— *Deposition taken before Magistrate—Evidence before Sessions Judge—Discretion of Sessions Judge.*—The purpose of s. 249 of the Code of Criminal Procedure, as amended by s. 20 of Act XI of 1874, is to make depositions given before Magistrates in the preliminary inquiry evidence in the trial before the Court of Session, only when the Sessions Judge determines, in the exercise of his discretion, that they are to be used in this way. But the exercise of this discretion, considering it as a matter of fact or law, is open to review by the Appellate Court. *REG. v. ARJUN MEGHA*

[11 Bom., 231

2. ———— *Former deposition of witness—Evidence Act, s. 80.*—The confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by s. 249, Criminal Procedure Code, 1872,—that is, it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession in order to afford *prima facie* evidence, under s. 80 of the Evidence Act, of the circumstances mentioned in it relative to the taking of the statement ought to give the facts necessary to render the deposition admissible under s. 249. *QUEEN v. NUSSURUDDIN*

[21 W. R., Cr., 5

3. ———— *Depositions taken before Magistrate.*—A Court of Session is not at liberty, under Act X of 1872, s. 249, to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh. *QUEEN v. MAJAHUR ROY*

24 W. R., Cr., 11

4. ———— *Witnesses before committing Magistrate.*—On the trial of a prisoner for the murder of his wife and child, the witnesses for the prosecution gave evidence contradicting the evidence

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

given by them before the committing Magistrate, and the Sessions Judge, purporting to act under s. 249, Act X of 1872, discarded the evidence taken before himself, and grounded his judgment on the evidence given before the Magistrate, and on this evidence convicted the prisoner and sentenced him to death. On appeal by the prisoner,—*Held* that s. 249 did not warrant such a course of proceeding. That section merely authorizes the Court to take a particular statement, made by a witness before the Magistrate as the true statement, notwithstanding that it is denied, or a statement inconsistent with it was made by the witness before the Judge, only if the Judge should see that the original statement was worthy of belief, and does not mean that the Court should discard wholly the testimony of witnesses before it and have recourse to the testimony of the same persons given before another officer. *QUEEN v. AMANULLA*

[12 B. L. R., Ap., 15; 21 W. R., Cr., 49

See *QUEEN-EMPRESS v. JADUB DASS*

[I. L. R., 27 Calc., 295

5. ———— *Use in Sessions Court of evidence taken before the committing Magistrate.*—Although under certain circumstances a Court of Session may use evidence given before the committing Magistrate as if it had been given before itself, it is not proper for a Court of Session to base a conviction solely upon such evidence, there being no other evidence on the record to corroborate it. *Queen v. Amanulla*, 12 B. L. R., Ap., 15, *Queen-Empress v. Bharamappa*, I. L. R., 12 Mad., 123, and *Queen-Empress v. Dhan Sahai*, I. L. R., 7 All., 862, referred to. *QUEEN-EMPRESS v. JECHHI*

I. L. R., 21 All., 111

6. ———— *Duty of Sessions Judge as to evidence taken before the Magistrate.*—Sessions Judges should act with great caution in exercising the discretion given to them by s. 288, Code of Criminal Procedure, in admitting evidence given by a witness before the committing Magistrate. Where at a Sessions trial the Sessions Judge admitted, under s. 288, Code of Criminal Procedure, such evidence, without any inquiry as to the allegation made by the witness that her statement before the Magistrate was made under pressure and threat by the police,—*Held* that the District Judge should not have placed reliance on the evidence as given before the Magistrate, and that he would have shown a better discretion if he had first made some inquiry by examining the police officer as to the restraint and pressure under which the statement was alleged to have been made. A witness was not examined in the Sessions Court with regard to the particular statements made by him before the committing Magistrate, and he did not repeat those statements before the Sessions Court. *Held* that the Sessions Judge could not properly admit such statements in evidence under s. 288, Criminal Procedure Code. Where a witness was examined in the Sessions Court and had shown no disposition in any way to resile from any statement he had made before the committing Magistrate,

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

the admission of that deposition by a Sessions Judge under s. 288, Code of Criminal Procedure, was improper. *Queen v. Amannila*, 12 B. L. R., 15; 21 W. R., Cr., 49, and *Queen-Empress v. Dan Sahai*, I. L. R., 7 All., 862, followed. Where a medical officer gave evidence before the committing Magistrate and it was not certified that the evidence was given in presence of the accused,—Held that the

that statements so obtained can hardly be regarded as voluntary. *BAJRANGI LAL v. EMPRESS*

[4 C. W. N., 49

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

[8 C. L. R., 53

s. 288.

See CASES UNDER RIGHT OF REPLY.

*EMPRESS v. NIRMAL DAS*. I. L. R., 22 All., 445

B. ———— *Admissibility of evidence*  
—Statement of approver made before committing Magistrate and afterwards retracted in the Court of Session.—Pardon was tendered by a Magistrate to one of several persons who were being tried before him for dacoity. The pardon was accepted, and the person to whom it was tendered made a statement

did not prevent the Sessions Court from considering the evidence of the approver under the provisions of s. 288 of the Code of Criminal Procedure. *QUEEN-EMPRESS v. SONEVU*

[I. L. R., 21 All., 175

B. ———— *Depositions in former case*  
—Refusal to allow cross-examination of witnesses.

trial before the Sessions Court. In the Court of the Magistrate the only material evidence for the prosecution was that of three witnesses, who, on being examined in the Sessions Court, denied all

must go on to its close; when in trials by jury, the jury, and in other trials the Judge, after considering the opinions of the assessors, have to find on the facts. It is only in the absence of any evidence as the accused tal without ing the opin can direct th to return a verdict of not guilty. *Queen-Empress v. Munna Lal*, I. L. R., 10 All., 414, approved. *QUEEN-EMPRESS v. VAJIRAM*

[I. L. R., 16 Bom., 414

ss. 289, 290 (1872, s. 251).

See COUNSEL. 11 Bom., 102

See CRIMINAL PROCEEDINGS.

[I. L. R., 10 All., 414

I. L. R., 23 Cal., 253

See SESSIONS JUDGE, POWER OF.

[I. L. R., 10 All., 414

Procedure—Absence of witnesses for defence.—If an accused has not his witnesses present, the Judge should, under s. 251, Criminal Procedure Code, if he sees grounds for proceeding, first call upon him for his defence, and then postpone the case. *QUEEN v. JIMMARDIN*

[23 W. R., Cr., 58

s. 290.

See CASES UNDER RIGHT OF REPLY.

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

s. 291 (1872, s. 363; 1861-69, s. 375).

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[23 W. R., Cr., 56  
I. L. R., 8 All., 668

s. 292 (1872, s. 252).

See COUNSEL . . . 11 Bom., 102

See RIGHT OF REPLY.

s. 297.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R., 23 Calc., 252

s. 297 (1872, s. 255, para. 1; 1861-69, s. 379) and s. 298.

See CASES UNDER CHARGE TO JURY.

ss. 298, 302.

See VERDICT OF JURY—GENERAL CASES.

[I. L. R., 19 Bom., 735

ss. 300-303, 306, 307 (1872, s. 263).

See RIGHT TO BEGIN.

[20 W. R., Cr., 33

s. 303.

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—RIOTING.

[I. L. R., 21 Calc., 955

See VERDICT OF JURY—GENERAL CASES.

[I. L. R., 10 Calc., 140

s. 307.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R., 9 All., 420

See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES.

See REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION.

[I. L. R., 15 Calc., 269

See VERDICT OF JURY—GENERAL CASES.

[I. L. R., 10 Calc., 140

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

s. 309 (1872, s. 255, para. 1, and s. 261; 1861-69, s. 324).

See CASES UNDER ASSESSORS.

s. 310.

See CRIMINAL PROCEEDINGS.

[13 C. L. R., 110

*Trials before jury or assessors—Record—Previous convictions.*—In trials before a jury or assessors the record should invariably

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence. KRISTO BEHARY DASS v. EMPRESS . . . 12 C. L. R., 555

See BEPIN BEHARY SHAW v. EMPRESS

[13 C. L. R., 110

s. 332 (1872, s. 414; 1861-69, s. 354).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[8 W. R., Cr., 83

s. 337 (1872, s. 347; 1861-69, s. 209).

See APPROVERS . . . I. L. R., 11 All., 79  
[I. L. R., 23 Bom., 493

See CHARGE TO JURY—MISDIRECTION.

[I. L. R., 17 Calc., 642

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . I. L. R., 22 Calc., 50

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

[I. L. R., 1 Bom., 610

I. L. R., 2 All., 280

I. L. R., 10 Bom., 190

I. L. R., 23 Bom., 213

See CASES UNDER PARDON.

s. 338 (1872, s. 348).

See APPROVERS . . . I. L. R., 7 All., 160  
[I. L. R., 14 All., 502

See PARDON . . . 7 W. R., Cr., 114  
[I. L. R., 10 Calc., 936

s. 339 (1872, s. 349).

See CASES UNDER APPROVERS.

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . I. L. R., 22 Calc., 50

See PARDON . . . I. L. R., 11 All., 79  
[I. L. R., 24 Calc., 492  
I. L. R., 20 All., 529

ss. 340, 341 (1872, s. 186).

See ADVOCATE . . . 7 Mad., Ap., 41

See ATTORNEY . . . 7 Mad., Ap., 41

See INSANITY . . . I. L. R., 5 Bom., 262

See PLEADER—APPOINTMENT AND APPEARANCE . . . 7 Mad., Ap., 37, 41

[I. L. R., 23 Calc., 493

I. L. R., 16 Bom., 661

I. L. R., 21 All., 109

*L. ——— Deaf and dumb person—Procedure.*—G was convicted by the Joint Magistrate of house-breaking by night, with intent to commit theft, and the case referred under the provisions of s. 186 of Act X of 1872 to the High Court

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1892: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

for orders. It appeared that G, whose understanding was of the most limited character, was caught at night in a house with some anklets in his possession. He was a lad of 15 or 16 years of age,

been in arrest before. The Court recommended that he should be made over to his father. *QUEEN v. GANGA* . . . 7 N. W., 131

referred the case to the Magistrate under the Code of Criminal Procedure. The Magistrate considered that the accused did understand what he was charged with. *Held* that the finding of the Magistrate must prevail and s. 186 did not apply. *DOORJI HULWAI v. ANONYMOUS*

[19 W. R., Cr., 37]

3. ——— *Deaf and dumb person, Trial of.*—The High Court under the circumstances of this case, which came before it under the last clause of s. 186 of the Criminal Procedure Code, 1872, set aside the conviction of the prisoner, who was deaf and dumb, and directed that he be admonished and discharged. *DWARKANATH HALDAR v. NODER CHAND KAMTE* . . . 22 W. R., Cr., 35

4. ——— *Deaf and dumb person,*

result of those proceedings, all said case —

the Magistrate to give him notice. *HARI* . . . 22 W. R., Cr., 35

He was subsequently convicted by the Magistrate, and this conviction was confirmed by the High Court. *QUEEN v. BOWKA* . . . 22 W. R., Cr., 72

5. ——— *"Accused," Meaning of—Criminal Procedure Code (Act V of 1898), s. 123—Person liable to imprisonment in default of giving security.*—The term "accused" in s. 340 of the Code of Criminal Procedure applies to a person who is liable under s. 123 of that Code to imprisonment in default of giving security. *NAKHI LAL JHA v. QUEEN-EMPRESS* . . . I. L. R., 27 Calc., 656

6. ——— *Deaf and dumb—Accused person unable to understand proceedings in Court, Commitment of—Report by Magistrate of such*

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1892: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

*proceedings to High Court—Power of High Court*

Government. *QUEEN-EMPRESS v. SOMER BOWRA*  
[I. L. R., 27 Calc., 368  
4 C. W. N., 421  
s. 342 (1872, ss. 193 and 250;  
1861-69, s. 202).

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . I. L. R., 5 All., 253

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED.

[I. L. R., 10 Mad., 295

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED . . . I. L. R., 10 Mad., 295  
[I. L. R., 26 Calc., 49  
I. L. R., 27 Calc., 295

See EXAMINATION OF ACCUSED PERSON.  
[16 W. R., Cr., 21  
1 C. L. R., 436

I. L. R., 6 Calc., 98; 6 C. L. R., 521

See FALSE EVIDENCE—GENERALLY.  
[I. L. R., 19 All., 200

See PENAL CODE, s. 182.  
[I. L. R., 12 Mad., 451

See WITNESS—CRIMINAL CASES—PERSON COMPETENT OR NOT TO BE WITNESS.

[I. L. R., 16 Bom., 661  
I. L. R., 20 All., 426

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by . . .  
on t . . .  
under s . . .  
cross-examine him. The only questions which are

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

— s. 291 (1872, s. 303; 1861-60, s. 375).

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[33 W. R., Cr., 58  
I. L. R., 8 All., 688

— s. 292 (1872, s. 252).

See COUNSEL . . . 11 Bom., 102

See RIGHT OF REPLY.

— s. 297.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R., 23 Calc., 252

— s. 297 (1872, s. 255, para. 1; 1861-60, s. 370) and s. 298.

See CASES UNDER CHARGE TO JURY.

— ss. 298, 302.

See VERDICT OF JURY—GENERAL CASES.

[I. L. R., 19 Bom., 736

— ss. 300-303, 308, 307 (1872, s. 263).

See RIGHT TO BEGIN.

[20 W. R., Cr., 33

— s. 303.

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—RIOTING.

[I. L. R., 21 Calc., 955

See VERDICT OF JURY—GENERAL CASES.

[I. L. R., 10 Calc., 140

— s. 307.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R., 9 All., 420

See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES.

See REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION.

[I. L. R., 15 Calc., 269

See VERDICT OF JURY—GENERAL CASES.

[I. L. R., 10 Calc., 140

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

— s. 309 (1872, s. 255, para. 1, and s. 261; 1861-60, s. 324).

See CASES UNDER ASSESSORS.

— s. 310.

See CRIMINAL PROCEEDINGS.

[13 C. L. R., 110

— *Trials before jury or assessors—Record—Previous convictions.*—In trials before a jury or assessors the record should invariably

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence. KRISTO BHABHY DASS v. EMPRESS . . . 12 C. L. R., 555

See DEPIN BHABHY SHAW v. EMPRESS

[13 C. L. R., 110

— s. 332 (1872, s. 414; 1861-60, s. 354).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[8 W. R., Cr., 83

— s. 337 (1872, s. 347; 1861-60, s. 209).

See APPROVERS . . . I. L. R., 11 All., 79  
[I. L. R., 23 Bom., 493

See CHARGE TO JURY—MISDIRECTION.

[I. L. R., 17 Calc., 842

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . I. L. R., 22 Calc., 50

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

[I. L. R., 1 Bom., 610

I. L. R., 3 All., 280

I. L. R., 10 Bom., 190

I. L. R., 23 Bom., 213

See CASES UNDER PARDON.

— s. 338 (1872, s. 348).

See APPROVERS . . . I. L. R., 7 All., 180  
[I. L. R., 14 All., 502

See PARDON . . . 7 W. R., Cr., 114  
[I. L. R., 10 Calc., 936

— s. 339 (1872, s. 349).

See CASES UNDER APPROVERS.

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . I. L. R., 22 Calc., 50

See PARDON . . . I. L. R., 11 All., 79  
[I. L. R., 24 Calc., 492

I. L. R., 20 All., 529

— ss. 340, 341 (1872, s. 186).

See ADVOCATE . . . 7 Mad., Ap., 41

See ATTORNEY . . . 7 Mad., Ap., 41

See INSANITY . . . I. L. R., 5 Bom., 262

See PLAIDER—APPOINTMENT AND APPEARANCE . . . 7 Mad., Ap., 37, 41

[I. L. R., 23 Calc., 493

I. L. R., 16 Bom., 661

I. L. R., 21 All., 109

1. ——— Deaf and dumb person—*Procedure.*—G was convicted by the Joint Magistrate of house-breaking by night, with intent to commit theft, and the case referred under the provisions of s. 186 of Act X of 1872 to the High Court

CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.

and had been deaf and dumb from his birth. He

he should be made over to his father. *QUEEN v. GANGA* . . . . . 7 N. W., 131

*DOORBI HULWAI v. ANONYMOUS* . . . . . [19 W. R., Cr., 37

set aside the conviction of the prisoner, who was deaf and dumb, and directed that he be admonished and discharged. *DWARKANATH HALDAR v. NODER CHAND KANTE* . . . . . 22 W. R., Cr., 35

*HARI* . . . . . 22 W. R., Cr., 35

He was subsequently convicted by the Magistrate, and this conviction was confirmed by the High Court. *QUEEN v. BOWEA* . . . . . 22 W. R., Cr., 72

5. ———— "Accused," Meaning of—*Criminal Procedure Code (Act V of 1898)*, s. 123—*Person liable to imprisonment in default of giving security*.—The term "accused" in s. 340 of the Code of Criminal Procedure applies to a person who is liable under s. 123 of that Code to imprisonment in default of giving security. *NAKHI LAL JHA v. QUEEN-EMPRESS* . . . . . I. L. R., 27 Cal., 658

6. ———— *Deaf and dumb—Accused person unable to understand proceedings in Court, Commitment of—Report by Magistrate of such*

CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.

*proceedings to High Court—Power of High Court to pass final orders on such report—Discretion of High Court to order Sessions trial to be held—Code of Criminal Procedure (Act V of 1898)*, ss. 341 and 471—*Penal Code (XLV of 1860)*, s. 302.—An accused person who had been for some time confined in a lunatic asylum was tried and committed to the Sessions by a Deputy Magistrate on a charge of murder. The accused was deaf and dumb, and

*Government. QUEEN-EMPRESS v. SOMIA BOWRA* . . . . . [I. L. R., 27 Cal., 366  
4 C. W. N., 421

s. 342 (1872, ss. 193 and 250; 1861-69, s. 202).

*See CONFESSION—CONFESSIONS TO MAGISTRATE* . . . . . I. L. R., 5 All., 253

*See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED.*

[I. L. R., 10 Mad., 295

*See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED* . . . . . I. L. R., 10 Mad., 295  
[I. L. R., 26 Cal., 49  
I. L. R., 27 Cal., 295

*See FALSE EVIDENCE—GENERALLY.*  
[I. L. R., 19 All., 200

*See PENAL CODE*, s. 182.  
[I. L. R., 12 Mad., 451

*See WITNESS—CRIMINAL CASES—PERSON COMPETENT OR NOT TO BE WITNESS.*

[I. L. R., 16 Bom., 661  
I. L. R., 20 All., 428

1. ———— *Examination of prisoner by Judge—Nature of examination*.—It is improper on the part of a Judge, when examining a prisoner under s. 342 of the Criminal Procedure Code, to cross-examine him. The only questions which are

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

permissible are such as will enable the prisoner to explain any circumstances appearing in the evidence against him. *HURRY CHURN CHUCKERBUTTY v. EMPRESS* . . . I. L. R., 10 Calc., 140

2. ———— *Meaning of "accused."*—By the word accused in s. 342 of the Code of Criminal Procedure (Act X of 1882) is meant a person over whom the Magistrate or other Court is exercising jurisdiction. *QUEEN-EMPRESS v. MONA PUNA* . . . I. L. R., 16 Bom., 661

*JHOJA SINGH v. QUEEN-EMPRESS*  
[I. L. R., 23 Calc., 493]

*QUEEN-EMPRESS v. MUTASADDI LAL*  
[I. L. R., 21 All., 107]

3. ———— *Examination of accused person—Power of Magistrate to question the accused.*—Where a Magistrate, before evidence taken for the prosecution, put questions to the accused of the nature of a cross-examination, such procedure was illegal, as it could not be said that the questions were put "for the purpose of enabling the accused to explain any circumstances appearing against him in the evidence" within the meaning of s. 342 of the Code of Criminal Procedure. *QUEEN-EMPRESS v. HAWTHORNE* . . . I. L. R., 13 All., 345

4. ———— *Sessions trial—Accused persons, Examination of.*—Questions put by the Court to an accused person under the provisions of s. 342 of the Code of Criminal Procedure, 1882, must be strictly limited to the purpose described in that section, i.e., "of enabling the accused to explain any circumstances appearing in the evidence against him." The evidence referred to in that section is the evidence already given at the trial at the time when the Court puts questions to the accused. *QUEEN-EMPRESS v. HARGOBIND SINGH* . . . I. L. R., 14 All., 242

5. ———— *Witness—Accused person calling as witnesses persons charged with him and awaiting a separate trial for same offence—Evidence Act (I of 1872), s. 132.*—The accused D, a European British subject, was charged, together with others who were natives of India, under ss. 384, 385, and 389 of the Penal Code (Act XLV of 1860), with conspiring to commit extortion. D claimed to be tried by a mixed jury under s. 450 of the Criminal Procedure Code (Act V of 1898). The other accused, who were natives of India, then claimed to be tried separately under s. 452. The trial of D then proceeded, and at the close of the case for the prosecution he proposed to call as his witnesses the persons who had been charged with him and who were awaiting their trial. They objected to be called. *Held* that he was entitled to call them as witnesses and to examine them on oath. The words "the accused" in cl. 4 of s. 342 of the Criminal Procedure Code (Act V of 1898) mean the accused then under trial and under examination by the Court. *QUEEN-EMPRESS v. DURANT* . . . I. L. R., 23 Bom., 213

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

6. ———— *Statement of accused under that section—Misdirection.*—A gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under s. 342 of the Criminal Procedure Code. It is a misdirection to ask the jury to consider a document, purporting to be proved by such a statement as evidence against the accused. *BASANTA KUMAR GHATTAK v. QUEEN-EMPRESS* I. L. R., 26 Calc., 49

s. 343 (1872, s. 344).

*See CONFESSION—CONFESSIONS TO MAGISTRATE* . . . I. L. R., 2 All., 260

s. 344, para. 1 (1872, s. 219; 1861-69, s. 253).

*See CRIMINAL PROCEEDINGS.*

[I. L. R., 19 Mad., 375.]

*See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.*

[4 B. L. R., Ap., 78

7 B. L. R., 564

2 N. W., 148, 393

(1872, s. 194; 1861-69, s. 224).

*See BAIL* . . . I. L. R., 6 Mad., 63, 69.  
[I. L. R., 15 Calc., 455.]

*See WARRANT OF ARREST—CRIMINAL CASES* . . . 5 Bom., Cr., 31

(Presidency Magistrate's Act, 1877, s. 124).

*See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.*

[I. L. R., 6 Calc., 523]

s. 345 (1872, s. 188).

*See CASES UNDER COMPOUNDING OFFENCE.*

s. 347 (1872, s. 221; 1861-69, s. 256).

*See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.*

[1 N. W., Ed. 1873, 307]

*Stay of proceedings after charge is drawn up—Committal for trial—Magistrate, Powers of.*—S. 221 of the Criminal Procedure Code authorizes a Magistrate, after a charge has been drawn up, to stop further proceedings, and commit for trial. *EMPRESS v. KUDRUTOOLLA*

[I. L. R., 3 Calc., 495; 2 C. L. R., 2

ss. 347, 349 (1872, s. 46, paras. 1, 2, and 3; 1861-69, s. 277).

*See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.*

[I. L. R., 13 Calc., 305

I. L. R., 9 Mad., 377

I. L. R., 10 Bom., 196

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

*See* CASES UNDER MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.

s. 349.

*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

[I. L. R., 14 Calc., 355

I. L. R., 4 Bom., 240

*See* PRISONER . . . 7 Bom., Cr., 31  
(7 W. R., Cr., 38

s. 350 (1872, s. 328).

*See* BENCH OF MAGISTRATES.

[I. L. R., 20 Calc., 870

I. L. R., 18 Mad., 394

I. L. R., 23 Calc., 184

I. L. R., 21 Mad., 246

*See* SESSIONS JUDGE, JURISDICTION OF.  
[23 W. R., Cr., 59

I. L. R., 3 Mad., 112

*See* WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[I. L. R., 25 Calc., 863

1. ———— *Magistrate deciding case*

question of possession on the evidence which had been taken by his predecessor. *GURU CHURN SEN v. KALI NATH DAS BISWAS*. 23 W. R., Cr., 62

2. ———— *Evidence heard by one Magistrate and case decided by another—Irregularity not prejudicing accused.*—In two cases, in one of which the evidence was taken entirely by one Deputy Magistrate, whilst the decision was passed by another, and in the other of which, although the Deputy Magistrate who decided the case heard part of the evidence, he decided it on the same grounds as the first case, the High Court declined to interfere, because the accused was not said to have been prejudiced by the decision in either case. *THAKUR DAS MAJHI v. NAMDAR MUNDUL*. 24 W. R., Cr., 12

3. ———— *Transfer of case by subordinate Magistrate—Dis-*

*taken by*  
*of—Crim-*  
350 of the  
to provide  
has been com-  
menced before one incumbent of a particular magisterial post, and that officer ceases to have jurisdiction in that post, and is succeeded by another

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

that they were covered by s. 350 of the Code. Held that this view was erroneous, that neither under s. 192 nor under s. 349 was there any transfer to

*See* QUEEN-EMPRESS v. BASHIR KHAN

[I. L. R., 14 All., 346

taken by the former Magistrate. *BARODA KANT ROY v. KARIMUNDI MOONSHI*. 4 C. L. R., 452

which has already been commenced to be entertained against other prisoners, and on which evidence has already been given. That section applies to investigations preliminary to commitment for a subsequent trial, and not to cases where the trial is actually being proceeded with. *QUEEN v. SUTHERLAND*. *QUEEN v. NARAIN SINGH*. 14 W. R., Cr., 20

2. ———— *Offence disclosed by evidence of witness in course of case—Powers of Magistrate—Criminal Procedure Code, s. 191, cl. (c).*—A Magistrate taking cognizance of an offence against a witness in a case which is pending before him upon the facts disclosed by the evidence of another witness does so under s. 191, cl. (c), of the Criminal



**CRIMINAL PROCEDURE CODES (ACT V OF 1838: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

*Reference to High Court.*—The High Court as a Court of reference can, under s. 287, Criminal Procedure Code, 1872 only deal with cases in which a sentence of death has been passed.  
**QUEEN v. OMAN** . . . . . 5 N. W., 130

1. ———— 3. 376 (1872, s. 288)—*Culpable homicide not amounting to murder—Reference to High Court for confirmation of sentence of death—New trial, Order for—Murder, Conviction on charge of.*—Under s. 288 of the Code of Criminal Procedure, the High Court, to which a reference is made by a Court of Session for confirmation of a sentence of death on conviction of murder, cannot, in the absence of an appeal, alter the conviction to one of culpable homicide not amounting to murder, if it be of opinion that the evidence does not establish the former, but the latter offence. It must order a new trial for that purpose. Where the prisoners were tried on two charges of murder and culpable homicide not amounting to murder, and the opinion of the assessors was taken on both charges, but the Sessions Judge, being of opinion that the

[I. L. R., 1 Bom., 639]

3. ———— *Power of High Court to go*

**CRIMINAL PROCEDURE CODES (ACT V OF 1838: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

s. 380 (1872, s. 18)—*Enhancement of sentence*—When an Assistant Sessions Judge passes a sentence of more than three years' imprisonment, the Sessions Judge cannot enhance it. **ENTREPRENEUR RAMA PRIMA** . . . . . I. L. R., 4 Bom., 239

s. 384 (1872, s. 303).

*See* WARRANT OF COMMITMENT

[I. L. R., 6 Mad., 296]

s. 336.

*See* COMPENSATION—CRIMINAL CASES—COMPENSATION FOR LOSS OR INJURY CAUSED BY OFFENCE.

[I. L. R., 21 Cal., 139]

I. L. R., 19 Mad., 238

*See* COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT . . . . . I. L. R., 21 Cal., 379

*See* MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES

[I. L. R., 22 Cal., 935]

ss. 336, 387, 399 (1872, s. 307).

*See* ACT XXI OF 1856

[5 B. L. R., Ap., 47]

17 W. R., Cr., 7

*See* FINE . . . . . 5 Bom., Cr., 83

[9 W. R., Cr., 50]

I. L. R., 30 Cal., 478

s. 391, para. 1 (1872, s. 310).

*See* WHIPPING . . . . . 7 Mad., Ap., 30

[20 W. R., Cr., 72]

s. 395.

*See* SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY

[I. L. R., 11 All., 308]

*See* SENTENCE—WHIPPING.

[I. L. R., 11 All., 308]

I. L. R., 21 All., 25

ss. 336, 337 (1872, ss. 310, 317; 1861-69, ss. 47, 48).

*See* SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY

[3 B. L. R., A. Cr., 50]

12 W. R., Cr., 47

I. L. R., 20 All., 1

s. 399.

*See* MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES

[I. L. R., 12 Mad., 94]

*See* REFORMATORY SCHOOLS ACT, s. 2.

[I. L. R., 25 Cal., 333]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

s. 403 (1872, s. 400).

*See* **Authentic Acquit, PLEA OF.**

[7 N. W., 371  
3 Ind. Jur., N. S., 67  
13 W. R., Cr., 42  
I. L. R., 10 Bom., 181  
I. L. R., 23 Calc., 377

1. ——— *Acquittal—Re-trial—Interference of the High Court—Criminal Procedure Code, s. 530.*—Where an offence is tried by a Court without jurisdiction, the proceedings are void under s. 530 of the Code of Criminal Procedure, Act X of 1882, and the offender, if acquitted, is liable to be re-tried under s. 403. It is, therefore, not necessary for the High Court to upset the acquittal before the re-trial can be had. *QUEEN-EMPEROR v. HEMANT DASS*. . . . . I. L. R., 8 Bom., 307

2. ——— *Previous acquittal.*—Upon a charge of dacoity, the Magistrate, having split up the charge, convicted the accused of rioting, using criminal force, and misappropriating the property of a deceased person. On appeal the Sessions Court reversed the conviction, holding that, the offence, if any, was dacoity, but that, the facts alleged being incredible, there was no need to order a committal. The complainant thereupon lodged a fresh complaint of dacoity based on the same facts before another Magistrate. *Held* that the judgment of the Sessions Court was no bar to further proceedings. *VIHAR-KOTI v. CHIVANU*. . . . . I. L. R., 7 Mad., 557

3. ——— and s. 437—*Different charges arising out of same transaction—Acquittal—Further inquiry—Re-trial.*—*E*, being charged with theft and mischief in respect of certain branches cut from a tree claimed by the complainant, was tried by a Subordinate Magistrate on the charge of mischief, and acquitted on the ground that, as against the complainant, *E* had title to the tree. On the application of the complainant, the District Magistrate directed further inquiry into the case under s. 437 of the Code of Criminal Procedure, and on a reference to the Court of Session the Sessions Judge held that, as no inquiry into the charge of theft had been held, the order was legal. *Held* that the District Magistrate had no power to pass such an order under s. 437, and that a trial on the charge of theft was barred by virtue of s. 403 of the Code of Criminal Procedure. *QUEEN-EMPEROR v. ENRAMHEDDI*

[I. L. R., 8 Mad., 296

4. ——— *Previous conviction or acquittal—Second trial upon the same facts for a different offence—Penal Code, ss. 486 and 487—Bengal Excise Act (Bengal Act VII of 1878), s. 61—Merchandise Marks Act (IV of 1889), ss. 6 and 7—Criminal Procedure Code, s. 235.*—The accused had been prosecuted and convicted under s. 61 of the Bengal Excise Act (Bengal Act VII of 1878), and the proceedings were instituted against him under ss. 486 and 487 of the Penal Code, and ss. 6 and 7 of the Merchandise Marks Act (IV of

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

1889). On an application to quash the proceedings on the ground that the accused had been at the first trial put in peril of a conviction for the latter offences, and therefore the first trial operated as a bar to the institution of the present proceedings,—*Held* the provisions of s. 403 of the Criminal Procedure Code did not operate as a bar to the institution of the present proceedings. Under the second part of that section, the fact of the accused having been charged at the first trial with one offence only did not prevent the institution of a separate proceeding in respect of some other offence which was disclosed during the course of the first trial. *QUEEN-EMPEROR v. CROFT* [I. L. R., 23 Calc., 174

s. 404 (1872, s. 282 and s. 280, illus. (d); 1861-69, s. 422), s. 406 (1872, s. 267), ss. 407, 408, 410-418 (1872, s. 271; 1861-69, s. 408), ss. 411, 412, and 419 (1872, s. 273; 1861-69, s. 411).

*See* **CASES UNDER APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.**

s. 404.

*See* **REMAND—CRIMINAL CASES.**

[3 B. L. R., A. Cr., 62  
6 B. L. R., 698  
9 B. L. R., Ap., 31

s. 407 (1872, s. 263; 1861-69, s. 412).

*See* **APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE**. 3 Bom., Cr., 18

*See* **DEPUTY COMMISSIONER.**

[6 W. R., Cr., 1

*See* **SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.**

[I. L. R., 18 Mad., 487

s. 408 (1872, s. 270; 1869, s. 445C).

*See* **REVISION—CRIMINAL CASES—MISCELLANEOUS CASES**. I. L. R., 9 Calc., 513

ss. 411, 412 (Presidency Magistrate's Act, 1877, s. 167).

*See* **APPEAL IN CRIMINAL CASES—ACTS—PRESIDENCY MAGISTRATE'S ACT.**

[I. L. R., 5 Bom., 85

*See* **SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.**

[I. L. R., 2 Mad., 30

s. 417 (1872, s. 272).

*See* **CASES UNDER APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.**

(Presidency Magistrate's Act, 1877, s. 168).

*See* **SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CRIMINAL CASES.**

[I. L. R., 7 Calc., 447

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

s. 418.

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.

[I. L. R., 10 Calc., 1029

See REFERENCE TO HIGH COURT—CRIMINAL CASES . I. L. R., 9 All., 420

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R., 9 All., 420

I. L. R., 14 Mad., 38

ss. 418, 419, 420, 421 (1872,

s. 278), s. 422 (1872, s. 279), and s. 423 (1872, ss. 280, 284; 1861-69, ss. 419, 427).

See CASES UNDER APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

s. 421.

See JUDGMENT—CRIMINAL CASES.

[I. L. R., 21 Calc., 92

I. L. R., 17 All., 241

I. L. R., 20 Bom., 540

See REVIEW—CRIMINAL CASES.

[I. L. R., 19 Bom., 732

See REVISION—CRIMINAL CASES—JUDGMENT, DEFECTS IN.

[I. L. R., 8 All., 514

s. 423 (1872, ss. 280-284; 1861-69, ss. 419, 427).

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEAL FROM.

[I. L. R., 10 Calc., 1029

See AUTHELOIS ACQUIT. PLEA OF.

[I. L. R., 22 Calc., 377

See COMMITMENT . I. L. R., 8 All., 14

[I. L. R., 15 All., 205

I. L. R., 23 Calc., 350, 975

I. L. R., 27 Calc., 172

4 C. W. N., 186

See COMPLAINT—REVIVAL OF COMPLAINT.

[I. L. R., 24 Calc., 528

See MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.

[12 Bom., 234

See REFERENCE TO HIGH COURT—CRIMINAL CASES . I. L. R., 9 All., 420

See REVISION—CRIMINAL CASES—COMMITMENTS . I. L. R., 16 Bom., 580

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R., 16 Calc., 730

I. L. R., 28 Calc., 6, 748

3 C. W. N., 598, 601

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[I. L. R., 23 Bom., 439

I. L. R., 17 All., 67

I. L. R., 27 Calc., 175

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—ENHANCEMENT.

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R., 20 Calc., 633

I. L. R., 18 Bom., 751

I. L. R., 18 All., 301

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICT

[I. L. R., 9 All., 420

I. L. R., 23 Calc., 252

I. L. R., 25 Calc., 711

I. (1872, s. 284) —*Annuling conviction—Omission to make order for retrial—Criminal Procedure Code, 1872, s. 464.—When a*

Right passing upon the conviction in such a case does not amount to an order of acquittal. IN THE MATTER OF THE PETITION OF RAMI REDDI

[I. L. R., 3 Mad., 48

Code of Criminal Procedure, 1872, s. 423 (a) entertained an appeal from this order under s. 423 (a) of the Code of Criminal Procedure, reversed it, and directed a re-hearing on the ground that the com-

YANGON T. J. (1872, s. 284) —*Annuling conviction—Omission to make order for retrial—Criminal Procedure Code, 1872, s. 464.—When a*

[I. L. R., 7 Mad., 213

s. 424.

See JUDGMENT—CRIMINAL CASES.

[I. L. R., 11 Calc., 440

I. L. R., 13 Calc., 110

I. L. R., 15 Bom., 11

I. L. R., 23 Calc., 241

I. L. R., 23 Calc., 420

I. L. R., 19 All., 508

1 C. W. N., 169

( 1959 )

DIGEST

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s. 426 (1872, s. 281; 1861-62 s. 421).

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY.

[3 B. L. R., A. Cr., 2's

s. 427 (Presidency Magistrate Act, 1877, s. 166).

See APPEAL IN CRIMINAL CASES—ESQUITTALS, APPEALS FROM.

[I. L. R., 9 All., 51,

See SUPERINTENDENCE OF HIGH COURT CHARTER ACT, 24 & 25 VIC., C. 147 15—CRIMINAL CASES.

[I. L. R., 7 Calc., 419,

s. 428 (1872, s. 352; 1861-62 s. 423).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[6 Bom., Cr., 72

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See CRIMINAL PROCEEDINGS.

[I. L. R., 15 All., 151

See PENAL CODE, s. 182.

[I. L. R., 12 Mad., 411

See CASES UNDER REMAND—CRIMINAL CASES.

1. (1872, s. 282)—Objections as to the exercise by an Appellate Court of powers conferred on it by s. 282 of Act X of 1872 (Criminal Procedure Code). *EMPEROR v. FATEH*

[I. L. R., 5 All., 3 to 4]

2. *Enquiry as to place where assault was committed—Power of Appellate Court.*—A case of assault, tried by the Assistant Magistrate of Purneah, was appealed to the Sessions Judge of that district, who ordered an inquiry and found that the assault had been committed at Maldah, and thereupon released the accused, as the Magistrate of Purneah had no jurisdiction. Held, that the Judge had no jurisdiction under s. 70, Criminal Procedure Code, to make such an order, the accused not having been prejudiced in his defence, and further, that he ought not to have ordered the inquiry as to the place where the assault was committed, that question having no bearing on the guilt or innocence of the accused—s. 282. Criminal Procedure Code. *MOHAMED GOLAB v. MOHABEED SIN*

[23 W. R., Cr.,

s. 429.

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[I. L. R., 15 Bom., 4

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s. 430 (1872, s. 285; 1861-69, s. 428).

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[I. L. R., 19 Bom., 732

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[I. L. R., 19 Bom., 714

s. 432.

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[I. L. R., 19 Calc., 380

s. 434 (Act X of 1875, s. 101).

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[I. L. R., 7 All., 673

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s. 435, para. 1 (1872, ss. 294, 295, para. 1; 1861-69, s. 405).

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[I. L. R., 14 Bom., 331

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See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R., 20 Calc., 633

1. "Inferior Criminal Court."—The words "inferior Criminal Court" in s. 435 of the Criminal Procedure Code mean inferior so far as regards the particular matter in respect to which the superior Court is asked to exercise its revisional jurisdiction. IN THE MATTER OF THE PETITION OF NOBIN KRISTO MOOKERJEE, NOBIN KRISTO MOOKERJEE v. RESICK LALL LALL

[I. L. R., 10 Calc., 263

2. and s. 437—District Magistrate—Power to revise proceedings of Sub-Divisional Magistrate of the first class—"Inferior," "Subordinate" Magistrates—Reason of distinction.—Under s. 435 of the Code of Criminal Procedure, a District Magistrate has power to call for and examine the record of a proceeding before a Sub-Divisional Magistrate of the first class. *Nobin*

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

*Kristo Mookerjee v. Russick Lall Laha, I. L. R., 10 Calc., 263, dissented from. IN RE PADMANABHA*

[I. L. R., 8 Mad., 18

3. ———— *Further inquiry—Inferior Criminal Court—Magistrate of the district, Powers of.*—A Magistrate of a district is competent, under s. 425 of the Criminal Procedure Code, to call for and deal with the record of any proceeding before any Magistrate of whatever class in his own district. *OPENDRO NATH GHOSH v. DEKHINI BEWA* [I. L. R., 12 Calc., 473

4. ———— (1872, s. 295)—*Record of*

PRAMANJE . . . I. L. R., 8 Calc., 644

which applies only to the Sessions Judge of the division. *BRONILDOO NOSHYO v. RUNG LAL JHAH* [25 W. R., Cr., 21

[I. L. R., 28 Calc., 188

ss. 435, 436, 438 (1872, ss. 295, 296, 1861-69, s. 434)

*See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.*

[3 Bom., Cr., 1

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[I. L. R., 1 Bom., 64

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*See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.*

[I. L. R., 24 Bom., 471

*See PLEADER—APPOINTMENT AND APPEARANCE OF* . . . 6 B. L. R., Ap., 46

*See PRIVATE PROSECUTOR.*

[3 B. L. R., Ap., 46

*See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES.*

*See RIGHT TO BEGIN* . . . 9 B. L. R., 417

s. 436.

*See COMMITMENT I. L. R., 10 Bom., 319*  
[I. L. R., 9 All., 14

*See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.*

[I. L. R., 18 Calc., 75

*See SESSIONS JUDGE, JURISDICTION OF.*

[I. L. R., 20 Calc., 633

I. L. R., 23 Mad., 225

ss. 436, 438 (1872, s. 296; 1861-69 s. 435).

*See DISCHARGE OF ACCUSED.*

[8 W. R., Cr., 41, 61

15 W. R., Cr., 61

4 B. L. R., A. Cr., 1

9 B. L. R., 337, 339

*See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.*

[8 Bom., 169

4 Mad., Ap., 61

5 B. L. R., Ap., 48

*See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES*

*See SESSIONS JUDGE, JURISDICTION OF.*

[3 B. L. R., A. Cr., 65

W. R., 1864, Cr., 3

9 Bom., 170

9 W. R., Cr., 41

1. ———— *Power of Sessions Court*

must specify the particular act constituting the

[10 B. L. R., 246; 19 W. R., Cr., 60

2. ———— *Order of committal of persons discharged under s. 215.*—A complaint was preferred before the Assistant Magistrate against two persons of an offence under s. 403 of the Penal Code. After inquiry they were discharged under s. 215. Held that the Sessions Court had no power

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

to subsequently direct their committal under s. 296. **ANONYMOUS** . . . 7 Mad., Ap., 28

3. ————— *Criminal Procedure Code, s. 1—Sessions case, Definition of—Charges under Penal Code, ss. 380, 457.*—The appellant, after his discharge by the Assistant Magistrate upon a charge under s. 457 of the Penal Code, was committed to the Sessions Court by order of the Sessions Judge under the Criminal Procedure Code, 1872, s. 296, upon charges under ss. 380 and 457 of the Penal Code. *Held* by the Full Bench (SPANKIE, J., and OLDFIELD, J., dissenting) that the commitment was illegal, and that "Sessions case," within the meaning of s. 296 of the Code of Criminal Procedure, is a case exclusively triable by the Court of Session. **EMPRESS OF INDIA v. KANCHAN SINGH** . . . I. L. R., 1 All, 413

**EMPRESS v. TARA CHAND BAGDI**

[7 C. L. R., 168]

4. ————— *Jurisdiction of Magistrate—Commitment to Sessions—Criminal Procedure Code (Act XXI of 1861), ss. 427, 435.*—The Sessions Judge has no power to commit to the Sessions a case in which persons were convicted by the Deputy Magistrate of an offence under s. 457 of the Penal Code: such a case being one triable by the Deputy Magistrate, ss. 427 and 435 of Act XXI of 1861 do not apply. **QUEEN v. HAKIM SUDAR**

[2 B. L. R., S. N., 2: 10 W. R., Cr., 35]

5. ————— *Revival of proceedings after discharge—Jurisdiction of Magistrate—Sessions case—Fresh evidence.*—A Deputy Magistrate having dismissed a case instituted under s. 380 of the Penal Code without taking certain evidence which in his opinion would have been of little value, the Magistrate of the district, on the application of the complainant, took such evidence, and committed the accused for trial before the Sessions Court. *Held*, on reference to the High Court, that as the words "Sessions case" in s. 296 of the Criminal Procedure Code had reference only to a case triable exclusively by a Court of Session, the Magistrate's action could not be supported under that section, but that (as further evidence in addition to that taken by the Deputy Magistrate was forthcoming) it was sustainable on the principle laid down in *Empress v. Donnelly*, I. L. R., 2 Calc., 405. **EMPRESS v. HARY DOYAL KARMOKAR** . . . I. L. R., 4 Calc., 16

**S. C. ISHEN CRUNDER KURMOKAR v. HURRY DOYAL KURMOKAR** . . . 3 C. L. R., 263

6. ————— *Revival of proceedings after discharge—Jurisdiction of Magistrate—Fresh evidence—Procedure.*—A Magistrate has no power to remand a criminal case to a Subordinate Magistrate for re-trial after the case has once been dismissed; the courses open to him are (1) to accept a fresh complaint supported by fresh evidence, which was not before the Court when the case was dismissed; or (2) if there be no additional evidence to be procured, to report the case for the orders of the High Court

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

under s. 296 of Act X of 1872. **IN THE MATTER OF THE PETITION OF DIJAHUR DUTT**

[I. L. R., 4 Calc., 647]

7. ————— *Discharge of accused persons under s. 215—Revival of proceedings at the instance of the Court of Session—Commitment of accused persons.*—Certain persons were charged under s. 417 of the Penal Code, and were discharged by the Magistrate inquiring into the offence, under s. 215 of Act X of 1872. The Court of Session, considering that the accused persons had been improperly . . . to the Magistrate of . . . to him to make the case over to a Subordinate Magistrate, with directions to enquire into any offence, other than the offence in respect of which the accused persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an inquiry, and committed the accused persons for trial before the Court of Session on charges under ss. 363 and 420 of the Penal Code. It was contended that the Court of Session was not competent to "direct the accused persons to be committed" under s. 296 of Act X of 1872, the case not being a "Sessions case" within the meaning of that section, and that the commitment was consequently illegal. *Held* that there was no "direction to commit" within the meaning of that section, that is to say, to send the accused persons at once to the Sessions Court, without further inquiry, and whether or not the inquiry was made in consequence of the suggestions of the Court of Session was immaterial, and that the inquiry upon the charges under ss. 363 and 420 of the Penal Code was rightly held by the Subordinate Magistrate, and the commitment could not be impeached. **EMPRESS OF INDIA v. BUTT SINGH** . . . I. L. R., 2 All, 570

8. ————— *Discharge by Magistrate—Order of commitment by Sessions Judge—Omission to call on accused to show cause against such commitment—Criminal Procedure Code (Act X of 1872), ss. 296, 283.*—A Sessions Court has no power, under s. 296 of the Criminal Procedure Code, to direct the commitment of a person discharged by a Deputy Magistrate, without first giving such person an opportunity of showing cause against such commitment. But under s. 296, as amended by Act XI of 1874, the Court has power to direct the subordinate Court to enquire into any offences for which it considers a commitment should be ordered. When, however, a trial under such a commitment made by order of a Sessions Judge has been duly held, and no actual failure of justice has been caused by the error of the Sessions Judge, s. 283 of the Criminal Procedure Code would be a bar to the reversal of his judgment. **EMPRESS v. KHAMIR**

[I. L. R., 7 Calc., 662: 10 C. L. R., 8]

9. ————— *Commitment by Sessions Judge—Offence of cheating—Criminal Procedure Code, 1882, s. 4.*—An order of commitment by a Sessions Judge under s. 296 of the Criminal

CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.

296 having record to the first...

10. ———— *Summoning or giving notice to accused person.*—The Sessions Judge, under s. 296, Criminal Procedure Code, 1872,

[23 W. R., Cr., 67

NOWAB SINGH v. KOKIL SINGH

[24 W. R., Cr., 70

IN THE MATTER OF DWARKANATH BHATTACHARJEE

1 C. L. R., 93

[1 L. R., 8 Mad., 372

12. ———— *Order by the District Magistrate under s. 436 for committal of a person discharged by first class Magistrate under s. 209—Validity of such commitment—Ultra vires.*—Where a Magistrate of the first class discharged, under s. 209 of the Criminal Procedure Code (Act X

ment was made, but the Sessions Judge referred the case under s. 215 for the order of the High Court,—*Held* that the order of the District Magistrate under s. 436 was not ultra vires, and that the commitment thereunder to the Court of Sessions

CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.

was good, and could not be quashed under s. 215  
QUEEN-EMPERESS v. PIRYA GOPAL

[1 L. R., 9 Bom., 100

s. 437.

*See* MAGISTRATE, JURISDICTION OF—  
POWERS OF MAGISTRATES.

[1 L. R., 18 Calc., 75

*See* NUISANCE—UNDER CRIMINAL PROCEDURE CODE, 1 L. R., 24 Calc., 385

[1 C. W. N., 217

1 L. R., 25 Calc., 425

3 C. W. N., 113

1. ———— *"Inferior"—"Subordinate"*—*First class Magistrate—Magistrate of District.*—A Magistrate of the first class is, within the meaning of s. 437 of the Criminal Procedure Code, "subordinate" to the Magistrate of the District, who is, therefore, competent to call for the record of the former, and to deal with it under s. 437  
QUEEN-EMPERESS v. LASKARI. 1 L. R., 7 All., 653

class shall be subordinate to the District Magistrate.

Jan, 1 L. R., 10 Calc., 531, dissented from.  
QUEEN-EMPERESS v. PIRYA GOPAL

[1 L. R., 9 Bom., 100

3. ———— *Different charges arising out of same transaction—Acquittal—Further inquiry—Re-trial.*—E. being charged with theft and mischief in respect of certain branches cut from

further inquiry into the case under s. 437 of the Code of Criminal Procedure, and on a reference to the Court of Session the Sessions Judge held that, as no inquiry into the charge of theft had been held, the order was legal. *Held* that the District Magistrate had no power to pass such an order under s. 437.  
QUEEN-EMPERESS v. ERABANEDDI

[1 L. R., 8 Mad., 298

4. ———— *Penal Code, ss. 497, 498—Marriage insufficiently proved—Discharge of accused—Retrial ordered—Wife ordered to be examined on re-trial.*—In an inquiry into a case of

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

alleged adultery and enticing away a married woman for illicit purposes, the complainant refused to examine his wife as to the marriage; the Deputy Magistrate declined to frame a charge, and discharged the accused. The Sessions Judge directed a re-trial to be held by another Deputy Magistrate, and ordered that the evidence of the wife should be taken as to the marriage. *Held* that the Sessions Judge in ordering a re-trial had not exercised a proper discretion, he having admitted that the prosecution had failed to prove the marriage, and it not being alleged that any evidence was tendered by the prosecution and not taken by the Deputy Magistrate. **CHUNDER NATH GHOSE v. NUNDOLLOL CHATTERJEE**

[I. L. R., 11 Cal., 81]

5. ————— *Further inquiry—Proceedings against accused—Notice.*—No order affecting an accused in a criminal matter should be made without giving him notice, so as to enable him to appear and show cause against it. A Sessions Judge has no power, under s. 437 of the Criminal Procedure Code, to direct a particular Magistrate by name to make the further inquiry contemplated by that section. The further inquiry contemplated by s. 437 of the Criminal Procedure Code is an inquiry upon further materials, not a re-hearing of the matter upon the same evidence which was before the Magistrate who held the first inquiry. **IN THE MATTER OF THE PETITION OF CHUNDI CHURN BHUTTA-CHARJEA. CHUNDI CHURN BHUTTA-CHARJEA v. HEM CRUNDER BANERJEA**

[I. L. R., 10 Cal., 207]

6. ————— *Further inquiry—Power of District Magistrate to direct—"Inferior Criminal Court"—Notice to accused.*—The words "Inferior Criminal Court" in s. 435 of the Criminal Procedure Code mean inferior so far as regards the particular matter in respect to which the superior Court is asked to exercise its revisional jurisdiction. A criminal charge instituted before a Magistrate of the first class was finally disposed of by him by an order discharging the accused. Subsequently the Magistrate of the district, proceeding under s. 437 of the Code of Criminal Procedure, directed a further inquiry to be made by a subordinate Magistrate. This order was made without notice to the accused. *Held* that the Magistrate of the district had no jurisdiction to direct a further inquiry. *Semle*—That, as a matter of strict law, the accused was not entitled to be heard by the District Magistrate before granting the order directing the inquiry. **IN THE MATTER OF THE PETITION OF NOBIN KRISTO MOOKERJEE. NOBIN KRISTO MOOKERJEE v. RUSSICK LALL LAHA**

[I. L. R., 10 Cal., 268]

7. ————— *Further inquiry.*—A Deputy Magistrate having discharged a person accused of an offence, on the ground that the evidence was insufficient for conviction, the Magistrate of the district recorded an order stating that, in his opinion, the accused had been improperly discharged, and directing

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

under s. 437, Criminal Procedure Code, that further inquiry should be made, and the accused called on to enter upon his defence. The accused was not called upon to show cause why a further inquiry should not be made, but a summons in the terms of s. 68 of the Criminal Procedure Code was issued to him. On his appearance he was tried by the Magistrate of the district, convicted and sentenced. The witnesses for the prosecution were not recalled, but the Magistrate relied upon their evidence as recorded in the first trial, and also upon the statement of a witness for the defence which was not receivable in evidence. *Held* that the proceedings of the Magistrate of the district were irregular, *first*, because notice to show cause why action should not be taken against him in the terms of s. 437 of the Code of Criminal Procedure was not served upon the accused person before proceedings, ostensibly under that section, were commenced; and, *secondly*, because the subsequent proceedings of the Magistrate were not such as are contemplated by the provisions of s. 437, inasmuch as the conviction was practically based upon evidence which was not recorded in the course of a "further inquiry" before the Magistrate of the district, but upon evidence which was recorded by the Deputy Magistrate, and had been adjudicated upon by that officer; and such irregularities were fatal to the conviction. **QUEEN-EMPERESS v. HASNU**

[I. L. R., 6 All., 367]

8. ————— *Discharge—Order for further inquiry—Trial for minor offence—Criminal Procedure Code, s. 253.*—A Magistrate having, under s. 253 of the Code of Criminal Procedure, discharged a person accused of rioting, an order for further inquiry was made by the Court of Session under s. 437. *Held* that, the offence of rioting not being proved, the Magistrate was competent to try the accused for the offence of assault. **QUEEN-EMPERESS v. PAPADU**

[I. L. R., 7 Mad., 454]

9. ————— *Further inquiry—Power of District Magistrate to direct—"Subordinate Magistrate"—Compoundable offence.*—A criminal charge under s. 448 of the Penal Code having been instituted, the accused was sent up by the police before a Deputy Magistrate of the first class. Previous to any evidence being taken, the complainant intimated to the Magistrate that the case had been amicably settled, and that he did not wish to proceed further in the matter, upon which the Magistrate recorded an order, "Compromised; defendant acquitted." Subsequently the Magistrate of the district, relying upon ss. 248 and 259 and professing to act under s. 437 of the Criminal Procedure Code, directed the Deputy Magistrate to send up the parties and proceed regularly with the case. *Held* further that, in addition to the Magistrate's order not being warranted by the fact, it was *ultra vires*, inasmuch as the Deputy Magistrate was a Magistrate of the first class and not "inferior" to the District Magistrate, and to give the District Magistrate jurisdiction to call for a record under s. 435 from another

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Magistrate and to act under s. 437, the latter must be inferior. *Nobin Krsto Mookerjee v. Russick Lal Laha, I. L. R., 10 Calc., 268*, followed. *QUEEN-EMPRESS v. NAWAB JAN*

[I. L. R., 10 Calc., 551]

10. — Discharge of accused—Further inquiry, Power to direct.—An accused, having been discharged after a full inquiry before a competent Court, is entitled to the benefit of such discharge, unless some further evidence is disclosed. Consequently, an order made by a District Judge directing a further inquiry to be held under s. 437 of the Criminal Procedure Code in a case where a Magistrate had discharged the accused under s. 253 was not warranted by law, when there had been a full inquiry by a competent Court and when no further evidence was disclosed, such order being based merely upon the ground that, in the opinion of the District Judge, the evidence recorded was sufficient for the conviction of the accused. *JEEBUN-KRISTO ROY v. SAIB CHUNDER DAS*

[I. L. R., 10 Calc., 1027]

certain accused persons and directed another Magistrate of the first class to make further inquiry into the case.—Held, following *Nobin Krsto Mookerjee v. Russick Lal Laha, I. L. R., 10 Calc., 268*, and *Queen-Empress v. Nawab Jan, I. L. R., 10 Calc., 551*, that the District Magistrate's order was ultra vires and illegal. *JHUNGAI v. BACHU*

[I. L. R., 7 All., 134]

12. — Further inquiry—Re-trial—District Magistrate, Powers of.—Where an accused person has been discharged by a Magistrate, further inquiry cannot be directed, under s. 437 of the Code of Criminal Procedure, on the ground that the Magistrate has not rightly appreciated the credit due to the witnesses. Further inquiry should only be directed when other witnesses might have been examined; and inasmuch as s. 437 does not direct that the evidence already taken should be taken again, the further inquiry should ordinarily be made by the Magistrate who made the original inquiry. Where a District Magistrate, being of opinion that a subordinate Magistrate had, without just cause, refused credit to the witnesses in a certain case and had improperly discharged an accused person, directed a further inquiry by another Magistrate, and the accused was on the same evidence re-tried and convicted.—Held that the conviction must be quashed. *QUEEN-EMPRESS v. AMIB KHAN*

[I. L. R., 8 Mad., 336]

13. — Further inquiry—Power of District Magistrate to suggest a committal.—A District Magistrate who refers a case to a Subordinate

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1892: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

be committed to the Court of Session. *QUEEN-EMPRESS v. MUNISAMI*. I. L. R., 15 Mad., 39

14. — "Complaint"—District Magistrate, Power of, to order further inquiry—Dispute concerning land—Criminal Procedure Code, s. 435.—S. 437 of the Code of Criminal Procedure does not give power to order a further inquiry in a case under s. 145 of that Code. *CHATHU KAI v. NIRANJAN RAI*. I. L. R., 20 Calc., 729

15. — Further inquiry, Order of, without notice to the accused—Magistrate, Power of to order further inquiry

Held that the District Magistrate was not competent, on the face of his predecessor's order, to direct a further inquiry, which had already been practically refused. That in the circumstances of the case the Sessions Judge was the proper officer to direct a further inquiry. *RATTO SINGH v. KARI SINGH*

[4 C. W. N., 100]

[I. L. R., 25 Calc., 425  
2 C. W. N., 113]

17. — "Further inquiry"—Sessions Judge, Jurisdiction of.—It is competent to a Sessions Judge acting under the Criminal Procedure Code, s. 437, to direct further inquiry to be held where additional evidence is not forthcoming. *QUEEN-EMPRESS v. BALASWATANDI*

[I. L. R., 14 Mad., 334]

18. — Power of Sessions Judge

has not rightly appreciated the credit due to the witnesses. "Further inquiry" under that section

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

means the taking of additional evidence, not the re-hearing of the same evidence. *Darsun Lall v. Jemck Lall*. . . I. L. R., 12 Cal., 522

19. ————— **Inquiry—Further inquiry—Fresh inquiry—Jurisdiction—Notice—District Magistrate—Subordinate Magistrate.**—When a complaint has been dismissed under s. 203 of the Criminal Procedure Code (Act X of 1882), or an accused person discharged by a Subordinate Magistrate, the District Magistrate has power, under s. 437 of the Code, to direct any Magistrate subordinate to him to make further inquiry into the complaint dismissed, or into the case of the accused person discharged, even though there be no additional evidence disclosed, or allegation that such exists. The term "further inquiry" in s. 437 is not restricted to "inquiry upon further materials or further or additional evidence." Before directing further inquiry under s. 437, it is not obligatory on the District Magistrate to give notice to the person discharged, or against whom the complaint was dismissed. When an order directing such inquiry is made, the Subordinate Magistrate to whom it is directed has jurisdiction, and is bound to carry it out. Such order remains in force until it is duly set aside or withdrawn. Difference between the powers of the District Magistrate under the former Criminal Procedure Code (Act X, 1872) and the present one (Act X, 1882) pointed out. *Empress v. Gowdappa*, I. L. R., 2 Bom., 535, explained. *Chundi Churn Bhattacharjee v. Hem Chander Banerjee*, I. L. R., 10 Cal., 207, commented on, and *Jeebunkristo Roy v. Shib Chunder Das*, I. L. R., 10 Cal., 1027, *Queen-Empress v. Hosein*, I. L. R., 6 All., 367, and *Queen-Empress v. Amir Khan*, I. L. R., 8 Mad., 336, commented on and doubted. *QUEEN-EMPRESS v. DORABJI HORMASJI*. . . I. L. R., 10 Bom., 131

20. ————— **"Further inquiry"—Practice—Notice to show cause.**—Held by the Full Bench that, when a Magistrate has discharged an accused person under s. 253 of the Criminal Procedure Code, the High Court or Court of Session under s. 437 has jurisdiction to direct further inquiry on the same materials, and a District Magistrate may, under like circumstances, himself hold further inquiry or direct further inquiry by a Subordinate Magistrate. *Queen-Empress v. Dorabji Hormasji*, I. L. R., 10 Bom., 131, referred to. *Empress v. Bhole Singh*, W. N., All., 1883, p. 150, *Queen-Empress v. Hasnu*, I. L. R., 6 All., 367, *Chundi Churn Bhattacharjee v. Hem Chander Banerjee*, I. L. R., 10 Cal., 207, *Jeebun Kristo Roy v. Shib Chunder Das*, I. L. R., 10 Cal., 1027, *Darsun Lall v. Jamuk Lall*, I. L. R., 12 Cal., 522, and *Queen-Empress v. Amir Khan*, I. L. R., 8 Mad., 336, dissented from. In exercising the powers conferred by s. 437, Sessions Judges and Magistrates should, in the first place, always allow the person who has been discharged an opportunity of showing cause why there should not be further inquiry before an order to that effect is made, and, next, they should

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

use them sparingly and with great caution and circumspection, especially in cases where the questions involved are mixed matters of fact. As to the mode in which their discretion should be regulated under such circumstances, the remarks of STRAIGHT and TRENELL, JJ., in *Queen-Empress v. Gayadin*, I. L. R., 4 All., 148, in reference to appeals from acquittals, are applicable. *QUEEN-EMPRESS v. CHOTU*. . . I. L. R., 9 All., 52

21. ————— **Orders for further inquiry—Order to the prejudice of an accused person—Notice to show cause.**—Before any order is made to the prejudice of an accused person under s. 437 of the Criminal Procedure Code, notice should be given to that person to appear and show cause why the order should not be passed. *Queen-Empress v. Chotu*, I. L. R., 9 All., 62, referred to. *QUEEN-EMPRESS v. ASUDHIA*. . . I. L. R., 20 All., 339

22. ————— **Power to order further inquiry—"Accused person"—Criminal Procedure Code, s. 437.**—Held that a person against whom proceedings under Ch. VIII (relating to security for good behaviour) of the Code of Criminal Procedure are being taken is "an accused person" within the meaning of s. 437 of the Code. *Queen-Empress v. Mouna Panna*, I. L. R., 16 Bom., 661, and *Jhajha Singh v. Queen-Empress*, I. L. R., 23 Cal., 493, followed. *QUEEN-EMPRESS v. MUTASADDI LAL* [I. L. R., 21 All., 107

23. ————— **Complaint, Dismissal of—Revival of proceedings—Criminal Procedure Code, s. 437.**—A complaint was made before a Magistrate of the first class of an offence punishable under s. 323 of the Penal Code. The Magistrate recorded a brief statement by the complainant, but did not ask him if he had any witnesses to call. An order was passed directing that "a copy of the petition of complaint should be sent to the police station, calling for a report on the matter," and on receipt of the report the Magistrate dismissed the complaint under s. 203 of the Criminal Procedure Code. There was nothing in the Magistrate's original order to show that he saw reason to distrust the truth of the complaint, nor did he direct any local investigation to be made by a police officer for the purpose of ascertaining the truth or falsehood of the complaint. Subsequently to the dismissal of the complaint, the same complainant brought a fresh charge upon the same facts against the same persons in the same Court, and upon this charge the accused were tried, convicted, and sentenced. Held that the Magistrate in ordering a further inquiry, on receiving the complainant's second petition, did not act contrary to any provision of the law, and that, considering the circumstances under which the first complaint had been dismissed, a further inquiry was necessary. *QUEEN-EMPRESS v. PURAN* [I. L. R., 9 All., 85

24. ————— **Notice to accused—Discharge by Magistrate—Criminal Procedure Code**

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

(Act X of 1882), s. 437.—No notice to an accused person is necessary in point of law before an order under s. 437 can be passed; but as a matter of discretion, it is proper that such notice should be

the Sessions, the proper course is to commit under s. 436; in other cases to refer to the High Court. *Per PRINSEP, J.*—The word "inquiry" includes a trial, and the "further inquiry" would, therefore, allow of the framing of a charge and the cross-examination of witnesses for the prosecution. *Per PETREBRAM, C.J., and GHOSH, J.*—The power given by s. 437 of the Criminal Procedure Code to order a further inquiry is confined to cases in which the revising officer is satisfied, for one of the reasons mentioned in s. 435, that the subordinate officer has proceeded on insufficient materials, and that with a more exhaustive inquiry further material would be

**25. ————— Further inquiry—Notice**

*Cale*, 608, followed. **JALPAI RAM v. SUPHAL SINGH**  
[3 C. W. N., 198]

ther inquiry, it did not give notice to the accused to

15 *Cale*, 608, followed. **IN THE MATTER OF AMIN KARIADAR**  
[3 C. W. N., 249]  
**RATTI SINGH v. KARTI SINGH** [4 C. W. N., 100]

**27. ————— Further inquiry—**  
**Wrongful confinement—Wrongful restraint—**  
**Malice—Penal Code, ss. 340, 342**—The accused as

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

shkari inspector visited a toddy shop, where the complainant and one D were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkari Act (Bombay Act V of 1878) had been committed, the accused made an inquiry, in the course of which the complainant made certain statements implicating his fellow-servant. The accused thereupon resolved to prosecute D and

in his deposition that he had ordered his

D's case. Those admissions had an important bearing on the present case. They were admissible in evidence against the accused, and as they were left out of consideration, the inquiry was necessarily incomplete and imperfect. Further inquiry was, therefore, ordered. **DIANIA v. CLIFFORD**

[I. L. R., 13 Bom., 376]

**28. ————— Order of Sessions Judge**  
**reserving application under s. 437—Subsequent**

wrong, he should submit them to the High Court through the medium of the Public Prosecutor. *Queen-Empress v. Shere Singh*, I. L. R. 9 All., 362, referred to. Where a Sessions Judge had, under s. 437 of the Criminal Procedure Code, refused to order further inquiry into the case of an accused person who had been discharged, the High Court set aside a subsequent order of the Magistrate of the

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

1. ————— *Act XXIII of 1861, s. 16*  
*—Sending case for investigation by Magistrate.—*  
 A Subordinate Judge, finding that a person had made a false verification of a plaint, sent his case for investigation to a Magistrate of the district, who refused to investigate it on the ground that the alleged offence was one triable exclusively by the Court of Session, to which the Subordinate Judge himself should, under s. 173 of the Code of Criminal Procedure, have committed it. *Held* that the Magistrate of the district was bound to proceed with the investigation of the case according to s. 16 of Act XXIII of 1861. *REG. v. AMBUTA NATH*

[7 Bom., Cr., 20]

2. ————— *Preliminary enquiry—*  
*Procedure.—*Under s. 471, Criminal Procedure Code, the Court must first make a preliminary enquiry to satisfy itself that a specific charge coming under the sections mentioned in it ought to be preferred against the accused; and after being so satisfied, it must either commit the case or send the case to the Magistrate for enquiry, whether a committal should be made or not. *IN THE MATTER OF THE PETITION OF KALI PROSUNNO BAGCHEE*

[23 W. R., Cr., 39]

3. ————— *Power of High Court as Civil Court to interfere with order under s. 471.—*  
 Where a Civil Court directs an inquiry to be made by the Magistrate of the district under s. 471 of the Criminal Procedure Code in respect to the evidence given by the witnesses in a case before it, the High Court cannot as a Civil Court on appeal interfere. See *Queen v. Baijoo Lall, I. L. R., 1 Cal., 450*. *UMBICA SUNDARI CHOWDRAI v. AJITELLA MONDUE*

4. ————— *Act XXIII of 1861, s. 16*  
*—Order sending case to Magistrate for enquiring into offence of giving false evidence—Preliminary enquiry—Vagueness of charge.—*Although s. 16 of Act XXIII of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by s. 471 of the Criminal Procedure Code, the whole law as to the procedure in cases within these sections is now embodied in s. 471 of the Criminal Procedure Code. In a suit brought to recover possession of certain property, the Judge decided one of the issues raised in the plaintiff's favour, but on the important issue as to whether the plaintiff ever had possession, he found for the defendant. The plaintiff was not examined, but on the issue as to possession he called two witnesses. The Judge disbelieved their statements, and, considering that the plaintiff had failed to prove his case, gave judgment for the defendant without requiring him to give evidence on that issue. In the concluding paragraph of his judgment, the Judge directed the depositions of the two witnesses above referred to, together with the English memoranda of their evidence, to be sent to the Magistrate, with a view to his enquiring whether or not they had voluntarily given false evidence in a judicial proceeding; and he further directed

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

the Magistrate to enquire whether or not the plaintiff had abetted the offence of giving false evidence, on the ground that, as the witnesses were the plaintiff's servants, he must personally have influenced them, and also to enquire whether the plaint which the plaintiff had attested contained averments which he knew to be false. On a motion to quash this order, —*Held* that, under s. 471 of the Criminal Procedure Code, the Judge had no power to send a case to a Magistrate except when, after having made such preliminary enquiry as may be necessary, he is of opinion that there is sufficient ground (i.e., ground of a nature higher than mere surmise or suspicion) for directing judicial enquiry into the matter of a specific charge, and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to enquire, and that the order was bad because the Judge had made no preliminary enquiry, and because it was too vague and general in its character. *QUEEN v. BAIJOO LALL*. *IN THE MATTER OF THE PETITION OF BAIJOO LALL*

[I. L. R., 1 Cal., 450]

5. ————— *Power of and procedure of Court in making order under section—Order directing prosecution.—*Before a Court is justified in making an order under s. 478, directing the prosecution of any person, it ought to have before it direct evidence, fixing the offence upon the person whom it is sought to charge, either in the course of the preliminary enquiry referred to in that section or in the earlier proceedings out of which the enquiry arises. It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that the person had been guilty of an offence; but there must be distinct evidence of the commission of an offence by the person who is to be prosecuted. *Queen v. Baijoo Lall, I. L. R., 1 Cal., 450*, and *In the matter of the petition of Kali Prosunno Bagchee, 23 W. R., Cr., 33*, followed. *IN THE MATTER OF THE PETITION OF KHERU NATH SIKDAR v. GRISH CHUNDER MUKERJI*

[I. L. R., 16 Cal., 730]

6. ————— *Offence against public justice—Contempt of Court—Prosecution procedure.—*That Court, civil or criminal, which is of opinion that there is sufficient ground for enquiring into a charge mentioned in ss. 467, 468, 469, Act X of 1872, may not, except as is provided in s. 472, try the accused person itself for the offence charged. *QUEEN v. KULTARAN SINGH*

I. L. R., 1 All., 129

ANONYMOUS. . . 7 Mad., Ap., 28

Nor can he try a person for the abetment of such an offence. *ANONYMOUS*

7 Mad., Ap., 28

7. ————— The Court, civil or criminal, which is of opinion that there is sufficient ground for enquiring into a charge mentioned in ss. 467, 468, 469 of Act X of 1872, is not precluded by the provisions of s. 471 from trying the accused person itself for the offence charged. *QUEEN v. JAGAT MAL*

[I. L. R., 1 All., 166]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

self. *QUEEN v. GUR BAKSH*. I L. R., 1 All, 183

quity than that which he has already held in his own Court. As a matter of discretion and propriety, it

*LALL GHOSE*. I L. R., 6 Calc, 308

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

made was necessary or would have put the Magistrate into a better position for dealing with the case than he was in, that the Munsif's proceedings were not bad because he did not hold a preliminary enquiry. *EMPRESS v. JUALA PRASAD*. I L. R., 5 All, 62

s. 477 (1872, s. 472; 1861-69, s. 172).

*See CONTEMPT OF COURT—PENAL CODE*,  
s. 175. I L. R., 12 Mad., 24  
[I L. R., 12 Bom., 63]

*See DISTRICT JUDGE, JURISDICTION OF*,  
[I L. R., 6 All, 103]

*See FALSE EVIDENCE—CONTRADICTORY STATEMENTS*. 4 B. L. R., A. Cr., 9

*See SESSIONS JUDGE, JURISDICTION OF*,  
[3 B. L. R., A. Cr., 35  
I L. R., 2 All, 388  
I L. R., 4 Calc., 570]

[21 W. R., Cr., 37]

s. 478 (1872, s. 474).

*See CRIMINAL PROCEEDINGS*,  
[I L. R., 16 Bom., 581]

*See SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION*,  
[I L. R., 15 Mad., 224]

*c. POPAT NATHU*. I L. R., 4 Bom., 287

2. *Power of Civil Court to order commitment.*—A Civil Court has no power to order the commitment of persons for offences under ss. 471, 485, and 193 of the Penal Code without holding the preliminary enquiry required by s. 474 of the Criminal Procedure Code. *QUEEN v. RENGARAOONER*. [23 W. R., Cr., 62]

3. *Sanction to prosecution, Effect of—Criminal Procedure Code (Act X of 1882), s. 195—Civil Court's power to protect under s. 478 after sanction given to a private person—Dismissal of a complaint by a private person.*

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869) —continued.**

*Effect of.*—The granting of a sanction to a private person under cl. (c) of s. 195 of the Code of Criminal Procedure (Act X of 1882) does not debar a Civil Court from proceeding under s. 478; nor can the dismissal by a Magistrate of a complaint made by a private person be held to be a bar, till set aside, to a proceeding under that section. *QUEEN-EMPRESS v. SHANKAR* . . . I. L. R., 13 Bom., 384

4. ————— *Forged documents filed in Court—Order of commitment for trial*—“Any such offence” in s. 478, *Meaning of*—*Criminal Procedure Code, s. 195.*—Certain documents were filed annexed to a petition in a suit pending before a Munsif, but were not given in evidence. The Munsif, on suspicion that they had been tampered with, held an enquiry and committed the petitioners for trial by the Court of Session. *Held* that it was a proper commitment under s. 478 of the Criminal Procedure Code. The words “any such offence” in that section mean an offence referred to in s. 195 of the Code, and not an offence referred to in that section qualified by the circumstances under which it is committed. *AKHIL CHANDRA DE v. QUEEN EMPRESS*

[I. L. R., 22 Calc., 1004]

s. 480.

*See CONTEMPT OF COURT—PENAL CODE, s. 175* . . . I. L. R., 13 Mad., 24  
[I. L. R., 12 Bom., 63]

*See CONTEMPT OF COURT—PROCEDURE.*  
[I. L. R., 11 All., 361]

*See WITNESS—CIVIL CASES—DEFAULTING WITNESSES* . I. L. R., 12 Bom., 63

ss. 480, 481 (1872, s. 435; Act XXIII of 1861, s. 21).

*See CONTEMPT OF COURT—PENAL CODE, s. 223* . . . 10 Bom., 69

*See CONTEMPT OF COURT—PROCEDURE.*  
[1 N. W., 162; Ed. 1873, 241  
I. L. R., 11 All., 361]

ss. 480, 481, 482 (1872, ss. 435, 436; 1861-69, s. 163).

*See CONTEMPT OF COURT—CONTEMPTS GENERALLY* . . . 6 Mad., Ap., 14

*See MUNSIF, JURISDICTION OF.*  
[I. L. R., 15 Mad., 131]

*See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.*  
[6 Mad., Ap., 16]

————— *Sub-Registrar—Offence during judicial proceeding—Penal Code, s. 228.*—A was charged before an Assistant Magistrate by a Sub-Registrar with having committed an offence under s. 228 of the Penal Code, and fined. *Held* that the Sub-Registrar should have tried the matter himself under ss. 435 and 436 of the Criminal Procedure

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869) —continued.**

Code, and as the Magistrate acted without jurisdiction, the order must be quashed. *IN THE MATTER OF THE PETITION OF SARDHARI LAL*

[13 B. L. R., Ap., 40; 22 W. R., Cr., 10]

s. 485,

*See COMPLAINANT.*

[I. L. R., 13 Bom., 600]

*See CONTEMPT OF COURT—PENAL CODE, s. 175* . . . I. L. R., 13 Mad., 24  
[I. L. R., 12 Bom., 63]

*See PENAL CODE, s. 179.*

[I. L. R., 13 Bom., 600]

s. 487, para. 1 (1872, s. 473).

*See CONTEMPT OF COURT—PENAL CODE, s. 175* . . . I. L. R., 13 Mad., 24  
[I. L. R., 12 Bom., 63]

*See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.*

[I. L. R., 18 Bom., 380]

*See SESSIONS JUDGE, JURISDICTION OF.*

[I. L. R., 16 Calc., 766]

1. ————— *Giving false evidence in judicial proceeding—Power of Magistrate—Offence in contempt of Court—Criminal Procedure Code, s. 435.*—The offence of intentionally giving false evidence in a judicial proceeding cannot be tried by the Magistrate before whom the false evidence is given; this offence, being an attempt to pervert the proceedings of the Court to an improper end, is a contempt of its authority (ss. 435, 436, 471, 472, and 473 of the Code of Criminal Procedure). *REG. v. NAV-BANDEG DULABAG* . . . 10 Bom., 73

*Contra, QUEEN v. RAMLOCHUN SINGH*

[18 W. R., Cr., 15]

2. ————— *Judicial proceedings—Sanction to prosecute—Criminal appeal, Hearing of, by District Judge who has granted sanction to prosecute—Penal Code, s. 210.*—A complainant applied to a Munsif for sanction to prosecute a decree-holder for an offence under s. 210 of the Penal Code, and upon the Munsif's refusing such application preferred an appeal to the District Judge, who granted the sanction asked for. The decree-holder, having been prosecuted and convicted before a Deputy Magistrate, preferred an appeal which came on for hearing before and was disposed of by the same District Judge who had granted the sanction. *Held* that the words “shall try any person,” as used in s. 487 of the Code of Criminal Procedure, include the hearing of an appeal, and that the hearing of the appeal from the order of the Munsif refusing sanction was a judicial proceeding within the meaning of the Code, and consequently that, under the provisions of s. 487, the District Judge had no jurisdiction to entertain the appeal against the judgment and sentence passed by the Deputy Magistrate. *IN THE*

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1881 AND VIII OF 1869)—continued.**

MATTER OF MADHUB CHUNDER MOZUMDAR v. NOVO-DEEP CHUNDER PUNDIT . I. L. R., 18 Calc., 121

Overruled by QUEEN-EMPRESS v. SARAT CHANDRA RAKHIT . I. L. R., 18 Calc., 768

3. ————— Penal Code (Act XLV of 1860), s. 193—False evidence, Sanction for prosecution for—Jurisdiction of Sessions Judge—Criminal Procedure Code, s. 195.—A Sessions Judge who has directed the trial of a person for the offence of giving false evidence committed in the course of a judicial proceeding of a criminal nature before him cannot try the case himself. *Empress v. Ganga Din*, All. W. N., 1884, p. 523, distinguished. QUEEN-EMPRESS v. MAKHNUM . I. L. R., 14 All., 354

Procedure Code, s. 487, to try the case himself. QUEEN-EMPRESS v. SESHADRI AYTANGAR [I. L. R., 20 Mad., 363

6. ————— Offence committed in contempt of Court—Sessions case—Criminal Proce-

Judge. Accordingly, an offence, which is committed in contempt of the Sessions Judge's authority, is cognizable by an Assistant Sessions Judge. REG. v. GULANDAS KUBERDAS . 11 Bom., 98

REG. v. RAMAJIRAY JIVANJIRAY . 12 Bom., 1

7. ————— Information by accused of

by the District Magistrate, who had previously sanctioned his prosecution. On revision the accused

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1881 AND VIII OF 1869)—continued.**

ceeding, RAMASOREY LALL v. QUEEN-EMPRESS [I. L. R., 27 Calc., 452-4 C. W. N., 594

to another Magistrate. IN THE MATTER OF THE PETITION OF SURATULLAH . 22 W. R., Cr., 49

8. ————— "Court"—Construction.—The prohibition in s. 473 of the Criminal Procedure Code (Act X of 1872) is a personal prohibition. ANONYMOUS CASE . I. L. R., 1 Mad., 305

QUEEN v. JAGATMAL . I. L. R., 1 All., 163

is not competent himself to try the person committing such offence. QUEEN v. JAGANATH [7 N. W., 133

12. ————— Giving false evidence.—Giving false evidence is "an offence committed in contempt of the authority" of a Court within

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

a case as the above, the better course would be for the Magistrate to try the case himself, and, if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence. *REG. v. GAJI KOM RANU* . . . **I. L. R., 1 Bom., 311**

13. ———— *Nuisance, Injunction to discontinue.*—S. 473 of the Code of Criminal Procedure, which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under Ch. X of the Penal Code, but extends to all contempts of Court. *REG. v. PARSAPA MAHADEVAPA* . . . **I. L. R., 1 Bom., 339**

14. ———— *Offence against public justice—Contempt of Court—Criminal Procedure Code, s. 471—Penal Code, s. 193.*—*Held* (STUART, C.J., dissenting) that an offence under s. 193 of the Penal Code, being an offence in contempt of Court within the meaning of s. 473 of Act X of 1872, cannot under that section be tried by the Magistrate before whom such offence is committed. *Queen v. Kaltaran Singh, I. L. R., 1 All., 129*, and *Queen v. Jagatmal, I. L. R., 1 All., 162*, overruled. *Per* STUART, C.J.—A Magistrate before whom such an offence is committed, if competent to try it himself, is not precluded from so doing by the provisions of s. 471 of Act X of 1872. *EMPRESS OF INDIA v. KASHMIRI LAL* . . . **I. L. R., 1 All., 625**

15. ———— *Penal Code, s. 174—Contempt of Court.*—Where a settlement officer, who was also a Magistrate, summoned as a settlement officer a person to attend his Court, and such person neglected to attend, and such officer as a Magistrate charged him with an offence under s. 174 of the Penal Code, and tried and convicted him on his own charge,—*Held* that such conviction was, with reference to ss. 471 and 473 of Act X of 1872, illegal. *EMPRESS OF INDIA v. SUKHARI*

**[I. L. R., 2 All., 405]**

16. ———— *False charge—Contempt—Prosecution—Charge—Act X of 1872 (Criminal Procedure Code), ss. 468, 473.*—*B* charged certain persons before a police officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against *B* on a charge of making a false charge of an offence, an offence punishable under s. 211 of the Penal Code, and convicted him of that offence. *Held* that, as such false charge was not preferred by *B* before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of ss. 468 and 473 of Act X of 1872 were inapplicable, and such Magistrate was not precluded from trying *B* himself, nor was his sanction or that of some superior Court necessary for *B*'s trial by

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

another officer. *Empress v. Kashmiri Lal, I. L. R., 1 All., 625*, distinguished. *EMPRESS v. BALDEO* **[I. L. R., 3 All., 322]**

17. ———— *Sanction to prosecute granted by District Judge—Power of same person as Sessions Judge to try the offence.*—A District Judge who has, on hearing a civil appeal, sanctioned the prosecution of a party for forgery is not debarred by s. 473 of the Code of Criminal Procedure (Act X of 1872) from trying the offence in his capacity of a Sessions Judge. *EMPRESS v. D'SILVA*

**[I. L. R., 6 Bom., 479]**

18. ———— *Perjury—Contradictory statements—Power of trial by Sessions Court before which one of such statements was made.*—A prisoner who had made certain contradictory statements on oath before a Magistrate and a Court of Session, respectively, was convicted by the same Court of Session on a charge, in the alternative, of giving false evidence either before a Magistrate or before the Court of Session. *Held* that the Court was precluded by s. 473 of the Criminal Procedure Code from trying the charge. *SUNDRIAH v. QUEEN*

**[I. L. R., 3 Mad., 254]**

s. 488 (1872, s. 536; 1861-69, s. 316), s. 489 (1872, s. 537; 1861-69, s. 317), and s. 490 (1872, s. 538).

*See* CASES UNDER MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

s. 488 (1872, s. 536; 1861-69, s. 316).

*See* APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

**[7 W. R., Cr., 10: 2 Ind. Jur., N. S., 88]**

*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

**[I. L. R., 9 Bom., 40]**

*See* MAHOMEDAN LAW—MAINTENANCE.

**[I. L. R., 8 Calc., 736]**

*See* SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

**[I. L. R., 8 Mad., 70]**

*See* WITNESS—CIVIL CASES—PERSON COMPETENT TO BE WITNESS.

**[I. L. R., 16 Calc., 781]**

**I. L. R., 18 All., 107**

*See* WITNESS—CRIMINAL CASES—PERSONS COMPETENT, OR NOT, TO BE WITNESSES . **I. L. R., 18 All., 107**

**[I. L. R., 16 Calc., 781]**

—“Cruelty.”—The word “cruelty” in s. 488 of the Criminal Procedure Code is not necessarily limited to personal violence. *Kelly v. Kelly, L. R., 2 P. D., 59*, and *Tomkins v. Tomkins, 1 S. & T., 168*, referred to. *RUKMIN v. PEARE LAL* **[I. L. R., 11 All., 480]**

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

s. 491.

See CUSTODY OF CHILDREN.

[I. L. R., 16 Bom., 307  
I. L. R., 23 Calc., 280]

See FOREIGNERS.

[I. L. R., 18 Bom., 638]

See LETTERS PATENT, HIGH COURT, CL. 15 . . . I. L. R., 14 Bom., 555

See WARRANT OF ARREST—CRIMINAL CASES . . . I. L. R., 18 Bom., 638

s. 493 (1872, s. 60).

See COUNSEL . . . 11 Bom., 102

s. 494.

See DISCHARGE OF ACCUSED.

[I. L. R., 12 Mad., 35]

See PUBLIC PROSECUTOR.

[I. L. R., 8 All., 291]

s. 495 (1872, s. 59).

See BOMBAY DISTRICT POLICE ACT, 1867, s. 23 . . . I. L. R., 8 Bom., 534

See COUNSEL . . . 11 Bom., 102  
[I. L. R., 6 Calc., 59; 6 C. L. R., 374]

s. 496 (1872, ss. 194, 204, para. 1; 1861-69, s. 224).

See BAIL . . . I. L. R., 6 Mad., 63, 69

See RECOGNIZANCE TO APPEAR.

[8 N. W., 368]

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 Bom., Cr., 31

s. 497 (1872, s. 389; 1861-69, s. 212).

See BAIL

[I. B. L. R., S. N., 28; 10 W. R., Cr., 34]

See JUDICIAL OFFICERS, LIABILITY OF.

[3 Bom., A. C., 36]

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R., 23 Bom., 549]

s. 498 (1872, s. 390; 1861-69, s. 486).

See BAIL . . . 1 B. L. R., A. Cr., 7

[23 W. R., Cr., 40]

24 W. R., Cr., 8

3 C. L. R., 404, 405 note

I. L. R., 1 All., 151

s. 503 (1872, s. 330).

See CASES UNDER COMMISSION—CRIMINAL CASES.

ss. 503, 504, 505, 506, 507 (Act X of 1875, s. 76).

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

s. 509 (1872, s. 323).

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . . . I. L. R., 9 All., 720

[I. L. R., 10 All., 174]

I. L. R., 18 Calc., 129

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE . . . I. L. R., 8 Calc., 739

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.

[I. L. R., 9 Calc., 455]

s. 510 (1872, s. 325; 1861-69, s. 370).

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER.

[8 B. L. R., Ap., 123]

I. L. R., 10 Calc., 1026

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE . . . 12 W. R., Cr., 25

s. 512 (1872, s. 327).

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . . . I. L. R., 10 Calc., 1097

[I. L. R., 8 All., 673]

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.

[31 W. R., Cr., 13, 61]

23 W. R., Cr., 33

12 C. L. R., 120

s. 514, paras. 1, 2, 3, 4 (1872,

ss. 396, 397; 1861-69, s. 219).

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 1 B. L. R., A. Cr., 1

See RECOGNIZANCE TO APPEAR.

[23 W. R., Cr., 74]

I. L. R., 11 Calc., 77

4 Mad., Ap., 44

2 C. W. N., 619

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R., 21 All., 86]

ss. 514, 515, 516 (1872, s. 398; 1861-69, s. 231).

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ARKANI ACT.

[I. L. R., 18 Mad., 48]

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES . . . 2 N. W., 113

s. 514 (1872, s. 502).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[I. L. R., 2 Mad., 169]

See RECOGNIZANCE TO KEEP PEACE—FORFEITURE OF RECOGNIZANCES.

[11 Bom., 170]

10 C. L. R., 571

I. L. R., 4 Calc., 865

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

a case as the above, the better course would be for the Magistrate to try the case himself, and, if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence. *Rao v. Gaji Kosi Rao*. I. L. R., 1 Bom., 311

13. ———— *Nuisance. Injunction to discontinue.*—S. 473 of the Code of Criminal Procedure, which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under Ch. X of the Penal Code, but extends to all contempts of Court. *Rao v. Parsara Mahabeyara*. I. L. R., 1 Bom., 339

14. ———— *Offence against public justice—Contempt of Court—Criminal Procedure Code, s. 471—Penal Code, s. 193.*—*Held* (STUART, C.J., dissenting) that an offence under s. 193 of the Penal Code, being an offence in contempt of Court within the meaning of s. 473 of Act X of 1872, cannot under that section be tried by the Magistrate before whom such offence is committed. *Queen v. Kallaran Singh*, I. L. R., 1 All., 129, and *Queen v. Jagatmal*, I. L. R., 1 All., 163, overruled. *Per* STUART, C.J.—A Magistrate before whom such an offence is committed, if competent to try it himself, is not precluded from so doing by the provisions of s. 471 of Act X of 1872. *Empress of India v. Kashmiri Lal*. I. L. R., 1 All., 625

15. ———— *Penal Code, s. 171—Contempt of Court.*—Where a settlement officer, who was also a Magistrate, summoned as a settlement officer a person to attend his Court, and such person neglected to attend, and such officer as a Magistrate charged him with an offence under s. 174 of the Penal Code, and tried and convicted him on his own charge,—*Held* that such conviction was, with reference to ss. 471 and 473 of Act X of 1872, illegal. *Empress of India v. Sumanth*. [I. L. R., 2 All., 405

16. ———— *False charge—Contempt—Prosecution—Charge—Act X of 1872 (Criminal Procedure Code), ss. 463, 473.*—*B* charged certain persons before a police officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against *B* on a charge of making a false charge of an offence, an offence punishable under s. 211 of the Penal Code, and convicted him of that offence. *Held* that, as such false charge was not preferred by *B* before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of ss. 463 and 473 of Act X of 1872 were inapplicable, and such Magistrate was not precluded from trying *B* himself, nor was his sanction or that of some superior Court necessary for *B*'s trial by

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

another officer. *Empress v. Kashmiri Lal, I. L. R., 1 All., 625*, distinguished. *Empress v. Baldeo* [I. L. R., 3 All., 322

17. ———— *Sanction to prosecute granted by District Judge—Power of same person as Sessions Judge to try the offence.*—A District Judge who has, on hearing a civil appeal, sanctioned the prosecution of a party for forgery is not debarred by s. 473 of the Code of Criminal Procedure (Act X of 1872) from trying the offence in his capacity of a Sessions Judge. *Empress v. D'Silva*. [I. L. R., 6 Bom., 479

18. ———— *Perjury—Contradictory statements—Power of trial by Sessions Court before which one of such statements was made.*—A prisoner who had made certain contradictory statements on oath before a Magistrate and a Court of Session, respectively, was convicted by the same Court of Session on a charge, in the alternative, of giving false evidence either before a Magistrate or before the Court of Session. *Held* that the Court was precluded by s. 473 of the Criminal Procedure Code from trying the charge. *Sundaram v. Queen*. [I. L. R., 3 Mad., 254

s. 488 (1872, s. 538; 1861-69, s. 316), s. 489 (1872, s. 537; 1861-69, s. 317), and s. 490 (1872, s. 538).

*See* CASES UNDER MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

s. 488 (1872, s. 538; 1861-69, s. 316).

*See* APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[7 W. R., Cr., 10: 2 Ind. Jur., N. S., 88

*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R., 9 Bom., 40

*See* MAHOMEDAN LAW—MAINTENANCE.

[I. L. R., 8 Calc., 736

*See* SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[I. L. R., 8 Mad., 70

*See* WITNESS—CIVIL CASES—PERSON COMPETENT TO BE WITNESS.

[I. L. R., 16 Calc., 781

I. L. R., 18 All., 107

*See* WITNESS—CRIMINAL CASES—PERSONS COMPETENT, OR NOT, TO BE WITNESSES.

I. L. R., 18 All., 107

[I. L. R., 16 Calc., 781

—“Cruelty.”—The word “cruelty” in s. 488 of the Criminal Procedure Code is not necessarily limited to personal violence. *Kelly v. Kelly*, L. R., 2 P. D., 59, and *Tomkins v. Tomkins*, 1 S. & T., 168, referred to. *Rukmin v. Peare Lal*. [I. L. R., 11 All., 480

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1883: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

s. 491.

See CUSTODY OF CHILDREN.

[I. L. R., 18 Bom., 307

I. L. R., 23 Calc., 290

See FOREIGNERS.

[I. L. R., 18 Bom., 638

See LETTERS PATENT, HIGH COURT, CL. 15 . . . I. L. R., 14 Bom., 555

See WARRANT OF ARREST—CRIMINAL CASES . . . I. L. R., 18 Bom., 638

s. 493 (1872, s. 60).

See COUNSEL . . . 11 Bom., 102

s. 494.

See DISCHARGE OF ACCUSED.

[I. L. R., 12 Mad., 35

See PUBLIC PROSECUTOR.

[I. L. R., 8 All., 291

s. 495 (1872, s. 59).

See BOMBAY DISTRICT POLICE ACT, 1867, s. 23 . . . I. L. R., 8 Bom., 534

See COUNSEL . . . 11 Bom., 102  
[I. L. R., 6 Calc., 59; 6 C. L. R., 374

s. 496 (1872, ss. 184, 204, para. 1; 1861-69, s. 224).

See BAIL . . . I. L. R., 6 Mad., 63, 69

See RECOGNIZANCE TO APPEAR.

[8 N. W., 366

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 Bom., Cr., 31

s. 497 (1872, s. 369; 1861-69, s. 212).

See BAIL.

[I. B. L. R., S. N., 26; 10 W. R., Cr., 34

See JUDICIAL OFFICERS, LIABILITY OF.

[3 Bom., A. C., 36

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R., 22 Bom., 549

s. 498 (1872, s. 390; 1861-69, s. 436).

See BAIL . . . 1 B. L. R., A. Cr., 7

[23 W. R., Cr., 40

24 W. R., Cr., 8

3 C. L. R., 404, 405 note

I. L. R., 1 All., 151

s. 503 (1872, s. 330).

See CASES UNDER COMMISSION—CRIMINAL CASES.

ss. 503, 504, 505, 506, 507 (Act X of 1876, s. 76).

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1883: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

s. 509 (1872, s. 323).

See EVIDENCE—CRIMINAL CASES—DE-

POSITIONS . . . I. L. R., 8 All., 720

[I. L. R., 10 All., 174

I. L. R., 18 Calc., 129

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE . I. L. R., 8 Calc., 739

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.

[I. L. R., 9 Calc., 455

s. 510 (1872, s. 325; 1861-69, s. 370).

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER.

[8 B. L. R., Ap., 122

I. L. R., 10 Calc., 1026

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE . 12 W. R., Cr., 25

s. 512 (1872, s. 327).

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . I. L. R., 10 Calc., 1087

[I. L. R., 8 All., 672

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.

[21 W. R., Cr., 12, 61

22 W. R., Cr., 33

12 C. L. R., 120

s. 514, paras. 1, 2, 3, 4 (1872, ss. 396, 397; 1861-69, s. 219).

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 1 B. L. R., A. Cr., 1

See RECOGNIZANCE TO APPEAR.

[23 W. R., Cr., 74

I. L. R., 11 Calc., 77

4 Mad., Ap., 44

2 C. W. N., 519

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R., 21 All., 86

ss. 514, 515, 516 (1872, s. 396; 1861-69, s. 231).

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ARMAHI ACT.

[I. L. R., 18 Mad., 48

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES . 2 N. W., 113

s. 514 (1872, s. 502).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[I. L. R., 2 Mad., 169

See RECOGNIZANCE TO KEEP PEACE—FORFEITURE OF RECOGNIZANCES.

[11 Bom., 170

10 C. L. R., 571

I. L. R., 4 Calc., 865

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1892; ACT X OF 1872; ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

—s. 517 (1872, s. 418; Act X of 1873, s. 415), ss. 518, 519, 520 (1872, s. 419), ss. 521, 523 (1872, ss. 415, 416; 1861-69, s. 181), s. 524 (1872, s. 417; 1861-69, s. 182) and s. 525.

**See CASES UNDER STOLEN PROPERTY—DISPOSAL OF, BY THE COURT.**

—s. 517.

**See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.**

[I. L. R., 9 Msd., 448]

**See CRIMINAL POSSESSION.**

[I. L. R., 8 All., 887]

1. — *Order as to disposal of property as to which no offence has been committed—Property found by police in possession of accused—Magistrate, Power of.*—The accused was convicted of criminal breach of trust in respect of certain money belonging to the complainant, and, on his conviction, the Magistrate made an order, under s. 517 of the Code of Criminal Procedure, directing that an amount equal to the moneys embezzled should be repaid to the complainant out of certain sums of money found by the police on the person of the accused. *Held* that the Magistrate had no power to make the order under s. 517 of the Criminal Procedure Code, there being nothing to show that any offence had been committed with regard to the property, or that it had been used for the commission of any offence. *Quere—Dismiss a RATAI CHAND* [I. L. R., 24 Cal., 489]

*FATTE CHAND v. BIRRA PRASAD*

[I. C. W. N., 495]

2. — *Proper order to make in respect of property in regard to which no offence is proved—Criminal Procedure Code, s. 523.*—Where, at the trial of a case, the accused is acquitted and some property, the subject-matter of the charge, was found by the police during investigation to be in the possession of persons accused of the offence, and was brought before the Court, *Held* the proper order to make in this case is an order under s. 517, Criminal Procedure Code. *Held* also that, the money in this case having come from the possession of the petitioners and no offence having been found at the trial to have been committed in respect of it, it should be returned to the party or parties from whose possession it came. *In re MURDER OF THE PETITIONERS OF MATH GHOSE*. [I. C. W. N., 561]

—s. 520 (1872, s. 419)—*Government currency note, Theft of—Court of appeal.*—A Government currency note was stolen from A and cashed by B in good faith for C. On the conviction of C for theft, the Magistrate ordered the note to be given to B. A appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of appeal under s. 419 of the Criminal Procedure Code, but submitted the case for the orders

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1892; ACT X OF 1872; ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

of the High Court. *Held* that the case could be disposed of by the Judge under s. 419 of the Criminal Procedure Code, and that the words "Court of appeal" in that section are not necessarily limited to a Court before which an appeal is pending. *Express a JOCHESTER MOCHI*

[I. L. R., 9 Cal., 879]

**S. C. IN THE MATTER OF MACHIN**

[I. C. L. R., 889]

—s. 522 (1872, s. 534).

**See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.**

[I. L. R., 25 Cal., 680  
2 C. W. N., 225]

**See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE.**

—s. 523 (1872, ss. 415, 416).

**See THELSTON PRATE.**

[I. L. R., 19 Bom., 368]

1. — *Property seized by police—Seizure of property on suspicion—Magistrate, Duty of—Procedure.*—By the provisions of s. 523 of the Code of Criminal Procedure, it is not intended that any final steps should be taken by the Magistrate, nor is he bound to take any final steps to ascertain whether the property seized on suspicion belongs to the person in whose possession it was found until after the expiry of the six months mentioned in the section; but when the proclamation has been issued, and the six months have expired, then under the provisions of s. 524, the person in whose possession the property was found can come forward and show that it is his own. *Quere—Dismiss a MURRAYMAN*

[I. L. R., 23 Cal., 781]

2. — *Property seized by the police pending an inquiry or trial under a search-warrant issued by the Court—Magistrate's power to deal with such property where no offence is committed—Criminal Procedure Code, s. 527.—S. 523 of the Code of Criminal Procedure (Act IX of 1872) does not apply to property which is in the possession of the police in the course of an inquiry or search-warrant issued by itself under s. 527 of the Code. To such property s. 517 alone would apply; and if no offence is found in respect thereof, the Court can make no order. The property must be given back into the possession from which it came. The scope of s. 523 must be confined to property seized by the police of their own motion in the exercise of the powers conferred on them by law, for instance under s. 51, 54, 164, or 165 of the Code of Criminal Procedure. *Per TRINING, J.*—Under s. 523 of the Code of Criminal Procedure, a Magistrate is bound to institute an inquiry before making any order touching the right, not of property, but of possession in the property, seized by the police. *In re RATAI CHAND RANABHAI*. [I. L. R., 17 Bom., 748]*

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

ss. 523, 524.

See FORFEITURE OF PROPERTY.

[9 W. R., Cr., 13

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES. 18 W. R., Cr., 5

s. 524.

See RIGHT OF SUIT—PROPERTY AT DISPOSAL OF GOVERNMENT.

[I. L. R., 19 Bom., 668

See TREASURE TROVE.

[I. L. R., 19 Bom., 668

s. 526 (Act X of 1875, s. 147; Act X of 1872, s. 64: Presidency Magistrate's Act, 1877, s. 181), ss. 527 and 528 (1872, ss. 47, 48).

See CASES UNDER TRANSFER OF CRIMINAL CASE.

s. 526.

See APPEAL IN CRIMINAL CASES—ACTS—BURMA COURTS ACT.

[I. L. R., 4 Calc., 667

See CRIMINAL PROCEEDINGS.

[I. L. R., 19 Mad., 375

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.

[I. L. R., 9 Bom., 333

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL.

[I. L. R., 12 Mad., 39

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R., 23 Calc., 44

4 C. W. N., 604

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R., 16 All., 9

I. L. R., 19 All., 291

s. 526A.

See CRIMINAL PROCEEDINGS.

[I. L. R., 19 Mad., 375

*Application for postponement of case in order to apply for transfer of case—Discretion of Magistrate in granting adjournment—Criminal Procedure Code Amendment Act (III of 1884), s. 12—M, the complainant, on the 19th November 1887, made an application to the Deputy Magistrate, under s. 526A of the Criminal Procedure Code, for the postponement of his case against G to enable him to apply to the High Court under s. 526 for a transfer of the case from the file of the Deputy Magistrate to that of another officer. On the same date the Deputy Magistrate refused the application and proceeded with the case acquitting G. Held,*

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1869)—continued.**

having regard to the words "the Court shall exercise, etc.," in s. 526A, the order of the Deputy Magistrate of the 19th November refusing to grant the application was illegal. *QUEEN-EMPEROR v. GAYITRI PROBUNNO GHOSAL*. I. L. R., 15 Calc., 455

s. 528.

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.

[I. L. R., 3 All., 749

I. L. R., 8 Calc., 851

I. L. R., 14 Mad., 389

I. L. R., 15 Mad., 94

I. L. R., 23 Bom., 549

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

[I. L. R., 23 Calc., 698

s. 529.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[4 C. W. N., 821

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CASTLE TREASURY ACT.

[I. L. R., 23 Calc., 300, 442

See PARDON

I. L. R., 20 All., 40

s. 530 (1872, s. 34).

See CRIMINAL PROCEEDINGS.

[22 W. R., Cr., 43

23 W. R., Cr., 33

1 C. L. R., 434

I. L. R., 8 Bom., 307

I. L. R., 11 Mad., 443

I. L. R., 13 Bom., 502

s. 531.

See CRIMINAL PROCEEDINGS.

[I. L. R., 8 Bom., 312

I. L. R., 16 Bom., 200

I. L. R., 17 All., 36

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[I. L. R., 16 Calc., 667

s. 532 (1872, s. 33).

See CRIMINAL PROCEEDINGS.

[I. L. R., 3 All., 258

I. L. R., 16 Bom., 200

I. L. R., 17 Mad., 402

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL

[I. L. R., 9 Bom., 283

See SANCTION FOR PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION.

[I. L. R., 23 Bom., 113

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

s. 517 (1872, s. 418; Act X of 1875, s. 115), ss. 518, 519, 520 (1872, s. 419), ss. 521, 523 (1872, ss. 415, 418; 1861-60, s. 131), s. 524 (1872, s. 417; 1861-60, s. 132) and s. 525.

See CASES UNDER STOLEN PROPERTY—DISPOSAL OF, BY THE COURTS.

s. 517.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R., 9 Mad., 448]

See OBSCENE PUBLICATION.

[I. L. R., 3 All., 837]

1. ———— *Order as to disposal of property as to which no offence has been committed—Property found by police in possession of accused—Magistrate, Power of.*—The accused was convicted of criminal breach of trust in respect of certain money belonging to the complainant, and, on his conviction, the Magistrate made an order, under s. 517 of the Code of Criminal Procedure, directing that an amount equal to the moneys embezzled should be repaid to the complainant out of certain sums of money found by the police on the person of the accused. *Held* that the Magistrate had no power to make the order under s. 517 of the Criminal Procedure Code, there being nothing to show that any offence had been committed with regard to the property, or that it had been used for the commission of any offence. *QUEEN-EMPRESS v. FATTAN CHAND*

[I. L. R., 24 Calc., 489]

FATTAN CHAND v. DURGA PRASAD

[I. C. W. N., 435]

2. ———— *Proper order to make in respect of property in regard to which no offence is proved—Criminal Procedure Code, s. 523.*—Where, at the trial of a case, the accused is acquitted and some property, the subject-matter of the charge, was found by the police during investigation to be in the possession of persons accused of the offence, and was brought before the Court,—*Held* the proper order to make in this case is an order under s. 517, Criminal Procedure Code. *Held* also that, the money in this case having come from the possession of the petitioners and no offence having been found at the trial to have been committed in respect of it, it should be returned to the party or parties from whose possession it came. *IN THE MATTER OF THE PETITION OF MATI GHOSH*

[I. C. W. N., 561]

s. 520 (1872, s. 419)—*Government currency note, Theft of—Court of appeal.*—A Government currency note was stolen from A and cashed by B in good faith for C. On the conviction of C for theft, the Magistrate ordered the note to be given to B. A appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of appeal under s. 419 of the Criminal Procedure Code, but submitted the case for the orders

**CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882; ACT X OF 1872; ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

of the High Court. *Held* that the case could be disposed of by the Judge under s. 419 of the Criminal Procedure Code, and that the words "Court of appeal" in that section are not necessarily limited to a Court before which an appeal is pending. *EM-PRESS v. JOGGESSUR MOOHII*

[I. L. R., 3 Calc., 379]

S. C. IN THE MATTER OF MICHELL

[I. C. L. R., 339]

s. 522 (1872, s. 534).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R., 25 Calc., 630]

2 C. W. N., 225

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE.

s. 523 (1872, ss. 415, 416).

See TREASURE TROVE.

[I. L. R., 19 Bom., 668]

1. ———— *Property seized by police—Seizure of property on suspicion—Magistrate, Duty of—Procedure.*—By the provisions of s. 523 of the Code of Criminal Procedure, it is not intended that any final steps should be taken by the Magistrate, nor is he bound to take any final steps to ascertain whether the property seized on suspicion belongs to the person in whose possession it was found until after the expiry of the six months mentioned in the section; but when the proclamation has been issued, and the six months have expired, then under the provisions of s. 524, the person in whose possession the property was found can come forward and show that it is his own. *QUEEN-EMPRESS v. MAHALABUDDIN*

[I. L. R., 22 Calc., 761]

2. ———— *Property seized by the police pending an inquiry or trial under a search-warrant issued by the Court—Magistrate's power to deal with such property where no offence is committed—Criminal Procedure Code, s. 523.*—S. 523 of the Code of Criminal Procedure (ACT V OF 1898) does not apply to property which is pro. 8 M. S. 11, Court in the course of an inquiry or trial under a search-warrant issued by itself under s. 517 of the Code. To such property s. 517 alone would apply; and if no offence is found in respect thereof, the Court can make no order. The property must be given back into the possession from which it came. The scope of s. 523 must be confined to property seized by the police of their own motion in the exercise of the powers conferred on them by law, for instance under s. 51, 54, 164, or 165 of the Code of Criminal Procedure. *PER TELANG, J.*—Under s. 523 of the Code of Criminal Procedure, a Magistrate is bound to institute an inquiry before making any order touching the right, not of property, but of possession to the property, seized by the police. *IN RE RATAN-LAL RANGILDAS*

[I. L. R., 17 Bom., 748]



**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

u. 533.

*See* CONFESSION—CONFESSIONS TO MAGISTRATE .

I. L. R., 9 Mad., 224  
[I. L. R., 14 Calc., 539  
I. L. R., 15 Calc., 505  
I. L. R., 17 Calc., 802  
I. L. R., 18 Calc., 549  
I. L. R., 21 Bom., 495  
I. L. R., 23 Bom., 221  
2 C. W. N., 702  
3 C. W. N., 367

*See* CRIMINAL PROCEEDINGS.

[I. L. R., 22 Mad., 15

s. 537 (1872, ss. 283, 300; 1861-69, ss. 420, 430).

*See* ESCORTING OFFENDER.

[I. L. R., 19 Mad., 3

*See* APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R., 21 Calc., 955

*See* COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

[I. L. R., 23 Calc., 983

*See* COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

[5 B. L. R., 660

*See* COMPLAINT—POWER TO REFER TO SUBORDINATE MAGISTRATE.

[3 B. L. R., A. Cr., 67

5 B. L. R., 160

7 B. L. R., 513

9 B. L. R., 149, 147 note

*See* CASES UNDER CRIMINAL PROCEEDINGS.

*See* CRIMINAL TRESPASS.

[I. L. R., 22 Calc., 391

*See* JOINDER OF CHARGES.

[I. L. R., 12 Mad., 273

I. L. R., 14 All., 502

I. L. R., 14 Calc., 395

I. L. R., 20 Calc., 413

4 C. W. N., 656

*See* JUDGMENT—CRIMINAL CASES.

[I. L. R., 20 Calc., 353

I. L. R., 21 Calc., 121

I. L. R., 23 Calc., 502

*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R., 23 Calc., 328

*See* MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.

[I. L. R., 23 Calc., 442

*See* POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE I. L. R., 20 Calc., 520

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

*See* POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS.

[I. L. R., 21 Calc., 404

*See* REVISION—CRIMINAL CASES—JUDGMENT, DEFECTS IN.

[I. L. R., 1 All., 680

I. L. R., 13 Calc., 272

*See* SANCTION FOR PROSECUTION—EXPIRY OF SANCTION I. L. R., 22 Calc., 176

*See* SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—REVERSAL.

[B. L. R., Sup. Vol., 459

5 B. L. R., 39

*See* SESSIONS JUDGE, JURISDICTION OF.

[19 W. R., Cr., 43

*See* WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[I. L. R., 25 Calc., 863

2 C. W. N., 465

“Court of competent jurisdiction.”—Meaning of the expression “a Court of competent jurisdiction” in s. 537 of the Criminal Procedure Code considered. *QUEEN-EMRESS v. KRISHNABHAT* . I. L. R., 10 Bom., 319

s. 540 (1872, s. 192).

*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R., 24 Calc., 167

4 C. W. N., 604

*See* PENAL CODE, s. 182.

[I. L. R., 12 Mad., 451

*See* WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION

. I. L. R., 14 Calc., 245

[I. L. R., 24 Calc., 288

*See* WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.

[I. L. R., 24 Calc., 167

*See* WITNESS—CRIMINAL CASES—SUMMONING WITNESSES

21 W. R., Cr., 61

[I. L. R., 8 All., 668

Order of examination of witnesses.—It is not intended by s. 540 of the Code of Criminal Procedure, 1882, that a Judge shall reverse the order of a Sessions trial and call the witnesses summoned for the defence before the case for the prosecution is closed. *QUEEN-EMRESS v. HARGOBIND SINGH* . I. L. R., 14 All., 242

ss. 545, 546 (1872, s. 308; 1861-69, s. 44).

*See* CASES UNDER COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE.

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—continued.**

See FINE . 3 C. L. R., 404, 405 note  
[I. L. R., 12 Mad., 352  
I. L. R., 19 All., 112]

by, and of the deposition taken before, the Magistrate. IN THE MATTER OF THE EMPRESS v. DINONATH ROY

[I. L. R., 8 Calc., 186; 10 C. L. R., 190]

**CRIMINAL PROCEDURE CODES (ACT V OF 1898: ACT X OF 1882: ACT X OF 1872: ACTS XXV OF 1861 AND VIII OF 1860)—concluded.**

s. 556 (Act X of 1862, s. 555).

See BENCH OF MAGISTRATES.

[I. L. R., 10 Calc., 194]

See CASES UNDER MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

s. 557.

See PRESIDENCY MAGISTRATE.

[I. L. R., 23 Bom., 490]

s. 558 (1872, s. 539; 1861-69, s. 444).

See ARMS ACT, 1878, s. 10.

[I. L. R., 8 Calc., 473]

See BENGAL ACT VI OF 1865.

[3 B. L. R., A. Cr., 39]

See GENERAL CLAUSES CONSOLIDATION ACT, 1868, s. 6 I. L. R., 8 Mad., 338

s. 560.

See CASES UNDER COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT.

**CRIMINAL PROCEEDINGS.**

Effect of striking off—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS . I. L. R., 20 Calc., 867

Institution of—

See CASES UNDER COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES

See CASES UNDER FALSE CHARGE.

Revival of—

See COMPLAINT—REVIVAL OF COMPLAINT.

See CRIMINAL PROCEDURE CODE, 1898, ss. 436, 438 (1872, s. 296)

[I. L. R., 4 Calc., 18, 647]

I. L. R., 2 All., 670

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED

See REVISION—CRIMINAL CASES—REVIVAL OF COMPLAINT AND RE-TRIAL

Withdrawal of—

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

[I. L. R., 23 Calc., 808]

1. ——— Dispute as to right to give girl in marriage.—The practice of instituting criminal proceedings with a view to determining disputes arising in cases as to the right to give a girl

**CRIMINAL PROCEEDINGS—continued.**

in marriage condemned. IN THE MATTER OF EMPRESS *v.* ABDUL KURRUM

[I. L. R., 4 Calc., 10: 3 C. L. R., 81

3. ——— Irregularity—Waiver or consent by prisoner—Recording statements of witnesses.—The jailer of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government, the matter was enquired into by the District Magistrate, and the jailer was, by the Magistrate's order, placed on trial before a Bench of Magistrates, consisting of the District Magistrate himself, *L*, the Officiating Superintendent of the jail, and three other Honorary Magistrates. The prisoner and his pleaders were alleged to have stated before the commencement of the trial on being questioned that they had no objection to the composition of the Bench, but after the charges had been framed, the prisoner's counsel objected to the Bench as formed. The District Magistrate directed the Government pleader to prosecute, and both the District Magistrate and *L* gave evidence for the prosecution. After the case for the prosecution was closed, two formal charges were drawn up, namely, that the prisoner had debited Government with the price of more oil-seed than he actually purchased, and that he had received payment for certain oil at a higher rate than he credited to Government. The moneys, the receipt of which were the subject of the first charge, were obtained by the prisoner on the strength of certain vouchers which he had induced *L* to sign as correct, and *L* had sanctioned the sale at the rates credited to Government. Upon the prisoner's giving the names of the witnesses, he intended to call in his defence, *L* was deputed by his brother Magistrates to examine some of them who were connected with the jail, in order "to guard against deviation," and the depositions so taken were placed on the record "to be used by either party."

**CRIMINAL PROCEEDINGS—continued.**

such a complaint should be referred to another Magistrate. IN RE THE PETITION OF BASAPA

[I. L. R., 9 Bom., 172

5. ——— Summary jurisdiction wrongly exercised—Unlawful assembly armed with deadly weapons—Splitting offence—Right of appeal, Deprivation of.—No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then by inflicting a sentence of imprisonment not exceeding three months to deprive the prisoner of his right of appeal. EMPRESS *v.* ABDUL KARIM, EMPRESS *v.* GOLAM MAHOMED I. L. R., 4 Calc., 18: 3 C. L. R., 44

6. ——— Exercise of summary jurisdiction after inquiry into charge which cannot be tried summarily—Criminal Procedure Code (Act V of 1898), s. 260—Summary procedure under Penal Code, s. 323, after enquiring into charges under ss. 147 and 324.—A first class Magistrate took a case on his file and commenced a regular enquiry therein under ss. 147 and 324 of the Indian Penal Code; but after hearing evidence and being of opinion that the offence was not triable summarily, he made out, he proceeded

**CRIMINAL PROCEEDINGS—continued.**

The appearance of the accused, to be instance, had tried and convicted the accused, to be Crown Prosecutor to conduct an enquiry subsequently

Magistrate who convicted the accused, he examined the Magistrate upon oath or solemn affirmation, in the same manner as an ordinary witness. **REG. v. KASHINATH DINKAR . 8 Bom. Cr., 126**

8. ————— Magistrate actively

a proper Court to deal with the case. IN THE MATTER OF THE PETITION OF HET LALL ROY . 22 W. R., Cr., 75

9. ————— Trial by Magistrate instituted by him as Collector.—The District Magistrate should not himself try a case in which he instituted the prosecution as Collector. **QUEEN v. NADI CHAND PODDAR . 24 W. R., Cr., 1**

10. ————— Interest of Ma-

**CHAND PAL v. TARACK CHUNDER GUPTA . 10 Cal., 1030**

11. —————  
cedure Code,  
trate did not  
s. 250 of the  
the accused  
charges made against

**CRIMINAL PROCEEDINGS—continued.**

to fall within s. 439 of that Code. **BHUGWAN v. DOYAL GORA . 10 W. R., Cr., 7**

ing them. It is essential, too, in a case of perjury, that he should know at what period he ceased to be a witness and his position was changed to that of the accused. **QUEEN v. KALICHURN LIAHOORER**

(8 W. R., Cr., 54)

13. ————— Omission to com-

**PANY v. KALIDAS DUTT . 23 W. R., Cr., 33**

14. ————— Contempt of

order for some days.—Held that such action, though it might be irregular, was not illegal, and as the accused had not been in any way prejudiced, was covered by s. 537 of the Criminal Procedure Code. **QUEEN EMPRESS v. PALAMBAR BAKSHI**

[I. L. R., 11 All., 391]

16. ————— Irregularity in holding trial without jurisdiction—Criminal Procedure Code, s. 531.—Sessions Judge, Jurisdiction outside, a Sessions to the Se at Dijaor heard by the said Judge

**CRIMINAL PROCEEDINGS—continued.**

place he was empowered to exercise civil, but not criminal jurisdiction. *Held* that the trial of such appeal at Moradabad was an irregularity, but no failure of justice being shown to have been occasioned thereby, it was covered by s. 531 of the Code of Criminal Procedure, and did not render the trial of the appeal a nullity. *QUEEN-EMRESS v. FAZI AZMI* . . . I. L. R., 17 All., 36

17. *Criminal Procedure Code, 1872, ss. 491, 530—Dispute likely to cause breach of the peace—Decision on title by Civil Court—Police report, Incorporation of, by reference.*—On the 20th of March 1879, *A* applied to have certain lands, which he had lately purchased, registered in his name. The order of the Deputy Collector, declaring that *A* had proved possession and was entitled to registration, was not passed until the 24th December 1879. Prior to *A*'s purchase, *B* and *C* had, on the 6th March 1879, obtained registration of the same property. The proceedings were sent to the Commissioner, who, on the 29th September 1880, declared *A* to be entitled to the land; and in October the registration in the names of *B* and *C* was cancelled, and *A*'s name was finally registered. In July 1880, proceedings under s. 530 of the Criminal Procedure Code were commenced upon the petition of certain raiyats, who alleged that other raiyats, at the instigation of *A*, were going to do acts which would lead to a breach of the peace. The Deputy Magistrate, the same person who, as Deputy Collector, had decided the land-registration case in favour of *A*, proceeded under s. 530 to consider the question as to who was in possession, and found *B* and *C* were in possession. *Held* that the Deputy Magistrate could not, in these proceedings, set aside the order which he had made in the registration case, as that order could only be set aside in a regular suit. The proceedings recorded by the Deputy Magistrate did not set forth in express language that he was satisfied that a dispute likely to create a breach of the peace existed in respect of the land in question between *A* on the one side and *B* and *C* on the other, nor did it set forth the grounds upon which he was so satisfied that such dispute existed. *Held* that the proceeding was therefore defective. In the proceedings the Magistrate referred to a police report, which, however, did not show that a breach of the peace was imminent. *Held* that, although this report might be taken to be incorporated by reference, yet that it was not sufficient to justify the order. *Per FIELD, J.*—Unless the parties are able to show that there is such a dispute as is likely to induce a breach of the peace, the Magistrate should hold his hand and not proceed further. When the rights of the parties have been determined by a competent Court, the dispute is at an end, and it is the duty of the Magistracy to maintain the rights of the successful party, and the proper course for the Magistrate to pursue, if the defeated party does any act that may probably occasion a breach of the peace, is to take action under s. 491 of the Criminal Procedure Code, and require from such person security to keep the peace. *IN RE GOMIND CHUNDER MOITRA* [I. L. R., 6 Calc., 835 : 8 C. L. R., 217

18. *Charges distinct and separate, simultaneously tried by jury—Consent*

**CRIMINAL PROCEEDINGS—continued.**

*by pleaders to irregular procedure.*—Members of two opposing parties in a riot were, under two distinct committals, sent up for trial before the Sessions Judge and jury. After the close of the case for the prosecution in one of these cases, the Sessions Judge, with the consent of the pleaders representing the accused, postponed the taking of the evidence for the defence, and proceeded to examine the witnesses for the prosecution in the counter-case before the same jury. The Court then took the evidence of the witnesses for the defence in the first, and in the counter-case, in the order named, and after hearing the address of the various pleaders for the defence and the reply of the Government pleader, proceeded to sum up the facts in both cases to the jury, who returned a verdict in respect of all the accused. *Held* that the procedure resorted to by the Judge was a practical violation of the salutary rule which necessitated the keeping of trials in such cases distinctly separate, and that its adoption having materially prejudiced the interests of the accused, the convictions should be set aside. *Queen v. BAZU, B. L. R., Sup. Vol., 750, distinguished.* *Held*, further, that the defect in the procedure could not be cured by the consent of the pleaders for the defence to the arrangement suggested by the Court. *HOSSEN BUXSH v. EXPRESS*

[I. L. R., 6 Calc., 96 : 6 C. L. R., 521]

19. *Power of High Court—Joint charge—Parties in riot on opposite sides.*—A Magistrate should not send up joint charges to the Sessions Court against persons who take part in a riot on opposite sides, as they have not a common object. But where a person had been so jointly charged and rightly convicted by the Sessions Court, *—Held* (MACPHERSON, J., dissenting) that, as the prisoner had not been prejudiced by the mistake of the Magistrate, there was no sufficient ground for setting aside his conviction or ordering a new trial. *QUEEN v. BAZU*

[B. L. R., Sup. Vol., 750 : 8 W. R., Cr., 47]

20. *Joint trial of persons charged with distinct offences.*—Trial of fourteen persons together charged with distinct offences (committing public nuisances) under ss. 290, 291 of the Penal Code, *—Held* an irregularity calculated to prejudice the accused. Convictions quashed. *PULISANKI REDDI v. QUEEN*

[I. L. R., 5 Mad., 20]

21. *Irregularity in criminal trial—Improper joinder of charges—Criminal Procedure Code, 1872, ss. 233 and 537.—Semble (per PETHERAM, C.J.)*—That if a man were tried for four specific offences of the same kind at one trial, such a procedure would not be merely an irregularity which could be cured by s. 537 of the Code, but a defect in the trial which would render the whole trial inoperative, unless possibly it could be cured by some subsequent proceeding by striking out some portion of the charge. *IN THE MATTER OF LUCHMINARAIN* . . . I. L. R., 14 Calc., 138

22. *Offences of same kind not within year—Failure of justice—Application of s. 537 of the Code of Criminal Procedure*

**CRIMINAL PROCEEDINGS—continued.**

—Power of Full Bench to send case back to referring Bench for final disposal—Rules of the High Court, Calcutta, Appellate Side, Ch. V, Rule 5—Code of Criminal Procedure (Act V of 1898), ss. 233, 234, and 537.—Held that s. 537 of the Code of Criminal Procedure can be applied to any case in which the trial has been held on charges joined together contrary to s. 234 of that Code. In the matter of *Luchmunarain*, I. L. R., 14 Calc., 128, *Queen-Empress v. Chandi Singh*, I. L. R., 14 Calc., 395, and *Ray Chunder Mozumdar v. Gow Chunder Mozumdar*, I. L. R., 22 Calc., 176, overruled. IN THE MATTER OF ABDUR RAHMAN

[I. L. R., 27 Calc., 839  
4 C. W. N., 658]

has in fact occasioned a failure of justice. *KAMU PROSAD MAHISAL v. QUEEN-EMPRESS*

[I. L. R., 28 Calc., 7]

*KABUKALAL v. RAM CHARAN PAL*

[I. L. R., 28 Calc., 10]

24. ————— Irregularity in

[I. L. R., 14 Calc., 358]

25. ————— Criminal Procedure Code, ss. 107, 112, 117, 118, 239, 537—Joint inquiry—Opposing factions dealt with in one proceeding.—Upon general principles, every person is entitled, in the absence of exceptional authority

**CRIMINAL PROCEEDINGS—continued.**

Held, applying by analogy the principles relating to the trial of members of opposing factions engaged in a riot, that the Magistrate acted irregularly in taking steps against both parties jointly, and in holding the inquiry in a single proceeding. Such procedure is not *ipso facto* null and void, but only where the accused have been prejudiced by it. *Empress v. Lochan*, W. N., 11, 1881, p. 98, and *Hossain Buxsh v. Empress*, I. L. R., 6 Calc., 96, referred to. *QUEEN-EMPRESS v. ABDUL KADIR*

[I. L. R., 9 All., 452]

26. ————— Criminal Procedure Code, ss. 535 and 537—Joint trial for

the procedure of the Magistrate. Held, on revision, that the convictions might stand. *QUEEN-EMPRESS v. KUTTI*

I. L. R., 11 Mad., 441

27. ————— Criminal Procedure Code

Separate persons were offence of moving on the one hand, and those persons and one of were charged with having committed the offence of criminal trespass on the 9th

cedure Code. IN THE MATTER OF THE PETITION OF CHANDI SINGH. *QUEEN-EMPRESS v. CHANDI SINGH*

I. L. R., 14 Calc., 395

See *BISHNU BANWAL v. EMPRESS*

[C. W. N., 35]

28. ————— Code of Criminal

**CRIMINAL PROCEEDINGS—continued.**

be applicable in a case where the minor concerned is a member of the dancing girl caste. *PER MUTTUSAMI AYYAR, J.*—It would be no offence if the intention was that the girl should be brought up as a daughter, and that, when she attains her age, she should be allowed to select either to marry or follow the profession of her prostitute mother. *QUEEN-EMPRESS v. RAMANNA*. I. L. R., 12 Mad., 273

**29.** *Irregularity prejudicing the accused—Rioting, Codrter charges of—Cross-cases tried together—Evidence in one case considered in the other—Criminal Procedure Code (Act X of 1882), ss. 233, 239, 537—Illegality—Fight between two parties not “transaction”—“Joinder of charges.”*—Where two cross-cases of rioting and grievous hurt were committed separately for trial before a Sessions Judge, who, having heard the evidence in the first case, heard the evidence in the second case, examined some of the accused in the one case as witnesses for the prosecution in the other and *vice versa*, and subsequently heard the arguments in both the cases together, and the opinions of the assessors (who were the same in both the cases) were taken at one time, and both the cases were dealt with in one judgment, *—Held* that this mode of trial, although irregular, did not prejudice the accused in their defence, and that, under such circumstances, a re-trial was not made necessary by reason of such irregularity. *Queen v. Bazu, B. L. R., Sup. Vol., 750: 8 W. R., Cr., 47,* and *Queen v. Surroop Chunder Paul, 12 W. R., Cr., 75*, approved. Nor did the examination of the accused, who were on their trial in one case as witnesses for the prosecution in the other, affect the validity of their conviction. Observations in *Bachu Mullah v. Sia Ram Singh, I. L. R., 14 Calc., 358*, dissented from. *Hussein Buksh v. Empress, I. L. R., 6 Calc., 96*, considered and distinguished. *Semble*—A fight between two parties cannot be treated as a ‘transaction’ within the meaning of s. 239 of the Code of Criminal Procedure. On the law as contained in that section, the two parties cannot regularly be charged in the same trial. *QUEEN-EMPRESS v. CHANDRA BHUIYA*. I. L. R., 20 Calc., 537

**30.** *Aggregate sentence instead of separate sentences—Material error or defect.*—Two prisoners, having been convicted by an Assistant Judge of forgery and other offences, were sentenced each to an aggregate amount of punishment which the Court was competent to inflict, but without specifying the several penalties awarded for each offence. On reference by the Sessions Judge under s. 434 of the Criminal Procedure Code, *—Held* that it was an irregularity on the part of the Assistant Sessions Judge not to pass a separate sentence under each independent head of the charge, but that it was not an error or defect in consequence of which the High Court could reverse or alter the sentence on revision. *REG. v. VINAYAK TRIMBAK*

[2 Bom., 414: 2nd Ed., 391]

**31.** *Case not finally disposed of—Criminal Procedure Code, 1882, s. 537.*—S. 537 does not apply to a pending case, but only to

**CRIMINAL PROCEEDINGS—continued.**

a case which has been finally disposed of. *NILBATAN SEN v. JOGESH CHANDRA BUTTACHARJEE*  
[I. L. R., 23 Calc., 983: 1 C. W. N., 56]

**32.** *Criminal Procedure Code, 1872, s. 537 (1872, s. 283; 1861-69, ss. 426, 439)—Irregularity prejudicing prisoner in his defence.*—An omission by a Magistrate to hold a preliminary inquiry on a charge under s. 307 of the Penal Code of attempting to murder was, on appeal by the prisoner to the High Court, held to be an irregularity which prejudiced the prisoner in her defence and the proceedings were ordered to be quashed, and a new trial held. *QUEEN v. ITWARAYA*

[14 B. L. R., 54: 22 W. R., Cr., 14]

**33.** *Irregular appointment of jurors.*—Where the Magistrate had appointed as jurors persons who had been appointed by the opposite party, it was held to be an error affecting the merits of the case. *SHATYANUNDO GHOSAL v. CAMPERDOWN PRESSING CO.*. 21 W. R., Cr., 43

**34.** *Irregular selection of jurors—Criminal Procedure Code, 1872, s. 240—Per FIELD, J.*—Irregularities under s. 240 of the Criminal Procedure Code in the selection of the jurors, and in the admission of the deposition of a medical witness, treated, it not being shown that the prisoners had been thereby prejudiced, as being objections which ought not to be entertained for the purpose of interfering with the verdict, regard being had to the provisions of s. 283 of the Criminal Procedure Code and s. 167 of the Evidence Act. *IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON*. *EMPRESS v. JHUBBOO MAHTON*

[I. L. R., 8 Calc., 739: 12 C. L. R., 233]

**35.** *Criminal Procedure Code, 1872, s. 283—Penal Code, s. 181—Irregular trial—Legal Practitioners Act (XVIII of 1879).*—Where three persons were tried together and convicted, under s. 181 of the Penal Code, of having made false statements on solemn affirmation, about the same matter, in the course of an inquiry into the conduct of a pleader under the provisions of the Legal Practitioners Act, *—Held* that the trial of the three prisoners together was a grave error of procedure vitiating the trial. *KOTHE SUBHA CHETTI v. QUEEN*

[I. L. R., 6 Mad., 252]

**36.** *Criminal Procedure Code, 1872, s. 283, and s. 144—Omission to reduce complaint to writing.*—Acting in violation of s. 144 of the Criminal Procedure Code, 1872, in not reducing the complaint to writing is not an irregularity for which an Appellate Court has power to reverse the judgment or sentence under s. 283. *ANONYMOUS*. 7 Mad., Ap., 25

**37.** *Criminal Procedure Code, 1872, s. 283—Irregularity in trial before Magistrate.*—Where a person summoned to answer a charge of criminal trespass appeared and filed a written statement, and the Magistrate proceeded accordingly without recording a proceeding under s. 530 of the Criminal Procedure Code, it was held that the irregularity was covered by s. 283 of

**CRIMINAL PROCEEDINGS—continued.**

38. \_\_\_\_\_ Criminal Proce-

proceedings. IN THE MATTER OF THE PETITION OF  
HUB PERSHAD . . . 24 W. R., Cr., 60

39. \_\_\_\_\_ *Criminal Proce.*

40. \_\_\_\_\_ Irregularities in

[24 W. R., Cr. 43]

**HYPOTHESIS 10<sup>a</sup>** A country's  $\beta$  will be positively related to its  $\alpha$ .

RAM . . . . . I. L. R. 9 ALL. 809

## CRIMINAL PROCEEDINGS—continued.

Procedure. QUEEN-EMPRESS v. RAM LALL  
(L. L. R., 15 ALL. 130)

ALI KHAN *alias* NATHU KHAN  
[I. L. R., 23 Cal., 252]

45. \_\_\_\_\_ Irregularity in

give evidence at the trial. After five witnesses had been examined, the Judge asked the jury whether they wished to hear any more evidence, and, on their stating that they did not believe the evidence and wished to stop the case, the Judge recorded a verdict of acquittal. *Held* that the procedure adopted was wrong, and that no final opinion as to the falsehood or insufficiency of the prosecution evidence ought to have been arrived at until the two

**CRIMINAL PROCEEDINGS—continued.**

remaining witnesses had been examined. *QUEEN-EXPRESS v. RAMALINGAM* I L R., 20 Mad., 445

46. *Irregularity in recording evidence in summons case—Criminal Procedure Code (1882), ss. 260 (d), 355, and 537—Evidence recorded by Native Magistrate in English.*—A Native Sub-Magistrate, who had not been authorized to take down evidence in English, recorded the memorandum of the substance of the evidence taken under s. 355 in that language. Held that there was no provision in the Code prohibiting this procedure, and that, at any rate, it was merely an irregularity which would not vitiate the trial. *QUEEN-EXPRESS v. GOPAL GOVINDAN*

[I L R., 19 Mad., 269

47. *Right of accused to have witnesses re-summoned and re-heard—Criminal Procedure Code (Act X of 1882), s. 350 (a), s. 537—Right to have witnesses summoned and re-heard—Irregularity—Refusal to recall witnesses.*—An accused person does not lose the right of having the witnesses re-summoned and re-heard under proviso (a), s. 350 of the Criminal Procedure Code, because an interlocutory application for enforcing the attendance of certain witnesses has been made and granted not at the trial, but before the trial and with a view to the trial. S. 537 of the Criminal Procedure Code cannot cure the defect in the proceedings by reason of the Magistrate's refusal to re-summon and re-hear the witnesses in contravention of proviso (a), s. 350. *GOMBE SEDA v. QUEEN-EXPRESS*

[I L R., 25 Cal., 863  
2 C. W. N., 465

48. *Criminal Procedure Code, 1872, s. 283—Material error.*—Where the Court, without having first heard the evidence for the prosecution, examines the witnesses for the defence, he commits an irregularity; but if the prisoners are not materially prejudiced thereby, the conviction will not be set aside. *IN THE MATTER OF TURBELLIAN*

4 C. L. R., 338

49. *Acquittal of accused without consulting assessors—Error or defect in proceedings—Criminal Procedure Code, ss. 283, 300.*—Held, where without asking the opinion of the assessors a Court of Session acquitted an accused person, after his defence had been heard, that such omission, although a serious irregularity, was not such an error or defect in the proceedings as was, with reference to the provisions of ss. 283 and 300 of Act X of 1872, a ground for revisional interference. *IN THE MATTER OF THE PETITION OF NARAYAN DAS*

I L R., 1 All., 610

50. *Criminal Procedure Code, ss. 289, 537—"No evidence"—Acquittal of accused without taking opinions of assessors.*—The words "there is no evidence" in s. 289 of the Code of Criminal Procedure, 1882, cannot be extended to mean *no satisfactory, trustworthy, or conclusive evidence*; but the third paragraph of the section means that if at a certain stage of a sessions trial the Court is satisfied that there is not on the record any evidence which, even if it were perfectly true,

**CRIMINAL PROCEEDINGS—continued.**

would amount to legal proof of the offence charged, then the Court has power, without consulting the assessors, to record a finding of not guilty. But if a Court acts only because it considers the evidence for the prosecution unsatisfactory, untrustworthy, or inconclusive, it acts without jurisdiction, and its order discharging the accused is illegal. Even if not illegal for want of jurisdiction, such action is a serious irregularity, which may, or perhaps must, have caused a failure of justice within the meaning of s. 537 of the Code of Criminal Procedure. *In the matter of the petition of Narain Das, I. L. R., 1 All., 610, referred to. QUEEN-EXPRESS v. MUNNA LALL*

I L R., 10 All., 414

51. *Criminal Procedure Code, 1882, s. 537 and s. 310—Charge of previous conviction joined with theft in jury case.*—Where in a trial by jury the Sessions Judge called upon the accused to answer at the same time a charge of theft and also a charge of having been previously convicted, the High Court refused to interfere, it not appearing that a failure of justice had been caused by the irregularity. *BEJIN BEHABY SHAHA v. EMPRESS*

13 C. L. R., 110

52. *Criminal Procedure Code, 1882, s. 537—Omission to read over charge.*—An omission to read and explain the charge to the prisoner held not, under the circumstances, to prejudice the prisoner, and therefore to be immaterial. *QUEEN-EXPRESS v. APPA SUBHANA MENDEE*

[I L R., 8 Bom., 200

53. *Criminal Procedure Code, 1882, s. 537 and s. 195—Irregularity in criminal case—Prosecution of witness for disobedience to summons without sanction.*—Where a witness was prosecuted for disobedience to a summons without sanction previously obtained under s. 195 of the Criminal Procedure Code, the High Court refused to interfere, there being no evidence that the want of sanction had occasioned a failure of justice. *KALLY MOHUN MOOKERJEE v. EMPRESS*

13 C. L. R., 117

54. *Criminal Procedure Code, 1882, s. 530 (1872, s. 34), s. 403—Acquittal—Re-trial—Interference of the High Court.*—Where an offence is tried by a Court without jurisdiction, the proceedings are void under s. 530 of the Code of Criminal Procedure, Act X of 1882, and the offender, if acquitted, is liable to be re-tried under s. 403. It is, therefore, not necessary for the High Court to upset the acquittal before the re-trial can be had. *QUEEN-EXPRESS v. HUSSEIN GAIBU*

I L R., 8 Bom., 307

55. *Criminal Procedure Code, 1872, s. 34—Trying summarily case which ought not to have been so tried.*—A Magistrate having adopted the summary procedure prescribed by Ch. XVIII, Criminal Procedure Code, in the case of an offence which he had no power to try summarily, the High Court set aside the proceedings as being void under s. 34, cl. 4, of that Code. *IN THE MATTER OF THE PETITION OF KHETTER MOHUN CHOWBUNGHER*

22 W. R., Cr., 43

## CRIMINAL PROCEEDINGS—continued.

See QUEEN v. JODOONATH SHARA

[23 W. R., Cr., 33

See CHUNDER SZEKOR SOOKUL v. DHURM NATH  
TEWARKE . . . 1 C. L. R., 434

[5 B. L. R., A. Cr., 67

57.

criminal

1874), ss.

1860), ss. 2, 3.

*Local Extent Act (XV of 1874), ss. 3, 4—Criminal Procedure in the Laccadive Islands.*—The Scheduled Districts Act having been extended to the Laccadive Islands, but no notifications having been made under that Act with regard to the criminal law to be administered there, the Penal Code and the Criminal Procedure Code are in force. Accordingly, where the Sub-Collector of Malabar, as such, tried and sentenced certain persons on one of the Laccadive

## CRIMINAL PROCEEDINGS—continued.

the defence were absent, one being too ill to attend, the other not having been served with the summons; but the Sessions Judge, considering the application

of ss. 344 and 526, when read together, is merely a matter of reasonable time to move the High

[I. L. R., 14 All., 348

See QUEEN-EMPRESS v. RADHE

[I. L. R., 13 All., 66

must be recorded and certified to the High Court under s. 428, Criminal Procedure Code. QUEEN-EMPRESS v. VIRASAMI . I. L. R., 19 Mad., 375

60. ————— Criminal Proce-

a case to the Court of Session. . . .  
nal Court within the meaning of s. 531 of the Code of Criminal Procedure (X of 1882). If such an order, contrary to the requirements of s. 177, directs the commitment to be made to a Court of Session which has no territorial jurisdiction, it is not to be set aside unless it appears that the error occasioned a failure of justice. QUEEN-EMPRESS v. THAKU . . . I. L. R., 8 Bom., 312

61. ————— Criminal Procedure Code, ss. 4, 530, and 537—Third class Magistrate taking cognizance of case on receipt of

**CRIMINAL PROCEEDINGS—continued.**

a yadast from a revenue officer and convicting accused without examining complainant.—A revenue officer sent a yadast to a third class Magistrate, charging a certain person with having disobeyed a summons issued by the revenue officer. The third class Magistrate thereupon tried and convicted the accused under s. 174 of the Penal Code. The District Magistrate referred the case on the ground that the conviction was bad under s. 530 (k) of the Code of Criminal Procedure. *Held* that, as the yadast amounted to a complaint within the meaning of s. 4, although the complainant was not examined on oath as required by s. 200, the conviction was not illegal. *QUEEN-EMPRESS v. MONU* . . . I. L. R., 11 Mad., 448

62. ————— *Criminal Procedure Code, 1882, s. 530, cl. (p)*—*Offence originally cognizable by a second class Magistrate subsequently non-cognizable by reason of an aggravating circumstance—Duty of inferior Court.*—The accused were charged before a Magistrate of the second class with causing grievous hurt as members of an unlawful assembly under ss. 149 and 325 of the Indian Penal Code. The evidence showed that one of the accused had used an axe in causing the hurt. The Magistrate apparently ignored this fact, and he convicted the accused under s. 325 of the Code. The accused appealed. The District Magistrate who heard one appeal and the first class Magistrate who heard the rest of the appeals were both of opinion that the offence committed by the accused was one of causing grievous hurt with a dangerous weapon within the meaning of s. 325 of the Penal Code, and as such beyond the jurisdiction of the second class Magistrate. But they did not think it proper under the circumstances of the case to quash the convictions. The Sessions Judge, on examining the record of the case, was of opinion that, as the offence committed by the accused was not cognizable by the trying Magistrate, his proceedings were void *ab initio* under s. 530 of the Criminal Procedure Code. He therefore referred the case to the High Court, and recommended that the convictions under s. 325 should be set aside. *Held* that the proceedings before the second class Magistrate were not void *ab initio*, as he had jurisdiction to try the accused for offences punishable under ss. 149 and 325 of the Indian Penal Code, with which they were originally charged. *Held* also that, though it was the duty of the trying Magistrate, when the evidence disclosed a circumstance of aggravation, such as the use of a dangerous weapon, which made the offence cognizable by a higher Court, to adopt the proper procedure to send the case to the higher Court, still it was not necessary to quash the proceedings, as the accused were not in any way prejudiced, and the sentences were not inadequate. *QUEEN-EMPRESS v. GUNDYA* [I. L. R., 13 Bom., 502

63. ————— *Irregularity in criminal trial—Prisoner charged with two offences, one of which was committed outside jurisdiction—Objection to jurisdiction taken before Magistrate and in Sessions Court—Criminal Procedure Code (X of 1882), ss. 531, 532.*—The accused was charged

**CRIMINAL PROCEEDINGS—continued.**

under s. 498 of the Penal Code (XLV of 1860) with having enticed away a married woman, and under s. 497 with having committed adultery. The woman alleged to have been enticed away resided in Bombay, but the alleged adultery took place at Khandala outside the jurisdiction. At the enquiry before the Magistrate in Bombay, objection was taken as to his jurisdiction with regard to the charge of adultery. The Magistrate, however, overruled the objections and committed the accused for trial. At the trial an application was made, on behalf of the accused, under s. 532 of the Criminal Procedure Code (X of 1882) that the commitment should be quashed and a fresh enquiry directed on the ground that an objection had been taken to the Magistrate's jurisdiction. *Held*, refusing the application, that the commitment being an order (see *Queen-Empress v. Thakur*, I. L. R., 8 Bom., 312) under s. 531 of the Criminal Procedure Code, the commitment should not be quashed unless a failure of justice would be caused by proceeding with the trial. *QUEEN-EMPRESS v. INGLE* [I. L. R., 16 Bom., 200

64. ————— *Irregularity in commitment—Criminal Procedure Code (1882), ss. 532 and 537—Commitment to Sessions Court by Magistrate having no jurisdiction over place where alleged offence was committed.*—A Magistrate who commits a case for trial by a Sessions Court does so in the exercise of powers duly conferred upon him, and the fact that he had no territorial jurisdiction over the place where the alleged offence was committed, and that an objection to the committal on this ground was taken before the commitment, is no ground for the Court to which the commitment is made quashing it under s. 532 nor under s. 537 of the Criminal Procedure Code. *Queen-Empress v. Ingle*, I. L. R., 16 Bom., 200, followed. *QUEEN-EMPRESS v. ABBI REDDI*. I. L. R., 17 Mad., 402

65. ————— *Stay of criminal proceedings pending civil litigation—Civil Procedure Code (1882), s. 278—Inquiry into claim to attached property—Subsequent civil suit by claimant to establish his right to the property—Criminal Procedure Code (1882), s. 478.*—It is not an invariable rule that criminal proceedings should be stayed during the pendency of civil litigation regarding the same subject-matter. Certain property was attached in execution of a decree. Thereupon accused No. 1 applied to have the attachment raised, on the ground that he had purchased the property from the judgment-debtor under a sale-deed executed long before the date of the attachment. In the summary inquiry, which was made under s. 278 of the Code of Civil Procedure (Act XIV of 1882), he produced the sale-deed, and accused No. 2 was called as his witness and supported his claim. The Subordinate Judge found that the deed was a forgery and rejected the claim. Proceeding then under s. 478 of the Code of Criminal Procedure (Act X of 1882), he held the inquiry directed by that section, and committed both the accused to the Sessions Court on charges of perjury and forgery. During the pendency of the inquiry under s. 478, the accused No. 1 filed a civil suit to establish the genuineness of the

## CRIMINAL PROCEEDINGS—continued.

66. \_\_\_\_\_ Power of the

67. \_\_\_\_\_ Stay of proceed-

and vakil, informing him of the issue of the rule directing stay of proceedings by the High Court, and the Magistrate refused to look at the telegrams and to stay proceedings, but on the other hand proceeded with the enquiry, it was held that the Magistrate had acted improperly, that he should not have proceeded with the enquiry, and in case he inter-

## CRIMINAL PROCEEDINGS—continued.

tained any doubt as to authenticity of the telegrams, the proper course for him was to send a telegram to the Registrar of the High Court to ascertain the truth. *RAYNESSARI PERSHAD NARAYAN SINGH v. EMPRESS* . . . . . 2 C. W. N., 493

See *ANANT RAM MARWARI v. MANMOOH ROY* [2 C. W. N., 639]

68. \_\_\_\_\_ Impropriety of

69. \_\_\_\_\_ Adoption by Sec-

by the Judge was wrong, and that he should have tried the accused with the aid of assessors under Indian Penal Code, s. 396, (2) that the Judge should have enquired under Criminal Procedure Code, s. 533.

s. 395 *QUEEN-EMPRESS v. ADGA VALATAN* [1 L. R., 22 Mad., 15]

70. \_\_\_\_\_ Right to institute prosecution—*Convicted person*.—There is no rule that a convicted person cannot institute criminal proceedings. *QUEEN v. MADHUB CHUNDER GUPTA* [21 W. R., Cr., 13]

71. \_\_\_\_\_ Suit in Civil Court.—Civil proceedings do not constitute a bar to a prosecution in a Criminal Court. *MADHUB KUTCHING v. RASHTH SINGH* . . . . . 9 W. R., Cr., 22

**CRIMINAL PROCEEDINGS—concluded.**

72. ————— Perjury or forgery committed in a civil suit.—*Stay of criminal proceedings pending civil suit—Sanction to prosecution.*—Criminal proceedings for perjury or forgery arising out of a civil litigation should not, as a rule, go on during the pendency of the litigation. *IS AN NANA MAHARAJ . . . I. L. R., 18 Bom., 729*

73. ————— Sunday.—*Legality of proceedings.*—Criminal proceedings taken by a Magistrate are not necessarily illegal by reason of having been taken on a Sunday. *IN THE MATTER OF THE PETITION OF SINGLAI . . . 6 N. W., 177*

**CRIMINAL TRESPASS.**

*See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES . . . I. L. R., 21 Bom., 538*

*See SENTENCE—CUMULATIVE SENTENCES. [I. L. R., 3 All., 101]*

*See THEFT I. L. R., 15 Cal., 388, 402*

1. ————— Penal Code, s. 441.—*Intention to annoy.*—To bring an act of trespass within the meaning of the Penal Code, s. 441, the entry upon the land must be with the intent to annoy, which means with the purpose of annoying the person in possession. *IN THE MATTER OF THE PETITION OF SHIBU NATH BANERJEE . . . 24 W. R., Cr., 68*

2. ————— *Intention to annoy*  
—*Being on land in assertion of title.*—Where the trespass (if any) was not committed within the intent to commit an offence, or intimidate, insult, or annoy the persons in possession, but in the bona fide assertion of a claim of title, this does not amount to criminal trespass. *QUEEN v. SEITH ROSEN LAL [2 N. W., 82]*

3. ————— *Intention to annoy*  
—*Causing loss or injury.*—A built a hut on portion of certain disputed land to which he laid claim, and was, on the prosecution of another claimant to the land, convicted of criminal trespass under s. 441 of the Penal Code. *Held* that the conviction was bad, as in erecting the hut it was not the intention of the accused to annoy. Less or injury would naturally cause annoyance, but not the kind of annoyance contemplated by s. 441 of the Penal Code. *SHRUBHU NATH SARKAR v. RAM KAMAL GUHA [13 C. L. R., 212]*

4. ————— *Intention to annoy*  
—*Enclosing and cultivating portion of burial-ground.*—Defendant was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial-ground. *Held* that the conviction was right. The person (corporate) in possession of the burial-ground is the portion of the public entitled to use the burial-ground, and the act of ploughing up the burial-ground was evidence of intent to annoy such person, the defendant not being one of the portion of the public entitled to its use. *ANONYMOUS . . . 6 Mad., Ap., 25*

5. ————— *Intention to annoy*  
—*Taking portion of public foot-path as one's*

**CRIMINAL TRESPASS—continued.**

*own land.*—Defendant was convicted of criminal trespass for including in his own land a portion of a public foot-path. *Held* that, as the public generally were entitled to the use of the foot-path, there was no illegal entry of the defendant on property in the possession of another with intent to annoy the person in possession, and consequently that the defendant was wrongly convicted. *ANONYMOUS*

[6 Mad., Ap., 28]

6. ————— Penal Code (Act XLV of 1860), ss. 341, 352, 448.—*Wrongful restraint, house-trespass, and assault—Entry into premises purchased at a Sheriff's sale, whether lawful.*—That the entry by a person into premises purchased by him at a Sheriff's sale for the purpose of acquiring possession is not an unlawful entry within the meaning of s. 441 of the Penal Code. *CHARO CHUNDER MUTTY LALL v. QUEEN-EMPRESS. HOSENSEE v. SARAT CHANDRA HALDAR [4 C. W. N., 4]*

7. ————— *Intention to annoy*  
—*Person not in actual possession of house.*—For a legal conviction under s. 441 of the Penal Code of criminal trespass, there must be an intention to intimidate, insult, or annoy a person in actual possession. To enter a house where the owner is only in constructive possession is not sufficient. *ISWAI CHUNDER KARMAKAR v. SITAL DAS MITTER [8 B. L. R., Ap., 68]*

*S. C. ISHUR CHUNDER KARMAKAR v. SEETU DOSS MITTER . . . 17 W. R., Cr., 41*

*QUEEN v. KALINATH NAG CHOWDHRY [9 W. R., Cr., 1]*

*QUEEN v. CHOORAMONT SANT [14 W. R., Cr., 28]*

8. ————— *Intention to annoy*  
—*Forcible entry.*—A person who forcibly enters upon property in the possession of another, and erects a building thereon, or does any other act with intent to annoy the person so in possession, is guilty of criminal trespass within the meaning of s. 441 of the Penal Code, without reference to the question in whom the title to the land may ultimately be found. *QUEEN v. RAM DYAL MUNDLE [7 W. R., Cr., 28]*

9. ————— *Land dispute—Title to land, Failure to prove.*—*Held* by JACKSON, J. (setting aside the order of the Magistrate; MARKBY, J., dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under s. 441 of the Penal Code because the complainant did not make out his title to the land: the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right. *QUEEN v. SURWAN SINGH [11 W. R., Cr., 11]*

10. ————— *Entry into family dwelling-house.*—Entrance of a member of a Hindu joint family into the family dwelling-house is not criminal trespass. The entry of a stranger into a family dwelling-house, with the permission and license

**CRIMINAL TRESPASS—continued.**

of one of the members, is not criminal trespass. IN THE MATTER OF THE PETITION OF FRANKISHNA CHANDRA . 6 B. L. R., Ap, 80

FRANKISHNA CHUNDER v. BISNONATH CHUNDER  
[15 W. R., Cr., 6]

11. ————— *Entry into market with intention to avoid payment of market dues.*—Entry of a local fund market with intent to evade payment of market dues is not a criminal trespass. QUEEN v. VARTHAHA . 1 L. R., 5 Mad., 382

12. ————— *Unlawful entry to*

amount to criminal trespass or any other criminal offence. REG. v. MEMBEVANJI BEJANJI

[3 Bom., Cr., 6]

13. ————— *Entry in property and cutting trees.*—The entry by one man on another's property, accompanied by the cutting down of trees on that property, is criminal trespass. QUEEN v. JERNUT BERRA . 1 W. R., Cr., 48

14. ————— *Entering on land after decree giving another possession.*—Accused was ejman of complainant's family. Complainant obtained a decree setting aside an alienation made by accused. In execution, complainant obtained possession from the alienee. The accused entered on this land. Held that he had not committed the offence of criminal trespass. ANONYMOUS

[8 Mad., Ap., 19]

they could not be convicted of criminal trespass. Re-entry into or remaining upon land from which a person has been ejected by civil process, or of which possession has been given to another for the

THE MATTER OF THE PETITION OF GOBIND PRASAD

[1 L. R., 2 All., 465]

15. ————— *Entry on land in exercise of claim of right—Mischief.*—If a person enters on land in the possession of another in the exercise of a *bond fide* claim of right, and without any intention to intimidate, insult, or annoy such

**CRIMINAL TRESPASS—continued.**

other person, or to commit an offence, then, though he may have no right to the land, he cannot be con-

OF INDIA v. BUDH SINGH . 1 L. R., 2 All., 101

17. ————— *Acting in exercise of right of distraint—Rent Act (Bang. Act VIII of 1869), ss 72, 74, 76.*—A, the servant of B, was convicted of criminal trespass in going upon the land of C, one of B's tenants, and preventing him from cutting his crops. B was convicted of

mand had been made, was served on C, and that no

[1 L. R., 7 Cal., 28]

of killing it. Held that his doing so was not a criminal trespass. IN THE MATTER OF THE PETITION OF CHUNDER NARAYAN v. FARQUHARSON [1 L. R., 4 Cal., 837]

19. ————— *Flying boat for*

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## DIGEST OF CASES.

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## CRIMINAL TRESPASS—continued.

considerable time, alleging a prescriptive right, the mere fact of continuing to do so after a notice of prohibition is not criminal trespass. IN THE MATTER OF THE PETITION OF SRIKANDHUR PARUR

[9 B. L. R., Ap., 19

SRISTEEDHUR PAROOS v. INDROBHOSUN  
CHUCKENBERRY 18 W. R., 25

21. — *Infringement of exclusive right of fishery in public river.*—The unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of criminal trespass in the Penal Code. EMPRESS v. CHART NANTAN

[I. L. R., 2 Calc., 354

22. — *House trespass*  
— *Possession of property the subject of criminal trespass.*—Penal Code, ss. 441, 442, and 443.—C, a ratepayer in a municipality, who had filed a petition against an assessment which in his absence had been dismissed, entered a room where a Committee of the Municipal Commissioners were seated hearing and deciding petitions in assessment matters, ostensibly with the object of presenting a petition for the revision of his assessment. The Chairman of the Committee ordered him to leave the room, and on his refusal to do so, he was turned out. Outside the room in the verandah, he addressed the crowd complaining that no justice was to be obtained from the Committee. C was prevented on these facts at the instance of the Chairman of the Committee, and convicted of house trespass under s. 443 of the Penal Code. *Held* that the conviction was wrong, and that no offence had been committed. The prosecution was bound to prove in order to support a conviction of a charge under s. 441 or s. 442 that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under s. 345 of the Code of Criminal Procedure, and the complainant had failed to prove that the room was in his possession, and had in fact shown that he was merely sitting in it with other persons at the invitation and with the consent of the person, whoever he might be who had the immediate right to such possession. *Held*, further, that even if the complainant could be held to be in possession of the room, there was no evidence of any intent to commit an offence or to intimidate, insult, or annoy any person, it appearing that the object of the accused in going into and remaining in the room was to endeavour to induce the complainant and his colleagues to reconsider their decision, the verbal insult on which the conviction was based having been uttered after C had left the room. CHANDI PERSHAD v. EVANS

[I. L. R., 22 Calc., 123

23. — *Penal Code, ss. 441, 456, 457, and 509—Lurking house trespass by night—Intrusion on privacy—Intention—Charge, Form of—Criminal Procedure Code (1892), ss. 221, 222, and 537.*—A conviction for lurking house trespass by night under s. 456 of the Penal Code is not bad for want of the specification of the intention in the charge, but one under s. 457 cannot be sustained without such specification. In a charge

## CRIMINAL TRESPASS—continued.

under the former section, though a guilty intention must be proved, it is not necessary to prove which of the several guilty intentions the accused had; it will be enough if it is shown that the intention must have been one or other of those specified in s. 441, though it may not be certain which it was. An accused person, the landlord of a house in which he occupied the lower flat, was found in the middle of the night in the room of the complainant and his wife were upstairs, in which the complainant and his wife were at the time sleeping. Upon being detected, the accused was subjected to very severe treatment, but did not utter a word of protestation of innocence or make any show of remonstrance, and when questioned said, "I have committed a fault, pardon me." He was arrested upon a charge under s. 456 of the Penal Code, the criminal intention alleged being that of committing theft. The charge framed by the Magistrate did not specify any intention, and the Magistrate came to the conclusion that the trespass was not committed by the accused, who was a wealthy man, with that intention. He found, however, that the complainant had suppressed some important facts, and that he was not in his wife's room when the accused entered it, and relying on the decision in *Koilash Chandra Chakrabarty v. Queen-Emress, I. L. R., 16 Calc., 657*, he convicted the accused. On appeal, the Sessions Judge, though finding that the Magistrate's views were against the evidence, upheld the conviction with which finding what specifically was the intention with which the entry was made. In revision, it was contended that the conviction was bad (1) because no guilty intention was set out in the charge; and (2) because no such intention was proved by the evidence; and (3) because no such intention was specifically found by the Sessions Judge. *Held* that the first contention was not sustainable for the reasons above stated. Even if it had been necessary to specify the intention in the charge, it would have to be shown under the provisions of s. 537 of the Code of Criminal Procedure that the omission had occasioned a failure of justice, and, having regard to the nature of the charge and the line of defence adopted, the accused had not in any way been prejudiced in his defence. *Held*, as regards the second contention, that though it was not certain what the precise intention of the accused was in committing the trespass, it was clear that it must have been with one or other of the intentions specified in s. 441 of the Penal Code, as, judging from the time, the place, and manner in which the trespass was committed and the conduct of the accused when discovered, it was impossible to suppose that the trespass could have been committed either unintentionally or with any innocent intention, and that it must have been committed with the intention of committing some offence, but that the accused was entitled to have it taken that it was with the least possible culpable intention, namely, an offence under s. 509 of the Penal Code. *Held*, as regards the third contention, that in exercising its powers under s. 439 of the Code of Criminal Procedure, it is open to the High Court to alter any finding and confirm a conviction, and that, if the evidence on the record in a case be sufficient to warrant a conviction, the Court

## CRIMINAL TRESPASS—continued.

or found incorrectly. *BALMARAND RAM v. GHANSAMRAM*. I. L. R., 22 Calc., 391

24. ——— Penal Code, s. 443—*Disobedience of illegal order of Municipal Commissioners*.—The accused were convicted of criminal trespass under s. 443 of the Penal Code, for driving

25. ——— Penal Code, s. 447—*Culti-*

ANONYMOUS. 5 Mad., Ap., 17

the Penal Code. The material fact of which was disbelieved by both the lower Courts. Neither Court found specifically what was the inten-

27. ——— During the pendency of a civil suit, certain persons, on behalf of the plaintiff, went on to the premises belonging to the defendant for the purpose of making a survey and for getting materials for a hostile application against the

## CRIMINAL TRESPASS—concluded.

acting. Held that their actions amounted to criminal trespass. *GOLAB PANDAY v. BODDAM*. [I. L. R., 18 Calc., 715

28. ——— Penal Code (Act XLV of 1860), ss. 441, 436, and 509—*House-breaking by night—Intent—Intrusion upon privacy*.—The accused in the middle of the night

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cause annoyance, in such manner as to act with that intent. *QUEEN-EMPRESS v. RAYAPPA YACHI*. I. L. R., 19 Mad., 340

29. ——— [I. L. R., 19 All., 74

## CROPS.

Assessment of price of—

See N.-W. P. RENT ACT, s. 42. [I. L. R., 10 All., 68

Deposit of, by order of Collector.

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[5 B. L. R., 194  
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**CROWN DEBTS.**

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judgment-debt due to the Secretary of State for  
India in Council, arising out of transactions at a  
public sale of opium held by the Secretary of State  
for India in Council, is a debt in respect of Crown

whether the debt, when recovered, falls into the  
coffers of the State. Principle in *Secretary of State  
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[I L. R., 11 All., 480]

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I L. R., 1 Bom., 184

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**CRUELTY TO ANIMALS.**

See PREVENTION OF CRUELTY TO ANIMALS  
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**CULPABLE HOMICIDE.**

See CHARGE TO JURY—SUMMING UP IN  
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[9 B. L. R., Ap., 88, 87 note  
9 W. R., Cr., 73]

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[I L. R., 19 Calc., 49]

See CASES UNDER MURDER.

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[1 W. R., Cr., 50]

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murder.

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TALS, APPEALS FROM.

[I L. R., 2 Calc., 273]

1. ——— Provocation—Beating—Deli-  
beration—A person who beats another brutally and  
continuously, so that death results, is guilty of mur-  
der, or culpable homicide not amounting to murder,  
according as there may or may not have been grave  
provocation. *QUEEN v. TEPPA FAKHER*

[5 W. R., Cr., 78]

2. ——— Penal Code, s. 300.

feeling had an adequate cause. *QUEEN v. HARI GIRI*  
[1 B. L. R., A. Cr., 11: 10 W. R., Cr., 26]

3. ——— Grave and sudden  
provocation—Murder.—Culpable homicide not  
amounting to murder is when a man kills another on  
being deprived of self-control by reason of grave  
and sudden provocation. But when the act is done  
after the first excitement had passed away, and there  
was time to cool, it is murder. *QUEEN v. YASIN  
SHIKH*

[4 B. L. R., A. Cr., 6; 12 W. R., Cr., 68]

[I L. R., 3 Mad., 123]

and its effects must be sudden as well as grave, and

**CULPABLE HOMICIDE—continued.**

the deprivation of the power of self-control must continue in order to benefit a man who kills another under circumstances of grave provocation. *QUEEN v. BECHOO SAOUT* . . . 19 W. R., Cr., 35

6. ————— *Grave provocation—Interval between provocation and attack.*—Where a man suddenly cut his wife's throat, it was held that, in order to establish that the act was not done under grave provocation so as to bring the case under excep. 1 of s. 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her. The offence in this case held to be culpable homicide. *QUEEN v. NOKUL NUSHYO* [7 W. R., Cr., 72

7. ————— *Sudden fight*—Where it appeared in the case of a person charged with murder that while smarting from a severe blow from a stick in the midst of a sudden fight, and possibly apprehensive of future violence, finding a knife at hand, he took it up, and in the *mêlée* inflicted the wound which caused the death of the deceased,—*Held* that, under the circumstances, the accused was guilty, under the Penal Code, s. 304, of culpable homicide not amounting to murder. *QUEEN v. SOMTRUDDIN* [24 W. R., Cr., 48

8. ————— *Hasty and fatal blow.*—The prisoner, having struck the deceased a hasty but fatal blow with a stick in his hand at the time for abusing his mother, was held guilty of culpable homicide not amounting to murder. *QUEEN v. SULEEM* . . . 1 W. R., Cr., 23

9. ————— *Grave provocation.*—The prisoners found the deceased lying in the same bed with their sister and ill-treated him, from the effects of which ill-treatment he died. *Held* that the provocation was sufficiently grave to justify a conviction of culpable homicide not amounting to murder. *QUEEN v. KASSEEMODDEEN* [4 W. R., Cr., 38

*QUEEN v. MAITHYA GAZEE* . . . 6 W. R., Cr., 42

10. ————— *Penal Code (Act XLV of 1860), s. 304—Culpable homicide not amounting to murder—Grave and sudden provocation.*—A person accused of murder under s. 302 of the Penal Code pleaded in defence that he had found his sister having illicit connection with a man named Thakuri, and had in a fit of passion killed them both on the spot. The statement being accepted was held to be a good plea of grave and sudden provocation so as to reduce the offence to one of culpable homicide not amounting to murder. *QUEEN-EMPERESS v. CHUNNI* . . . I. L. R., 18 All., 497

11. ————— *Grave provocation—Husband finding wife in adultery.*—Two prisoners confessed that having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him. *Held* that the grave provocation given reduced the crime

**CULPABLE HOMICIDE—continued.**

from murder to culpable homicide not amounting to murder. *QUEEN v. GOOR CHUND POLIE* [1 W. R., Cr., 17

12. ————— *Grave provocation—Husband finding wife in adultery.*—Where a prisoner confessed that he did not suspect his wife's fidelity; that he left home on business; that on his return he saw what convinced him of his wife's infidelity; and that, maddened at the sight, he killed both her and her paramour,—*Held* that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity. *QUEEN v. BOODHOO* [8 W. R., Cr., 38

13. ————— *Grave provocation—Husband seeing wife seduced to adultery.*—The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died. *Held* that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder. *QUEEN v. RAMTAHAL KAHAR* [3 B. L. R., A. Cr., 39

14. ————— *Grave provocation—Husband seeing wife in adultery—Deliberation.*—On a certain evening, M, a common workman, saw N committing adultery with his (M's) wife, and on the following morning, while labouring under the excitement provoked by their misconduct, came upon them eating food together, while his wife had neglected to provide food for M. M took up a bill-hook and killed N on the spot. *Held* that, if M connected the subsequent conduct of N and his wife with their misconduct on the preceding evening and regarded it as implying an open avowal of their criminal relations, which, under the circumstances, he might have done, the provocation was sufficiently grave and sudden to deprive him of self-control, and to reduce the offence from murder to culpable homicide not amounting to murder. *BOYA MUNIGADU v. QUEEN* [I. L. R., 3 Mad., 33

15. ————— *Right of private defence—Penal Code, ss. 97, 99, and 104.*—When the accused, whose property had frequently been stolen, went out with a latee to watch his property, and with the latee struck a thief, who died from the effects of the blows, it was held (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s. 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property. *QUEEN v. MOKKE* . . . 12 W. R., Cr., 15

16. ————— *Search by police for stolen property—Apprehended violence.*—A head constable, making an investigation into a case of

**CULPABLE HOMICIDE—continued.**

house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but,

against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head constable was guilty of culpable homicide amounting to murder. *EMPRESS OF INDIA v. ABDUL HAKIM*. I. L. R., 3 All., 253

17. — Killing outlaw while endeavouring to escape—*Penal Code, s. 300, except. 3.*—The prisoners, fearful of being punished if they allowed him to escape, and thinking that they were acting lawfully, in furtherance of a plan arranged for them by a police constable and the lumberer of a village for the capture of an outlaw, for whose arrest a reward had been offered, and in pursuance thereof killed him while endeavouring to escape. Held that the offence committed came under the third exception in s. 300 of the Penal Code, and was culpable homicide not amounting to murder. *QUEEN v. AMAN*. [5 N. W., 130

18. — Unpremeditated assault—*Penal Code, s. 300, except. 4.*—An unpremeditated assault, ending in an affray in which death is caused, committed in the heat of passion upon a sudden quarrel, comes within except. 4 of s. 300 of the Penal Code. It is immaterial which party offered the provocation or committed the first assault. *QUEEN v. ZALIM RAI*. I W. R., Cr., 33

that, there being no intention to cause death, and no bodily injury not being sufficient in the ordinary

**CULPABLE HOMICIDE—continued.**

course of nature to cause death, the offence committed by the prisoner was not murder, but culpable homicide not amounting to murder. *REG. v. GOVINDA*. [I. L. R., 1 Bom., 342

20. — Grievous hurt—Blow caus-

SAHAN RAO

[I. L. R., 3 Calc., 623; 2 C. L. R., 304

21. — Death from violent attack.—Where death has resulted from a violent attack, the Magistrate is bound to commit to the Court of Session, on a charge of culpable homicide not amounting to murder. Conviction of grievous hurt in such a case is contrary to law. *IN THE MATTER OF GORI NATH SHAHA*. I C. L. R., 141

22. — Consenting to act likely to cause death—Murder—*Penal Code, s. 300,*

person from whom the charge is taken. *PER BROUGHTON, J.*—Except. 5 to s. 300 is not applicable to the case of a premeditated fight, but points to a different character, such as suttie. *EMPRESS v. ROHIMUDDIN*

[I. L. R., 5 Calc., 31; 4 C. L. R., 235

23. — Riot—Unlawful assembly—

was taken by the one who is charged with the offence, the offence committed is culpable homicide, but does not amount to murder. *SAMSEREE KHAN v. EMPRESS*

[I. L. R., 8 Calc., 154; 8 C. L. R., 158

24. — *Penal Code, s. 300, cl. 5, and ss. 149 and 307.*—Murder, Attempt to commit—Rioting armed with deadly weapons—Pre-arranged fight.—In a case in which it was found that all the accused were guilty of rioting armed with deadly weapons, that the fight was pre-

the course of the assembly, killed or attempted to kill a man under such circumstances that his act

**CULPABLE HOMICIDE—continued.**

amounted to an attempt to murder, the question arose whether that act could be said to bear a less grave character by reason of excep. 5 to s. 300 of the Indian Penal Code. *Per Curiam.*—Held that upon such finding the case did not fall within the exception. *Per Pigot, J.* (PETHERAM, C.J., and MACMURDOCK, J., concurring).—The 5th exception to s. 300 should receive a strict and not a liberal construction; and in applying the exception it should be considered with reference to the act consented to or authorized, and next with reference to the person or persons authorized, and as to each of those some degree of particularity at least should appear upon the facts proved before the exception can be said to apply. *Shamshere Khan v. Empress, I. L. R., 6 Cal., 151*, and *Queen v. Kukier Mather*, unreported, dissented from, so far as they decide that from such a finding as the above consent to take the risk of death is inferred. *Per O'KINEALEY, J.*—Before excep. 5 can be applied, it must be found that the person killed, with a full knowledge of the facts, determined to suffer death, or take the risk of death; and that this determination continued up to, and existed at, the moment of his death. *Queen v. Kukier Mather*, unreported, observed on. *Per GHOSH, J.*—No general rule of law can be laid down in determining in cases of this description whether the person killed or wounded suffered death or took the risk of death with his own consent, it being a question of fact, and not of law, to be decided upon the circumstances of each case as it arises. *Shamshere Khan v. Empress, I. L. R., 6 Cal., 151*, and *Queen v. Kukier Mather*, unreported, observed on, and the propositions of law laid down therein concurred with. *QUEEN-EMPRESS v. NAYAMUDDIN*

[I. L. R., 18 Cal., 484]

**25.** — Subjecting person of full age to emasculation.—When a man of full age (i.e., above 18 years) submits himself to emasculation, performed neither by a skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder. *QUEEN v. BABOOLUN HIRAH* . . . 5 W. R., Cr., 7

**26.** — Knowledge of likelihood to cause death—*Pre-meditation.*—Where a person snatches up a log of heavy wood, and strikes another with it on a vital part, with so much force and vindictiveness as to cause that other person's death almost on the spot, the act must be held to have been done with the knowledge that it was likely to cause death; but if done without pre-meditation, in the heat of passion on a sudden quarrel, the offence committed is culpable homicide not amounting to murder. *QUEEN v. RAJOO GHOSH* . . . 7 W. R., Cr., 108

**27.** — Taking persons in old boat—*Negligence—Penal Code, s. 299.*—Certain persons whom the accused, a ferryman, was rowing across a river were drowned by the sinking of the boat which was an old one with holes in it over which planks had been nailed. *Held* that the prisoner could not be convicted of culpable homicide not amounting to murder, unless it could be shown

**CULPABLE HOMICIDE—continued.**

that he acted with the knowledge that he was likely, by taking them in the boat, to cause death within the terms of s. 299 of the Penal Code. *QUEEN v. MAOHNEE BEHARA* . . . 11 W. R., Cr., 3

**28.** — The knowledge that an act is likely to cause death does not constitute culpable homicide amounting to murder. It must be shown that the act was committed with the knowledge that it must in all probability cause death. *QUEEN v. GIRDHAREE SING* . . . 6 N. W., 28

**29.** — Act likely to cause death—*Penal Code, ss. 301 and 304 (a)—Assault on thief.*—The prisoners assaulted a thief so severely that he died. One hundred and forty-one marks of separate blows were found on the body of the deceased, and several of his ribs were broken. *Held* that s. 304 (a) of the Penal Code was not applicable to the circumstances of the case, and that, taking the offence out of the category of murder, it must still come under s. 301. *QUEEN v. MAN* . . . 5 N. W., 235

**30.** — *Causing death by branding a thief—Dangerous act.*—Causing death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause death, or such bodily injury as was likely to cause death, is punishable under s. 301 of the Penal Code as culpable homicide not amounting to murder. *QUEEN v. KHEDUN MISSEU* . . . 7 W. R., Cr., 54

**31.** — *Penal Code, s. 304 (a)—Administering milk to child in such quantity as to kill it—Rash and negligent act—Knowledge of consequences.*—Where there was medical evidence to show that milk had been administered to a child in such quantities as to kill it, but there was no evidence to show that the milk was administered by the orders of the mother, or that she knew the quantity that was being administered, *Held* that there was not sufficient evidence to bring her within s. 304 (a) of the Penal Code. The Sessions Judge found that the mother could not have been ignorant of the fact that her child was being over-fed, or of the probable consequences of such over-feeding; such feeding was inconsistent with the terms of s. 304 (a) which provides for the causing of death by any rash or negligent act, not amounting to murder. What a man does with the knowledge that the consequences will be likely to cause death cannot be reduced to a simply rash and negligent act. *QUEEN v. PEMBOER* . . . 5 N. W., 38

**32.** — *Intention to cause injury likely to result in death—Causing death by rash act—Culpable rashness—Culpable negligence.*—Prisoner killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death. *Held* that this was no ground for acquitting of culpable homicide not amounting to murder: the question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions

## CULPABLE HOMICIDE—continued.

33. ————— Penal Code,

34. ————— Penal Code, ss. 304,  
325—Voluntarily causing hurt—Causing death  
by negligence—Spleen disease.—B voluntarily caused

voluntarily causing grievous hurt. *EMPRESS v.*  
*O'BRIEN*. I. L. R., 2 All., 788

35. ————— Penal Code,  
ss. 304 (a), 323—Causing death by a rash or negli-  
gent act—Voluntarily causing hurt.—A person, with-  
out the intention to cause death, or to cause such bodily

ous hurt. *Queen v. Nidamarti Nagabhushanam*, 7  
Mad., 119, *Queen v. Pemkoer*, 5 N. W., 33, *Queen*  
*v. Man*, 5 N. W., 235, *Empress v. Ketabdi Mundul*,  
I. L. R., 4 Calc., 764, *Empress v. Fox*, I. L. R.,  
2 All., 522, and *Empress v. O'Brien*, I. L. R., 2

## CULPABLE HOMICIDE—continued.

37. ————— Penal Code,  
s. 304 (a)—Doing act with rashness and negligence.  
—Where an accused was charged with culpable homi-  
cide, and the evidence showed that the deceased had

[I. L. R., 4 Calc., 815

38. ————— Penal Code,

in the class of offences of the same character. *EM-*  
*PRESS v. KETABDI MUNDUL*

[I. L. R., 4 Calc., 764

shock so inflicted on the nervous system.—*Held per*  
*DAVIES, J.*, that the death was an unforeseen result  
for which prisoner could not be held liable, and that  
she ought to be convicted under s. 323, Penal Code.  
*Held per SUBRAMANIA AYYAR and DENSON, JJ.*,  
that death was a probable consequence of the  
prisoner's act, and that she was guilty under s. 304.  
Penal Code, of culpable homicide not amounting to  
murder. *QUEEN-EMPRESS v. KALIYANI*

[I. L. R., 19 Mad., 350

**CULPABLE HOMICIDE—continued.**

40. ————— *Penal Code, s. 304 (a)*—*Act done in course of dispute*.—In the course of a trivial dispute the accused gave the deceased a severe push on the back which caused him to fall to the road below, a distance of two and a half cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. *Held* that on these facts the accused was not guilty of the offence described in s. 304 (a) of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and *a fortiori*, no designed causing of it. *REG. v. ACHARJYS* . . . . . **I. L. R., 1 Mad., 224**

41. ————— *Penal Code, s. 304 (a)*—*Causing death by a rash or negligent act*.—N, a servant of a railway company, charged with moving some trucks by coolies on an incline, discharged his duty negligently, and in consequence lost control of the trucks. Under his orders, one of the coolies attempted to stop the trucks, and was killed in such attempt. *Held* that A had caused the coolie's death by his negligence, within the meaning of s. 304 (a) of the Penal Code. *Reg. v. Longbottom, 3 Cox, C. C., 439, Reg. v. Swindall, 2 C. & K., 230, Reg. v. Williamson, 1 Cox, C. C., 97, referred to. QUEEN-EMPRESS v. NAND KISHORE* **[I. L. R., 6 All., 248]**

42. ————— *Causing death by a rash and negligent act—Kobiraj—Surgical operation—Unskilled medical practitioner—"Good faith"—"Accepting risk"—Penal Code (Act XLV of 1860), ss. 304 (a), 88, and 52*.—A kobiraj operated on a man for internal piles by cutting them out with an ordinary knife. The man died from hæmorrhage. The kobiraj was charged, under s. 304 (a) of the Penal Code, with causing death by doing a rash and negligent act. It was contended that, inasmuch as the prisoner had performed similar operations on previous occasions, it was not a rash act within the meaning of that section, and that at all events he was entitled to the benefit of s. 88 of the Penal Code, as he did the act in good faith, without any intention to cause death, and for the benefit of the patient, who had accepted the risk. *Held* that, as the prisoner was admittedly uneducated in matters of surgery, and having regard to the meaning of "good faith" as defined in s. 52 of the Penal Code, he was not entitled to the benefit of s. 88. *Held*, further, that s. 88 did not apply to the case, as it was not shown by the accused, on whom the burden of proving that fact lay, that the deceased knew the risk he was running in consenting to the operation, and he could not therefore be said to have accepted the risk. *Held* also that, under the circumstances, the conviction under s. 304 (a) was a proper one. *SOOKABOO KOBIRAJ v. QUEEN-EMPRESS* . . . . . **I. L. R., 14 Calc., 566**

43. ————— *Penal Code, s. 304 (a)*—*Causing death by a criminal act*.—Where death is caused by an act being in its nature criminal, s. 304 (a) of the Indian Penal Code has no application. *QUEEN-EMPRESS v. DAMODARAM* **[I. L. R., 12 Mad., 58]**

**CULPABLE HOMICIDE—concluded.**

44. ————— *Form of conviction—Penal Code, s. 300—Exceptions*.—When a Judge convicts on the charge of culpable homicide not amounting to murder, he should record under which of the exceptions in s. 300 of the Penal Code the case falls. *GOVERNMENT v. KALIKA MISSE* . . . . . **1 Agra, Cr., 3**

**CULTIVATOR.**

*See STAMP ACT, 1879, SCH. II, ART. 13.*  
**[I. L. R., 6 Bom., 691]**  
**I. L. R., 5 All., 360**  
**I. L. R., 15 Bom., 73**  
**I. L. R., 18 Bom., 546**

**CUMULATIVE SENTENCE.**

*See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.*

*See WHIPPING.*

**[B. L. R., Sup. Vol., 951]**  
**7 B. L. R., 165**  
**5 Bom., Cr., 83**  
**20 W. R., Cr., 72**

**CURATOR.**

— under Act XIX of 1841.

*See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.*  
**[I. L. R., 20 Bom., 437]**

**CUSTODY OF CHILDREN.**

*See DIVORCE ACT, s. 41.* . . . . . **6 B. L. R., 313**

*See CASES UNDER HINDU LAW—GUARDIAN.*

*See LETTERS PATENT, HIGH COURT, OL. 15* . . . . . **I. L. R., 14 Bom., 555**

*See CASES UNDER MAHOMEDAN LAW—GUARDIAN.*

*See MAINTENANCE, ORDER OF CRIMINAL COURT FOR* . . . . . **I. L. R., 4 Calc., 374**  
**[I. L. R., 19 Mad., 461]**

*See MALABAR LAW—CUSTODY OF CHILD.*  
**[7 Mad., 179]**

*See CASES UNDER MINOR—CUSTODY OF MINOR.*

1. ————— *Father's right to custody—Legitimate children—English law previous to Stat. 2 & 3 Vic., c. 39*.—The father, if a proper person, cannot be deprived of his legal right to the custody of his legitimate children of whatever age. 2 & 3 Vic., c. 39, which gives a discretionary power to a Judge in England, has not been extended to this country; therefore the law applicable to cases which occurred in England previous to the passing of that statute is applicable here. *IN THE MATTER OF HOLMES* . . . . . **1 Hyde, 99**

## CUSTODY OF CHILDREN—continued.

of his child, if he be an improper person. IN RE  
CARRAU . . . . . 1 Hyde, 143

ARZOON SABOO . . . . . 5 W. R., 235

4. ————— *Parent's or guardian's right to custody of infant—"Habeas Corpus"*  
—Criminal Procedure Code (1882), s. 491—

rights of custody. The modern equitable doctrine  
cited in Seton on Decrees, Vol. II, p. 814, approved.  
IN THE MATTER OF JOSHY ASSAM

[I. L. R., 23 Cal., 280

5. ————— *Custody of mother*

and any removal of the children from place to place  
by the mother ought to be taken to be consistent with  
the right of the father as guardian, and not as a  
taking out of his keeping. IN THE MATTER OF THE  
PETITION OF PRANKRISHNA SURMA. EMPRESS v.  
PRANKRISHNA SURMA . . . . . I. L. R., 8 Cal., 968  
[I. C. L. R., 8

the child in such a case would be no ground for  
stopping an allowance previously ordered. LAL DAS  
v. NECTUNO BHAIKHANI . . . . . I. L. R., 4 Cal., 374

8. ————— *Practice—Cus-*

## CUSTODY OF CHILDREN—continued.

an application was made by the petitioner for the  
custody of the child *pendente lite*, which was  
opposed by the respondent and refused. After  
decree made for judicial separation, the respondent  
not appearing at the hearing, an application was  
made by the petitioner, under the provisions of s. 43  
of the Act, for the custody of the child. No notice  
of such application was given to the respondent.

asked for. LEDLIE v. LEDLIE

[I. L. R., 18 Cal., 473

9. ————— *Change of religion*  
—Education and prospects of minor—Conduct of  
natural guardian—Guardians and Wards Act  
(VIII of 1890)—Habeas Corpus—Criminal Proce-

anything towards the expenses of her daughter's  
board and education, and was quite unable to do so.

should be guided in such cases is that the Court is  
to judge upon the circumstances of each particular

**CUSTODY OF CHILDREN—continued.**

case, and that the welfare of the infant, irrespective of its age, is the main feature to be regarded. *Sembla*—A boy of fourteen and a girl of sixteen have a right to choose their own residence. The provisions of the Guardians and Wards Act VIII of 1890, and the cases on the subject in the English and Indian Courts considered. *IN THE MATTER OF SAITHI JAINOO v. ABRAMS* . I. L. R., 16 Bom., 307

10. ————— *Appointment of Guardian—Guardians and Wards Act (VIII of 1890,) ss. 9 and 17—Application by a Christian father to be appointed guardian of his Hindu minor son—Matters to be considered by the Court in appointing guardian.*—A, who was originally a Hindu, but afterwards became a Christian and abandoned his family residence, applied to be the guardian of the person of his minor son. On the objections of the paternal and maternal uncles of the boy that under the circumstances of the case the father was not fit and proper person to be appointed the guardian of the minor,—*Held*, although the father is *prima facie* entitled to the custody of his infant child, he can be deprived of such parental right if the circumstances justify it; therefore in a case where a child who was brought up as a Hindu, and who expressed a desire to remain a Hindu, and was living with his Hindu relation, who was maintaining him and was looking after his education properly, it would not be to the welfare of the child that he should be handed over to the father and brought up in the Christian faith, and that the Court below, under the circumstances of the case, was right in dismissing the application. *MOKOOND LAL SINGH v. NORODIR CHUNDER SINGH*

[I. L. R., 25 Calc., 881  
2 C. W. N., 379]

11. ————— *Mother's right to custody—Guardian—Act IX of 1861—Marriage of Mahomedan mother with Christian in Mahomedan form.*—A child, the offspring of a Christian marriage, was living after her father's death under the protection of her mother. A married man, a Christian, came to live with her mother, and, in order to legalize their intercourse, he and the mother became Mahomedans, and were married in Mahomedan form. About three years after, when the child had attained the age of fourteen, some of her relatives applied for an order, under Act IX of 1861, that the girl be removed from the guardianship of the mother and her second husband and placed under a Christian guardian. The girl deposed that she wished to remain with her mother and to become a Mahomedan. *Held* by the High Court in granting the application and appointing a guardian in place of her mother that a Judge, in the exercise of his jurisdiction under the Act, is justified in having respect to the religion professed by the father of a minor, and in passing such orders with regard to the custody of the person of such minor as he may hold to be in accordance with what would have been the minor's father's wishes had he been alive to express them. Where a mother under colour of a change of religion forms a connection or leads a life which, by persons professing her husband's faith, would be deemed immoral,

**CUSTODY OF CHILDREN—concluded.**

she thereby ceases to be a proper person to be entrusted with the education of the children of her deceased husband. If the Court finds a case made out for its interference, it will not be deterred from the exercise of its powers because the persons setting it in motion may be actuated by motives other than the interests of the minor. Special leave having been given to appeal to the Privy Council, the order was upheld. *SKINNER v. ORDE* . 10 B. L. R., 125  
[14 Moore's I. A., 309: 17 W. R., 77]

S. C. in High Court . . . 2 N. W., 275

12. ————— *Parent and child—Interference with natural rights for the benefit of the child—Equity and good conscience.*—Plaintiff, a Brahmin widow, sued to recover her illegitimate infant child from defendant, to whom she had entrusted it since its birth for nurture. *Held* that, it being proved that the plaintiff was leading an immoral life, the suit was rightly dismissed. *VENKAMMA v. SAVITRAMMA* . I. L. R., 12 Mad., 67

**CUSTODY OF WIFE.**

*See MAHOMEDAN LAW—CUSTODY OF WIFE* . . . 5 B. L. R., 557  
[13 B. L. R., 180]

**CUSTOM.**

*See CASES UNDER HINDU LAW—CUSTOM.*

*See CASES UNDER MAHOMEDAN LAW—CUSTOM.*

*See CASES UNDER MALABAR LAW—CUSTOM.*

————— *of Trade.*

*See SALE BY AUCTION.*  
[I. L. R., 16 Calc., 702]

1. ————— *Origin of custom.*—A custom, to be valid, must be ancient, must have been continued and acquiesced in, and must be reasonable and certain. *LALA v. HIRA SINGH* . . . I. L. R., 2 All., 49

2. ————— *Effect of custom—Written contract.*—Custom cannot affect the express terms of a written contract. *INDUR CHUNDER DUGAR v. LACHMI BIBI* . 7 B. L. R., 682: 15 W. R., 501

3. ————— *Custom contrary to law of inheritance.*—Custom, when it is ancient, invariable, and established by clear and positive proof, overrides the usual law of inheritance. *KUSTOORA KOOMAREE v. MONOHUR DEO. GOVERNMENT v. MONOHUR DEO* . . . W. R., 1864, 39

4. ————— *Custom regulating succession, Proof of.*—If it is contended that the succession to property is regulated by any special family custom, that custom ought to be alleged and proved with distinctness and certainty. *SERUMAH UMAH v. PALATHAN VITIL MARYA COOFRY UMAH*  
[15 W. R., P. C., 47]

**CUSTOM—continued.**

5. ——— *Family custom—Intermarriages.*—To establish a family custom at variance with the ordinary law of inheritance, it is necessary to show that the usage is ancient and has been invariable, and it should be established by clear and positive proof. **NUGENDER NARAIN v. RUGHONATH NARAIN DEX** . . . **W. R., 1864, 20**

6. ——— *Custom contrary to Hindu law.*—Where a custom according to which the Rajahs of Beerbhoom had granted a right to a share of property described as "Bhabak mehals" appeared to have been always recognized by the Courts, it was maintained, notwithstanding that it was in contravention of the ordinary Hindu law. **NIL MADHUB GOSSAMEE v. CHUNDER MOOKHEE GOSSAMEE** . . . **22 W. R., 387**

7. ——— *Custom contrary to Limitation Acts.*—No custom can be admitted to override the provisions of the Limitation Act. **MOHANTAL JECHAND v. AMRATMAL BECHARDAS** [**I. L. R., 3 Bom., 174**]

variance with both Hindu and Mahomedan laws. **MAHOMED SIDICK v. HAJI AHMED. HAJI ABDULA HAJI ABDSTATAR v. HAJI AHMED** [**I. L. R., 10 Bom., 1**]

tuff hired a pair of horses at Ootacamund from the

[**I. L. R., 14 Mad., 420**]

10. ——— *Sale—Exchange—Trade usage—Contract Act, ss. 49, 77, 92, 151—Delivery of cotton to cotton press—Transfer of Property Act, s. 118—Ownership of cotton.*—According to mercantile usage in the cotton trade in Tuticorin, where a dealer delivers cotton to the owner of a cotton press, not in pursuance of any special contract, the property in the cotton vests in the owner of the cotton press, who is bound to give the merchant in

**CUSTOM—continued.**

to be so well known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract. **JUGGOMOHUN GHOSH v. MANICK CHUND**

[**W. R., P. C. 8**  
**7 Moore's I. A., 283**]

*Reeb Ram, 3 Mad., 50, followed.* **MADHAVAY RAGHAVENDRA v. BALKRISHNA RAGHAVENDRA** [**4 Bom., A. C., 113**]

[**W. R., 1864, 20**]

14. ——— *Mahomedan law*

of such a custom in such district. **KUNHI BIVI v. ABDUL AZIZ** . . . **I. L. R., 8 Mad., 103**

15. ——— *Land separated from estate by change in course of river.*—When a party claims land separated from his estate by a

[**3 B. L. R., P. C. 5**  
**11 W. R., P. C. 42**  
**13 Moore's I. A., 1**]

*See also BISSESSURNATH v. MONESAR BUX SINGH* [**11 B. L. R., 265**  
**18 W. R., 180**  
**L. R., I. A., Sup. Vol., 34**]

## CUSTOM—continued.

16. *Transferability of tenures.*—In an enquiry as to whether tenures of a certain class are transferable according to local custom, it is sufficient if there is credible evidence of the existence and antiquity of the custom, and none to the contrary; there is no necessity for the witnesses to fix any particular time from which such tenures became transferable. *Joy Krishna Moorthy v. Doonda Narain Nag* (11 W. R., 340)

17. *Pre-emption—Proceedings in former suits.*—The proceedings in two former suits, where, under similar circumstances, though the exercise of the right was disputed on other grounds, the right of pre-emption was admitted to exist, may be received in evidence in support of the custom. *Madhus Chunder Nath Biswas v. Tomen Bewan* . . . . . 7 W. R., 210

18. *“Hajji-chaharum”*—Private sale—Sale in execution of decree.—Proof of a custom whereby the zamindar of a village is entitled to one-fourth of the purchase-money when a house in the village is sold privately is not proof of a similar custom in respect of sales in execution of decrees. *Kalian Das v. Bhagirathi*

[I. L. R., 8 All., 47]

19. *Right to timber washed ashore—Wreck—Lords of manor.*—Where a plaintiff sued for damages for value of timber carried away by Government after being washed on to his estate, and to have his right declared as against Government to all timber that in the future may be washed on to his estate. *Held* that it was not necessary for plaintiff to produce documentary evidence in support of the right, or some decree or decision of competent authority establishing the custom. Lords of manors are allowed to establish rights to wrecks, etc., by long-continued and adverse assertion of, and enjoyment under, such claim; and the plaintiff was entitled to have the question tried by the evidence he had adduced. *Chuttur Lall Singh v. Government* . . . . . 9 W. R., 97

20. *Observations on the use of books of history to prove local custom.*—Observations on the use of books of history to prove local custom, and on the position as heads of their caste by custom of the representatives of the ancient sovereigns of the West Coast. *Vallabha v. Madusudan* . . . . . I. L. R., 12 Mad., 495

21. *Local custom—Bom. Reg. IV of 1827, s. 26.*—By s. 26, Regulation IV of 1827 (Bombay), the usage of the district in which a suit may arise takes precedence over the law of the defendant in the determination of civil suits. By local custom in the Broach district, wuqf land left as a religious endowment may be mortgaged, although such practice is contrary to Mahomedan law. *Abas Ali Zenuf Abadin v. Ghulam Muhammad*

[I. L. R., 36

22. *Proof of existence of custom—Information derived from deceased persons—Evidence Act, 1872, s. 32, sub-s. (5), ss. 49 and 60.*—A witness may state his opinion as to

## CUSTOM—continued.

the existence of a family custom (in this case primogeniture) and give as the grounds thereof information derived from deceased persons. But it must be independent opinion based on hearsay, and not on mere repetition of hearsay. See Evidence Act, 1872, s. 32, sub-s. (5), ss. 49 and 60. Its weight depends on the character of the witness and of the deceased persons. *Gaururudhwaia Parshad Singh v. Saparamdhwaia Parshad Singh* . . . . . L. R., 27 I. A., 238

23. *Custom of inheritance to bhagdari tenures in the Broach district.*—The custom in the Broach district of male first cousins succeeding to property held on the bhagdari tenure in preference to daughters or sisters upheld in a case in which the bhagdars were Mahomedans. *Bai Khedu v. Dasu Lall* . . . . . 5 Bom., A. C., 123

24. *Bhagdari tenures in Broach—Inheritance—Special custom—Priority of nearest male relative to daughter or sister.*—The plaintiff, as heir of her father (a deceased Hindu bhagdar), sued the sons of sisters of her father's paternal uncle for possession of certain bhagdari lands situate in a village in the Broach collectorate. The defendants pleaded that they were entitled to the property under a special custom regulating the succession to bhagdari lands in the collectorate of Broach, under which custom, on the death of a bhagdar, whether Hindu or Mahomedan, without male issue, his nearest male relations (after the death of his widow), whether sprung through male or female relatives of the deceased bhagdar, succeed to his bhagdari lands to the exclusion of his daughter or sister. *Held* that the custom alleged was sufficiently proved, and that the defendants were entitled to retain possession of the bhagdar lands in question. *Per Curiam.*—The custom alleged being, if not universal, at least general, in the Broach collectorate, it should, in the case of any particular village, at any rate on evidence being given of its continuance in other similar adjacent villages, if not in the particular village itself (though it would always be more satisfactory if this could be done), be held still to survive, unless and until the opposite party proved the adoption of some other custom, or of the ordinary rules of inheritance, in the particular village, or, failing such proof, the general prevalence of such rules or such opposing custom in other similar adjacent villages. *Quære*—Whether males sprung of male relatives of a deceased bhagdar have priority over males sprung of female relatives of the same. *Quære*—Whether a daughter or sister of a deceased bhagdar is wholly excluded by the custom, from the line of inheritance, or would, on failure of male relations, succeed to the bhagdari lands. *Pranjiwan Dayaram v. Bai Reva*

[I. L. R., 5 Bom., 482]

25. *Wajib-ul-urz—Evidence of village custom.*—A wajib-ul-urz is not a mere contract; it is a record-of-rights made by a public servant; and therefore, without attestation or execution by the proprietors of the mouzah, it is entitled to weight as evidence of village custom. *Dabee Dutt v. Enait Ali* . . . . . 2 N. W., 395

**CUSTOM—continued.**

28. *Cess, Levy of—Wajib-ul-urz.*—Held that the mention of the cess in a wajib-ul-urz is not conclusive proof of the custom or usage which gives the right to levy the cess against persons not parties to it. *RAM CHUND v. ZAHOR ALI KHAN* . 1 Agra, 134, 135

co-parceners and their tenants who were no parties to it. *PUCHOO v. MAHOMED TALA ASSUDDOOLAH*

[3 Agra, 217]

28. *Record of cess*  
*by settlement officer.*—The fact that a cess leviable

[I. L. R., 2 All, 49]

29. *Manorial dues*

But such a custom is not established by one instance. *TOTA RAM v. MOHAN LAL* . 2 Agra, 120

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B, 75

**CUSTOM—continued.**

tion as a right and of its recognition or enforcement, ranging over a long period of time and in various places, should be shown. *SHEO CHURN KANDOO v. GOODUR BURNWAR* . 3 Agra, 138

33. *Suit for pre-emption—Evidence—Decrees enforcing right.*—In a suit for pre-emption based on custom, evidence of decrees passed in favour of such a custom, in suits in which it was alleged and denied, is admissible evidence to prove its existence. The most satisfactory evidence of an enforcement of a custom is a final decree based on the custom. *Gurus Lal v.*

at a certain period of the year, for the purpose of cultivating indigo. Held by the Full Bench that the word "khushi" used in the wajib-ul-urz indicated that the land was only to be taken with the occupancy-tenant's consent, and the document created no right of the nature alleged, namely, to take the land despite the tenant. *SHEKHARAN v. BHABHO PRASAD* . I. L. R., 7 All, 880

the custom the burden of proof; and in the same

**CUSTOM—continued.**

of pre-emption, which was based on contract and custom as evidenced by the wajib-ul-urz of a village, was dismissed by the lower Courts on the ground that any contract which might be founded on the wajib-ul-urz was not binding on the vendor-defendant, as that document did not bear his signature, and the lower Appellate Court attached no weight to the wajib-ul-urz as proof of the custom of pre-emption, because it was drawn up when Regulation VII of 1822 was in force, and at that time there was no legal presumption of its accuracy. The claim was dismissed on the ground that the plaintiff's evidence did not prove the existence of a custom of pre-emption in the village. *Held* that the lower Appellate Court had erred in dealing with the evidence, and that, although this particular wajib-ul-urz was made before Act XIX of 1873 came into force, yet the weight which would attach to its entries, both as proof of the contract as well of custom, was very strong. *Isri Singh v. Ganga, I. L. R., 2 All., 876*, referred to. *MUHAMMAD HASAN v. MUNNA LAL I. L. R., 8 All., 434*

**36. Wajib-ul-urz—Mahomedan law.**—It having been alleged that an estate, by custom, descended to a single heir in the male line, the High Court, concurring with the Court of first instance, found that this custom had not been proved to prevail in the family. On an appeal contesting this finding, it was argued, among other objections, that the High Court had not given sufficient effect to an entry in the wajib-ul-urz of a zamindari village, the principal one comprised in the family estate now in dispute; the last owner of that estate who held all the shares in the village having caused an entry to be made to the effect that his eldest son should be his sole heir, the others of the family being maintained. *Held* that, though termed an entry in a wajib-ul-urz, the document was not entitled to the name, but was rather in the nature of a testamentary attempt to make a disposition contrary to the Mahomedan law of descent. *MOHAMMAD ISMAIL KHAN v. FIDAYAT-UN-NISSA*

[I. L. R., 8 All., 516]

**37. Dhardhura—Alluvial land.**—*Quare*—What is the extent of the applicability of the custom of dhardhura in regard to alluvial land overriding the provisions of Regulation XI of 1825. *NASER-OD-DEEN AHMED v. OOMEDEH*

**38. Dhardhura, Applicability of custom—Accretion.**—The custom of dhardhura applies to lands thrown up or formed by fluvial action either in one year or in the course of a number of years. Whether it is equally applicable to chuckee formations or tracts of land severed by a sudden change in the course of a river, and yet preserving their identity of site and surface after the severance, must be determined by proof of the extent of the custom. *KATIYANEE v. MAHOMED SHURFOOD-DEEN*

**39. Dhardhura.**—The custom of dhardhura is, when applied to lands gained otherwise than by gradual accretion, opposed to equity; and such a custom must be proved, not by

**CUSTOM—continued.**

the vague assertions of witnesses, but by a sufficient enumeration of instances. *ISREE SINGH v. SHURFOOD-DEEN* . . . 1 N. W., 142; Ed. 1873, 224

**40. Dhardhura—Beng. Reg. XI of 1825, ss. 2, 4 (ii).**—The question whether the custom of dhardhura applies to lands gained by gradual accretion only, or also to lands which have been separated from a mouzah by a sudden change of stream, must be determined in each case on the evidence; for although the Court would be disposed to scrutinize with care evidence in regard to a custom which would have the effect of passing from one owner to another lands long held and enjoyed, and of which the character is in no way altered by river action, yet it cannot be said that such a custom can in no case be established and given effect to. *Katiyane v. Mahomed Shurfoodeen, 3 Agra, 189, Isree Singh v. Shurfoodeen, 1 N. W., 142, and Rajendur Pertab Sahoe v. Laljee Sahoo, 20 W. R., 427*, referred to. *Sibt Ali v. Munir-ud-Din* [I. L. R., 6 All., 479]

**41. Validity of custom—Power of some of mirasidars to bind co-owners of village lands.**—A custom that some only of the mirasidars of a village should bind the co-owners of the village lands is valid. *ANANDAYAN v. DEVARAJAYAN* [2 Mad., 17]

**42. Usage of mangrove—Policy of insurance—Evidence of average loss—Certificate of mahajans.**—An alleged usage that the mahajans' certificate is deemed to be conclusive evidence against the under-writer without production of manifest and account sales, and that upon proof of the certificate alone and of the policy the owner is entitled to recover his average loss, cannot be upheld, such not being a reasonable usage. *RANSORDAS BHAGILAL v. KESRISING MOHANLAL* 1 Bom., 229

**43. Unreasonable custom—Broker varying contract.**—A custom which allows a broker to deviate from his instructions is unreasonable, and the Courts of law will not enforce it. *ARLAPA NAIK NARSI KISHAVJI AND COMPANY* [8 Bom., A. C., 19]

**44. Customary right of privacy—Right of building and to interfere with erection of building.**—A customary right of privacy under certain conditions exists in India and in the North-Western Provinces, and is not unreasonable, but merely an application of the maxims *sic utere tuo ut alienum non laedas* and *aedificare in tuo proprio solo non licet quod alteri noceat*. In the case of a building for parda purposes, newly erected without the acquiescence of the owner of an adjacent building site, a custom preventing such owner from so building as to interfere with the privacy of the first new building would be unreasonable and consequently bad in law. But if such adjacent owner, without protest or notice, allowed his neighbour to erect and consequently to incur expenses in connection with a building for the use of parda-nashin women, a custom preventing him from interfering with the privacy of such new building would not

**CUSTOM—continued.**

India be unreasonable. **GOKAL PRASAD v. RADHO.** I. L. R., 10 All., 358

45. ————— Customary right  
—Facts necessary to establish the existence of a

during the  
rt, on the  
the said land  
as follows —

That various murams, whose connection with each other is not established, have within a period of twenty years or so placed tazias upon land and sung there." Held that this finding of fact did not necessarily in law lead to the conclusion that there was a local custom by virtue of which the easement now claimed by the defendants was acquired. Where a local custom excluding or limiting the general rule of law is set up, a Court should not decide that it exists unless such Court is satisfied of its reasonableness, and its certainty as to extent and application, and is further satisfied by the evidence that the enjoyment of the right was not by leave granted, or by stealth, or by force, and that it had been openly enjoyed for such a length of time as suggests that originally, by agreement or otherwise, the usage had become a customary law of the place in respect of the persons and things which it concerned. **KUAB SEN v. MAMMAN.** I. L. R., 17 All., 87

Reversing on appeal under the Letters Patent **MAMMAN v. KUAB SEN** I. L. R., 18 All., 178

46. ————— Usage imported  
as term of a contract—Practice on a particular estate.—In order that the practice on a particular estate may be imported as a term of the contract into a contract in respect of land in that estate, it must be shown that the practice was known to the person whom it is sought to bind by it, and that he assented to its being a term of the contract; and when the person sought to be bound by the

**CUSTOM—concluded.**

47. ————— Custom of burial  
—Local custom—Right claimed by a certain section

(I. L. R., 23 Bom., 666)

**CUTCHI MEMONS.**

See **HINDU LAW—INHERITANCE—SPECIAL LAWS—CUTCHI MEMONS.**

(I. L. R., 9 Bom., 115  
I. L. R., 10 Bom., 1)

See **HINDU LAW—JOINT FAMILY—DEETS AND JOINT FAMILY BUSINESS.**

(I. L. R., 14 Bom., 189)

See **MAHOMEDAN LAW—CUTCHI MEMONS.**

(I. L. R., 6 Bom., 452  
I. L. R., 9 Bom., 115, 158)

See **PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF.**

(I. L. R., 6 Bom., 452)

See **WILL—VALIDITY OF WILL.**

(I. L. R., 10 Bom., 1)

**CYPRES PERFORMANCE.**

See **WILL—CONSTRUCTION** I. Mad., 429  
(I. L. R., 1 Calc., 303; I. L. R., 3 I. A., 32  
I. L. R., 11 Calc., 591  
I. L. R., 13 Calc., 193)



